

(1984) 03 MP CK 0011

In the Madhya Pradesh High Court

Case No : Second Appeal No. 626 of 1981

Rajlal Sindhi

APPELLANT

Vs

Kaka and Company, Satna and Another

RESPONDENT

Date of Decision : 31-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1985 MP 219 : (1985) ILR (MP) 497 : (1984) ILR (MP) 645 : (1987) JLJ 632

Hon'ble Judges : J.S. Verma, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.—This is plaintiffs second appeal arising out of a suit based on a tort for recovery of damages. The suit was partly decreed by the trial Court, but the first appellate Court has reversed that decree hence this further appeal by the plaintiff.

2. The basis for claiming damages is rather unusual. The plaintiff is a cloth merchant in retail business at Satna, while defendant No. 1 is a partnership firm, carrying on wholesale business in cloth. Defendant No. 2 Cloth Merchants Association, Satna, is an association of cloth merchants, of which defendant No. 1 is a member but not the plaintiff. Plaintiff had business relations with defendant No. 1 in cash as well as on credit. There was some dispute between the plaintiff and defendant No. 1 regarding payment of interest on the goods purchased on credit by the plaintiff from defendant No. 1. This led to a resolution by the Managing Committee of the Cloth Merchants Association, Satna, (defendant No. 2) on 1-1-1978, by which it was decided that members of the association would not enter into credit transactions with the plaintiff. Accordingly, such an intimation (Ex. P-6) dt. 3-1-1978 was given by the association to all its members. The plaintiff claims that such a resolution passed by the Cloth

Merchants Association (defendant No. 2) is void and its consequence has been to cause business loss to the plaintiff, which amounts to Rs. 750/- at the rate of Rs. 250/- per month, up to the date of the suit and even thereafter at the same rate. The plaintiff has, therefore, claimed a declaration that the resolution dt. 1-1-1978 passed by the Cloth Merchants Association (defendant No. 2) is invalid and consequently damages amounting to Rs. 750/- up to the date of the suit and thereafter at the rate of Rs. 250/- per month.

3. The defendants have contested the suit, denying any cause of action in plaintiffs favour for recovery of damages. It is contended that the resolution of the Cloth Merchants Association governs only the members of the Association and it was to protect the interest of the members to whom alone it was communicated for this reason. It has also been contended that the plaintiff not being a member of the Association is not bound by the resolution and has no right to challenge it. Continuance of cash transactions with the plaintiff remains unaffected. The plaintiffs allegation of suffering any actual loss has also been denied. It is also claimed that there is no right to insist on credit transactions and the seller can refuse to sell on credit to any one.

4. The trial Court decreed the suit for recovery of Rs. 500/- as damages. The defendants' first appeal to the District Court has succeeded and setting aside the trial Court's decree, the suit has been dismissed in its entirety. It has been held that no actual loss to the plaintiff has been proved and no cause of action for recovery of any damages is made out. The dismissal of the plaintiffs suit has led to this second appeal by the plaintiff.

5. The contentions of Shri R. K. Pandey, learned Counsel for the appellant, are two, namely, (1) there is sufficient proof of actual loss to the plaintiff to sustain the claim for recovery of damages on the basis disclosed in the suit; and (2) the application dt. 28-3-1981 for amendment of the plaint to recover damages on the basis of defamation, filed in the first appellate Court, was wrongly rejected. The only question formulated at the time of admission of this appeal can at best cover the aforesaid first contention of Shri Pandey, but not the second. However leave was granted to learned counsel for the appellant, to advance the other contention as well. In reply, Shri R. N. Singh, learned counsel for the respondents, contended that the suit, as framed, does not disclose any cause of action for recovery of damages and, at any rate, there is no proof of actual damage to the plaintiff to furnish any basis for recovery of damages. Rejection of the application for amendment of the plaint has been supported on the ground that the proposed amendment would alter the nature of the suit.

6. The first question arising for consideration in this appeal is whether any case is made out for recovery of damages on the plaint averments. The finding of the first appellate Court is that there is no proof of any actual loss to the plaintiff or of procuring any breach of contract or procuring refusal to make a contract as a result of the impugned act of the defendants. This is the background in which this question has to be decided. The question, therefore, is whether the

resolution passed by the Managing Committee of the Cloth Merchants Association (defendant No. 2), deciding that its members would not enter into credit transactions with the plaintiff and its communication only to its members, furnishes the basis for recovery of damages, when no actual loss to the plaintiff has been proved. It is not the plaintiffs case that the publication of the resolution of the Cloth Merchants Association was to any one other than its members or that such an action was not for protecting the interests of its members, but was done with some ulterior motive. There is also no finding of malice to support the plaintiffs claim.

7. The plaintiffs case placed at the highest can be classified as a tort affecting economic interests falling under the head "conspiracy to injure" or a combination of the members of the Cloth Merchants Association refusing to sell cloth on credit to plaintiff, while continuing the cash transactions, causing loss to the plaintiff. The question is whether under this head of tort, the plaintiff is entitled to recover damages on the pleadings and the findings of fact. It would be appropriate at this stage to discuss the settled principles relating to recovery of damages under this head of tort.

8. The leading cases on the point are *Mogul Steamship Co. v. McGregor, Gow & Co.* (1892) AC 25, *Alien v. Flood* (1898) AC 1, *Quinn v. Leathem* (1901) AC 495, *Sorrell v. Smith* (1925) AC 700 and *Crofters Hand Woven Harris Tweed Co. v. Veitch* (1942) AC 435. The principles enunciated in the first three cases were summarised in *Sorrell v. Smith* (supra) by the House of Lords and it was held that a combination of two or more persons for the purpose of injuring a man in his trade is unlawful and, if it results in damage to him, is actionable, but if the real purpose of the combination is not to injure another and only to protect self interest, then no wrong is committed and no action will lie to recover damages, provided the purpose is not achieved by illegal means. In the speech of Lord Dunedin, the principles laid down in the aforesaid first three cases were summarised as under:--

"But I think the three leading cases upon the subject, without any doubt, are the well known cases of the *Mogul Steamship Company v. McGregor, Gow & Company* (1892) AC 25, *Alien v. Flood* (1898) AC 1 and of *Quinn v. Leathem* (1901) AC 495. Now, the result of those cases, in my mind is this : In the first place, every one has the right to conduct his own business upon his own lines, and as suits him best, even although the result may be that he interferes with other people's business in so doing. That general proposition, I think, may be gathered from the *Mogul* case. Secondly, an act that is legal in itself will not be made illegal because the motive of the act may be bad. That is the result. I think, of *Alien v. Flood*. Thirdly, even although the dominating motive in a certain course of action may be the furtherance of your own business or your own interest, as you conceive those interests to lie, you are not entitled to interfere with another man's method of gaining his living by illegal means, and illegal means may either be means that are illegal in themselves or that may become

illegal because of conspiracy where they would not have been illegal if done by a single individual. I think that is the result of *Quinn v. Leathern* (1901) AC 495

The two propositions of law deduced in the decision were stated by Viscount Cave, L.C. as follows : --

"My Lords, the argument on this appeal ranged over a wide field and involved the examination of a large number of authorities, including the famous trilogy of cases in your Lordships' House : *Mogul S. S. Co. v. McGregor, Gow & Co.* (1892) AC 25 *Alien v. Flood* (1898) AC 1, and *Quinn v. Leathern* (1901) AC 495. Such an examination is of no value, unless it yields some general principle or test which may be of service in deciding other cases; and from these authorities, which I have carefully read and considered, I deduce as material for the decision of the present case two propositions of law, which may be stated as follows : --

(1) A combination of two or more persons wilfully to injure a man in his trade is unlawful and, if it results in damages to him, is actionable.

(2) If the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues. The distinction between the two classes of cases is sometimes expressed by saying that in cases of former class there is not, while in cases of the latter class there is, just cause or excuse for the action taken." (at pp. 711-712)

The aforesaid last decision of the House of Lords in *Crofter Hand Woven Harris Tweed Co. v. Veitch* (1942) AC 435, has reiterated the above propositions and it continues to hold the field. It was held therein that where the predominant purpose of the combination was the legitimate promotion of the interests of the persons combining and the means employed were neither criminal or tortious in themselves, the combination was not unlawful and no damage can be recovered even if such an act caused loss to another.

9. The correct position under the heading "Actionable Combinations" is summarised in Salmond's Law of Torts, 18th Edn. as under : --

"A combination wilfully to do an act causing damage to a man in his trade or other interests is unlawful and if damage in fact is caused is actionable as a conspiracy, even if no unlawful means are used. Further there is liability if the conspirators know all the facts, even if they do not know that they are acting unlawfully. To this there is an exception where the defendants' real and predominant purpose is to advance their own lawful interests in matter in which they 'honestly believe that those interests would directly suffer if the action against the plaintiff was not taken.

It had previously been thought by some that a combination to damage a man was not actionable unless it was inspired by malice or "disinterested malevolence". The true proposition seems to be that it is actionable unless there is some justification. Such justification will be found if it is inspired by self-

interest. The pursuit of selfish ends provides in law, whatever may be the case in morals, its own justification." (at p. 352)

To the same effect is the summary in Clerk & Lindsell on Torts, 15th Edn. under the heading "conspiracy to injure", as under : --

"We now turn to combinations which employ no acts or means that are in themselves unlawful commonly known as "conspiracies to injure". Everything here turns on the distinction "between the case where the object is the legitimate benefit of the combiners and the case where the object is deliberate damage without any just cause. Earlier cases must now be read in the light of this principle clearly established by the House of Lords in Crofter Hand-Woven Harris Tweed Co. v. Veitch (1942) AC 435, Lord Cave L. C. in Sorrel v. Smith (1925) AC 700, when what he called "the famous trilogy of cases." were submitted to a close examination..... formulated as a result two propositions of law, which he stated as follows : (1) A combination of two or more persons, wilfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable. (2) If the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues". This is the cause of action now regarded by the House of Lords as "a highly anomalous cause of action" but "too well established to be discarded however anomalous it may seem today," (pp. 773-774)

10. It is, therefore, the settled view that if the real purpose of the combination is not to injure another but to protect the business interests of those who combine no actionable wrong is committed even though it results in damage to another. It is, therefore, the real purpose of the combination or the predominant intention with which the persons combine that determines their liability; where the predominant interest is protection of self interest, it does not constitute an actionable wrong in spite of the resulting damage to another.

11. In the present case, the defendants have taken the plea of protection of the business interests of the members of the Cloth Merchants Association as the only and predominant reason for passing the impugned resolution and advising its members not to enter into credit transactions with the plaintiff. This predominant intention set up by the defendants is also evident and has not been negated by the plaintiff. This alone is sufficient to non-suit the plaintiff on the ground of absence of any cause of action to recover damages. Moreover, there is also the finding of the first appellate Court that no loss to the plaintiff as a consequence of the defendants' act has been proved. This is a further reason to negative the plaintiff's claim. It is, therefore, clear that the basis on which the plaintiff claims damages in this suit, does not constitute an actionable wrong, particularly in view of the facts found proved by the Court below. Dismissal of the suit on this basis is, therefore, justified.

12. The only surviving question now is of the legality of the order made by the

first appellate Court, refusing permission to the plaintiff to amend the plaint. Shri Pandey, learned counsel for the appellant, contended that refusal of permission to amend the plaint for recovery of damages on the basis of defamation was contrary to law. According to the learned counsel for the appellant, the proposed amendment did not alter the nature of the suit or the cause of action on which the suit had been tried. In my opinion, this contention cannot be accepted.

13. As already indicated, the claim for damages in the plaint is for a tort affecting economic interests under the head "conspiracy to injure". This is distinct and different from torts affecting person of reputation which include the tort of defamation. It is, therefore, clear from this established classification in the law of torts that by the proposed amendment, the plaintiff wanted to introduce a different cause of action than the one on which the suit was brought. Even in the case of tort of conspiracy, which is actionable, if either the end or the means or both are unlawful, each of them is a different cause of action and the plaintiff cannot subsequently amend the pleadings by substituting one for the other. This is clear from the passage in Salmond's Law of Torts, 18th Edn. as under : --

"Hence a conspiracy may be actionable if either the end or the means, or both, are unlawful. But a plaintiff must make up his mind whether he is going to rely on one or other or both of these allegations and if he has put his case in one of these ways he cannot thereafter bring the same transactions before the Court and say that he is relying on a new cause of action." (P.354)

14. If there are distinct causes of action even for the same tort of conspiracy, there cannot be any doubt that the cause of action for defamation which is a different tort and falls in a different classification is definitely and entirely different cause of action. Permitting such an amendment as the plaintiff wanted to make would result in a new case being set up by insertion of a new cause of action different from the one on which the suit was brought. Rejection of the plaintiffs application for amendment of the plaint in the first appellate Court was, therefore, fully justified.

15. Consequently, the appeal is dismissed with costs throughout, Counsel's fee according to schedule, if certified.