

(1965) 01 MAD CK 0027

In the Madras High Court

Case No : Second Appeal No. 43 of 1962

Rajagopala Naidu

APPELLANT

Vs

Aiyyaswamy Chettiar and Others

RESPONDENT

Date of Decision : 25-01-1965

Acts Referred:

Limitation Act, 1963 — Article 115, 23, 24

Citation : AIR 1965 Mad 532 : (1965) 78 LW 658 : (1965) 2 MLJ 135

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Judgement

(1) The plaintiff who has failed in the courts below, on a question of limitation, is the appellant in this second appeal. The plaintiff had a subsisting lease with the second defendant over a premises in a busy locality in Rangai Gowder St., Coimbatore. During the currency of that lease, the second defendant granted a lease to the first defendant. The plaintiff agreed to surrender his right as lessee over the premises and in consideration thereof, an agreement. A.2 dated, 29-12-1952 was entered into between the first and second defendants to the effect that for a period of 15 days, at the time of Deepavali each year, the plaintiff would be permitted to occupy the downstairs portioning the premises to sell crackers. Even though this agreement purports to be one between the first and second defendants, the recitals of the agreement taken along with the fact that the plaintiff himself has signed this agreement leave no room for doubt that the plaintiff also should be regarded as a party to the agreement.

(2) On 17-10-1953, the plaintiff issued a notice to both the defendants asking for possession of the premises for a period of 15 days as specified in the agreement. But his claim was repudiated by the defendants on 26-10-1953. The result was that the plaintiff who had purchased crackers with a view to sell them during Deepavali season and make profit, could not do so, and from the evidence it appears that the plaintiff sold his entire stock only by 13-11-1953. As the plaintiff was deprived of a good opportunity of carrying on business in Rangai

Gowder St, he sustained damage to the tune of Rs. 5200. This sum of Rs. 5200 is the loss, which he had sustained in respect of the capital invested by him. It may be mentioned that the plaintiff filed the suit O. S. 302 of 1954 for enforcing his rights under the agreement Ex. A. 2 and the same has been dismissed. The courts below have held that the suit O. S. 302 of 1954 does not operate as a bar to the present claim. Nothing turns upon this aspect of the matter. Both the courts have held that the plaintiff had made out that he had sustained damages as stated above.

(3) In paragraph 3 of the plaint, the plaintiff has admitted that under the agreement Ex. A. 2 he must be put in possession for a period of 15 days prior to Deepavali, so that, at the latest, the breach committed by the defendants had occurred on 6-11-1953. It was contended in the courts below that Art. 115 of the Limitation Act would not apply to the facts of the instant case and that the case would be governed either by S. 23 or S. 24.

I am unable to see how S. 23 or S. 24 has any application to the case. Learned counsel for the petitioner drew my attention to some decisions dealing with a claim for damages between the vendor and vend, in which it had been held that a cause of action for a suit for damages would commence to run not on the date of the contract or on the breach as such, but only when the vendor or the vendee, as the case may be, had sustained damages as a result of the claim put forward by a third party with a paramount claim. Learned counsel relied on some of the observations contained in those decisions.

I am of the opinion that those decisions are not relevant to the instant case and that the observations contained therein should not be divorced from their context and understood as authority for the position that in every case of a breach of contract, limitation would commence to run not on the date of the breach, but only from the date when the party aggrieved was in a position to fix or quantify his damages. Entirely different considerations would apply to claim for indemnity. This is a simple case of a breach of contract, the breach consisting in the plaintiff not being allowed to enjoy his promised right of a licence for a period of 15 days. Breach is complete when the time for putting the plaintiff in possession of the property had expired on 6-11-1953, the date of Deepavali. The fact that the plaintiff could not file a suit that very day and that some time may have to lapse for him to determine the quantum of damages does not mean that limitation does not commence to run from the date of the breach.

Learned counsel for the respondents drew my attention to a Bench decision of this court in Soundararajan and Co. Ltd. Vs. K.P.A.T. Annamalai Nadar, in which it was contended that where a suit is filed for damages sustained upon a breach and consequent upon a resale, time would commence to run not from the date of the breach but only after the resale when the exact amount of damages could be ascertained by the plaintiff. This argument was not accepted and it was held that time would commence to run under Art. 115 from the date of the breach. The matter was put thus by Anantanarayanan J., delivering the judgment on behalf of

the Bench:

"But we find, upon a scrutiny of the relevant dates, that this claim is definitely out of time. It ought to have been instituted within 3 years of the date of the breach of the contract and it is no defence to this objection to urge that it was only the occasion of resale which enabled the defendant firm to ascertain exactly the degree of damages, or the precise amount which would represent the injury suffered by them. The occasion for ascertainment will have to be distinguished from the date upon which the cause of action arose and from which limitation began to run".

The principle of the decision clearly applies to the instant case. The acceptance of the contention urged by learned counsel for the appellant would be completely opposed to the scheme of Art. 115 and S. 23 and S. 24 of the Limitation Act. In every case of a breach of contract for the sale of goods, the plaintiff who comes to court has a duty to mitigate the damages and he may leave to take certain steps with regard to the goods in question and it is only after such steps are taken by way of resale that the damages could be ascertained. That does not mean that the running of time is postponed till the damages are actually ascertained and after resale. In this case, there is no question of any continuing wrong within the meaning of S. 23, nor is it a case in which a cause of action has not accrued to the plaintiff on the date of the breach, within the meaning of S. 24. The second appeal is dismissed, but in the circumstances, there will be no order as to costs here. Leave refused.

4. Appeal dismissed.