(1930) 10 MAD CK 0001

In the Madras High Court

P.V.S. Kabalamurthi Pillai APPELLANT

Vs

P.V. Subramania Pillai and Others RESPONDENT

Date of Decision : 08-10-1930

Acts Referred:

Citation : 131 Ind. Cas. 655

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—This summons is taken out by the 5th defendant. He applies that the Receivers may either be removed or in the

alternative suitable directions be given to them. After hearing the application very fully, I have come to the conclusion that they should be continued

but that in the interests of the estate their duties should be more precisely defined than in the orders under which they were appointed.

2. [His Lordship stated the facts and dealt with the charges made against the Receivers and proceeded.]

3. By far the most important question that has been argued is, what is the amount of remuneration to which, the receivers are entitled? The point

really turns on the meaning of the expression ""gross sale"" in the order of Court dated the 2nd June, 1925. Paragraph 12 of the order reads thus:

With regard to the condiment business the said Receivers do retain 5 per cent, on the gross sales in their hands as and for their remuneration for

the said condiment business,

4. It was by the consent and at the request of the parties that this order was made. It ""must be read in the light of the affidavit filed then by the

Receivers. In that affidavit, they ask for a commission at 5 per cent, on the "" gross sale-proceeds."" It is not disputed that the two expressions

gross sales "" and ""gross sale proceeds"" are identical in their meaning and effect. Messrs. Fraser and Ross in their report point out, that the

commission retained by the Receivers in respect of the business from the 18th of August, 1924 to the 31st of March, 1930, ia Re. 4,391-12-0.

They have drawn this commission on the footing that they are entitled to 5 per cent, on what is shown as the amount of the "" gross sales,"" namely, 9

lakhs odd. This concern had dealings mainly with two firms, Messrs, Sharwood and Co., England, and Messrs. Fisher and Co., Australia The

goods were supplied to them on a large scale from time to time under subsisting contracts. The invoices made out against them, mention certain

figures as the price of the goods supplied and from those figures is deducted what is described in the report as "" trade discount,"" This latter term

comprises various items such as commission, bonus and discount. It is the aggregate of the total prices that reaches the figure 9 lakhs odd, to which

I have referred. The "" trade discount."" amounts to about two lakhs and the actual proceeds received by the Receivers is about 7 lakhs. The

question is, are they entitled to commission on the 9 lakhs odd or only on the sum of about 7. lakhs? In my opinion, the Receivers are clearly not

entitled to cemmission on the sum shown as "" trade discount,"" "" Proceeds"" mean produce, out come, profit. (See the Concise Oxford Dictionary).

An amount never received cannot be part of the proceeds. Whether from the point of view of the buyers or the sellers, the only figure that matters,

is the amount actually paid and received. As Messrs. Fraser and Ross point out. "" It is usual in business concerns to quote list or catalogue prices

and allow percentages off such prices to trade customers as trade discounts. Such discounts are deducted in the invoices themselves and are not

brought into account in the financial books."" To seem to make a concession while in point of fact no concession is made or intended, is a devise

which tradesmen usually employ. To take an instance, if you want to charge for an article Rs. 75 you may qoute its price as Rs. 100 and allow a

discount of 25 per cent.; or you may quote Rs. 125 as its price with a discount of 40 per cent. In either case, the buyer pays and the seller receives

only Rs. 75. So long as the buyer parts only with Rs. 75, it little signifies to him whether the price quoted is Rs. 100 or Rs, 125. The Receivers'' commission must not be made to depend upon the fictitious figure that they may choose to show as the original price of the article.

5. Moreover, the Receivers'' commission is in truth the price of the work done by them. It must have some relation to the labour involved and the

time taken. Why should they receive remuneration in respect of an amount which is added in the first instance and then straightway deducted? So

long as the buyer knows that he is paying only 7 lakhs, what matters to him whether the original price is shown as 9 lakhs, as in this case, or say 15

lakhs?

6. It has been suggested for the Receivers that the very phrase "" gross proceeds"" involves that it is something distinct from net pioceeds. Perfectly

true but you cannot, for sustaining this distinction, import a fiction and call a sum never received, as a part of the proceeds. Having regard to the

nature of this business the expression ""gross sale-proceeds"" is extremely in apt and wholly unrelated to the facts of the case. The parties have used

the words loosely without passing to think what they mean. The difference between the gross and the net sale-proceeds is recognised in some of

our enactments. For instance, in the Origin al Side Rules, Order XXVI, Rule 4, makes the commission depend on what may be described as

gross sale-proceeds."" It says that the Receiver may take his commission at 5 per cent, on sales calcutated on the total value realised by him. On

the other hand, Order XVIII, Rule 6, provides that the master may fix as the auctioneer''s remuneration, a percentage on the net sale-proceeds.

The same expression ""net sale-proceeds "" occurs also in Order XXXIV, Rule 6, also Rule 8-A, Civil Procedure Code. Let us take Order

XXXIV, Rule 6. Where after the sale of a morgaged property, there is still a balance due to the mortgagee, this rule says that the Court may pass a

personal decree for the balance. It is on the basis of net sale-proceeds the, rule provides that the balance is to be computed. In these several

instances, the "" net proceeds "" are something different from "" gross proceeds."" The mortgagee in the rule quoted above, has no concern with the

gross sale-proceeds,"" The mortgagee in the rule quoted above, has no concern with the "" gross sale-proceeds."" The expenses of the sale must be

first deducted, and thus the net sale-proceeds are arrived at. But in the present case, there are generally speaking, no expenses attending a sale at all. So, as I have said, the phrase "" gross sale-proceeds"" is inappropriate and in any event cannot include an amount never received. Whether the

phrase is suitable or not, the question really is, did the parties at the time they used it, intend that the commission should be paid on a fictitious sum,

an amount that was never to come? In my opinon, the answer must clearly be in the negative.

7. The report points out, that the Receivers have charged commission also on packing charges and freight, which are treated as part of the price. I

can give effect, if necessary, to the phrase "" gross sales"" by holding that they are entitled to remuneration on these two items. Strictly, in my opinion,

they cannot charge commission on freight; it is paid at one end and recovered at the other. But still the term used being "" gross proceeds,"" as the

freight is a part of the sum they received, I am prepared to allow them commission on this head. In the result, they may retain commission on freight

and packing charges but not on "" trade discount.

8. I have discussed this point at some length as the sum involved is upwards of Rs. 10,000 On my finding, the Receivers are accountable for this

sum, being the excess received by them. I do not propose, to direct them to bring back this sum, bat it will be treated as a debt due by them to the

estate to be adjusted against any future commission they may earn.

9. In the result, I have decided not to remove the Receivers but to give them the following directions.

10. [His Lordship gave the necessary directions and also passed orders regarding costs.]