(2006) 07 CHH CK 0001

In the Chhattisgarh High Court

Case No : Second Appeal No. 8 of 1989

Rokde Goods Garage	APPELLANT
Vs	
National Textiles Corporation and Others	RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Carriers Act, 1865 — Section 10
Civil Procedure Code, 1908 (CPC) — Section 100, 34, 34(1)

Citation : (2006) 3 CGLJ 400 : (2007) 1 MPJR 18

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Ravindra Agrawal, for the Appellant; N.K. Vyas, Parag Kotecha, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal filed by Defendant No. 3 was admitted for hearing on 27.2.1989 on the following substantial question of law:

Whether in view of the fact that the bale in question had been wrongly delivered to the Defendant No. 3 due to the negligent act of the Plaintiff-corporation itself, the first appellate court erred in law in directing the Defendant No. 3-Appellant to pay interest on the principle amount at the rate of 18% p.m.?

2. The brief facts are that the Plaintiff, Respondent No. 1 herein, filed a suit for recovery of Rs. 5,584.50 along with interest @ Rs. 1.50 p.m. from the date of filing of the suit till realization and the cost of the suit. The plaint allegations are that the Plaintiff''s unit at Rajnandgaon, commonly known as Bengal Nagpur Cotton Mills, wrongly delivered one bale of cloth bearing No. C.B.906 to Defendant No. 3, Appellant herein, for its transportation on 12.4.1979. When this mistake was discovered on 29.7.1979, the Defendant No. 3 was asked to return the said bale. The said Defendant promised to return the bale but in due course, the said bale No. C.B.906 was not returned to the Plaintiff by the said Defendant nor it was delivered to the other road transport through which it was to be sent

to its destination. Various correspondences between the parties took place and ultimately, after giving a notice dated 26.5.1980 the Plaintiff filed the suit for the above reliefs).

3. The Defendants denied the claim of the Plaintiff. The Defendant No. 3 in its separate written statement made averments that no such consignment bearing No. C.B.906 was received by its office arid by mistake its local worker had signed the delivery slip. It also took a defence that a requisite notice u/s 10 of the Carriers Act was not served within a period of six months and the suit of the Plaintiff was not maintainable.

4. The trial Court framed various issues in this case and after recording the evidence of the parties, held that the aforesaid bale No. C.B. 906 worth Rs. 4588.23 P. was handed over to Defendant No. 3. It was also held that even after receiving the; information that it has wrongly been delivered to them, the Defendant No. 3 did not return the same to the Plaintiff. However, the trial Court dismissed the suit holding that a notice u/s 10 of the Carriers Act, 1865 was not duly served upon the Defendant and in absence thereof, the suit was liable to be dismissed.

5. Against the aforesaid judgment and decree passed by the trial Court, the Plaintiff filed at appeal before the lower appellate court. The lower appellate court allowed the appeal of the Plaintiff and decreed the suit for recovery of a sum of Rs. 5584.50 P. towards claim. It also awarded interest thereon @ 18% per-annum from the date of filing of the suit till its realization along-with cost of the suit through out. It is against this judgment and decree, passed by the lower appellate court, the Defendant No. 3 has preferred this second appeal u/s 100 of the Code of Civil Procedure.

6. Learned Counsel for me Appellant argued that since there was a mistake on the part of the Plaintiff itself by making wrong delivery of bale to the Defendant No. 3 for its transportation, the Plaintiff was not entitled to recover interest @ 18% per annum and higher rate of interest has been awarded by the first appellate Court which is without any basis. Learned Counsel further argued that the act of the parties cannot be classified under the definition of a "commercial transaction" and there was no contractual rate fixed between them, therefore, awarding interest @ 18% p.a. was not justified. His submission was that in any case, the rate of interest should not have exceeded 6% per annum in the present facts and circumstances of the case.

7. I have heard learned Counsel for the parties at length and have also perused the records of the courts below.

8. Section 34 of the CPC deals with interest. Proviso to Sub-section (1) of Section 34 provides that where the liability in relation to the sum so adjudged had arisen out of a "commercial transaction", the rate of such further interest may exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or

advanced by nationalized banks in relation to commercial transactions. Explanation-II thereof provides that for the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

9. Now the question arises as to whether the transaction between the parties can be held to be a commercial transaction under which the party held liable would be responsible to pay the interest @ 18% per annum, which was the prevailing commercial rate at the relevant time as the same is not disputed in this appeal.

10. The dictionary meaning of word "transaction", as defined in Blacks Law Dictionary 7th edition at Pg. 1503, is (1) the act or instance of conducting business or other dealings; (2) something performed or carried out "a business agreement or exchange"; (3) any activity involving two or more persons; (4) Civil Law. An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions.

11. Referring to 1945 ITR 24 : 58 LW 37, Advanced Law Lexicon, 3rd Edition 2005 by P. Ramanatha Aiyar, at page No. 4743; defines that term "transaction" has a very wide meaning and can be applied to any particular act done in the carrying on of a business. It includes the carrying on or completion of an action or a course of action. The Law Lexicon also says at the same page that the act of carrying out a business deal is also a transaction.

12. It has been held in the matter of Periasami Kachirayar and Others Vs. Varadappa Kachirayar (died) and Others, that the term ''transaction'' in the realm of law, bears, as pointed out in the Concise Oxford Dictionary of Current English, 3rd Edition at Pg. 1303 the sense of any act affecting legal rights..."Which is not confined to a dealing with property between two persons intervivos but can, without any strain on the language, be taken to include a testamentry dealing with the property.

13. Therefore, the word transaction has a wide amplitude so as to include any act of carrying out a business or an act or an instance of conducting business. In very simple meaning, it would include any activity involving two or more persons. Therefore, in view of the above, the activity of wrongly supplying a bale to the transport company for its transportation and after discovery of the mistake, demand thereof to be returned to the principal supplier will be covered under the definition of "transaction" which we simply say that it was an act performed in the process carrying out a normal business between the parties, which in the present case they were carrying on since long back. Explanation II to Section 34 CPC says that if a transaction is connected with the industry, trade or business, it shall be held to be a commercial transaction. Here in the present case, admittedly, the Plaintiff was an industry doing trade or business in textiles by its manufacturing etc., in the name and style of National Textiles Corporation (M.P.). As stated in the plaint, its principle work was to manufacture clothes and to supply to the other agencies. This admitted identity of the Plaintiff classifies

the Plaintiff to be an industry dealing with the aforesaid business and as defined in Explanation II, if the transaction is connected with the industry, trade or business as in the present case, it shall further be classified as a commercial transaction. For the reasons that the aforesaid transaction was directly connected with the business affairs of the said industry, it was a commercial transaction and the proviso to Section 34 shall be made applicable in this case and I hold it accordingly.

14. What meaning has to be assigned to the phrases "principal sum adjudged" and "such principal sum" as occurring in Section 34 of the CPC 1908 has been dealt with by the Constitution Bench of the Apex Court in a banking institution matter, in Central Bank of India v. Ravindra and Ors. 2001 SAR (Civil) 930. The Apex Court interpreted Section 34 and laid down that while decreeing a suit if the decree be for payment of money, the Court would adjudge the principal sum on the date of suit. The Court may also be called upon to adjudge interest due and payable by the Defendant to the Plaintiff for pre-suit period which interest would, obviously be other than such interest as has already stood capitalized and having shed its character as interest, has acquired the colour of the principal and having stood amalgamated in the principal sum would be adjudged so. The principal sum adjudged would be the sum actually loaned plus the amount of interest on periodical rests which according to the contract between the parties or the established banking practice has stood capitalized. The interest pendent elite and future interest (i.e., interest post decree not exceeding 6% per annum) shall be awarded on such principal sum i.e., the principal sum adjudged on the date of the suit. The Apex Court said that it is well settled that the use of the word ''may'' in Section 34 confers a discretion on the Court to award or not to award interest or to award interest at such rate as it deems fit. Such interest, so far as future interest is concerned, may commence from the date of the decree and may be made to stop running either with payment or with such earlier date as the Court thinks fit (Please see para 41 of the said judgment).

15. Therefore, it is clear that in a money suit, the court has to firstly adjudge the principal sum on the date of the suit and then it may award the interest at the appropriate rate, which may be applicable according to the character of the transaction between the parties as are classified in Section 34. So far as commercial transactions are concerned, if there is some contractual rate, the contractual rate of interest should be the rate and the departure would be an exception. However, when there is no contractual rate of interest between the parties, and the matter-falls under the category of commercial transaction, then, the rate of interest would be the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

16. In the present case, there is no question of contractual rate as the matter is not based upon a contract, but if the transaction between the parties are held to be a commercial transaction as has been held by me (supra), in the absence of any agreed rate, naturally the court has to determine a rate which may be

supplement to the rate on which moneys were normally lent or advanced by the nationalized banks in relation to the commercial transactions at the relevant time. No dispute has been raised before me about the rate of interest on commercial transactions at the relevant time, which the appellate court has awarded in this matter. The only dispute is raised about the entitlement and the justification of awarding interest at the commercial rate in light of the admitted fact that the delivery of the said bale was made on account of mistake of the Plaintiff itself. In a general way, the argument appears to be correct in first sight, but in the opinion of this Court, it was a business mistake upto the date of discovery of the mistake only, but as soon as the mistake was discovered cm 29.7.1979 a business obligation to return the said bale was there on defendgnt No. 3 to which the said Defendant failed to discharge and ultimately as per the unassailed finding recorded by the first appellate court, the said bale was nearer returned to the Plaintiff and the Plaintiff had to file a suit for recovery of the amount of the said bale with interest @ 18% per annum from the date of discovery ill the date of realization. The contents of the plaint would show that the principal amount was the amount of bale and also the amount of interest from 29.7.1979111 filing of the suit and the notice expenses etc., and the lower appellate court has also confirmed the said sum to be the principal sum adjudged and on this principle al sum, holding the transaction to be the commercial transaction, awarded interest it the said rate. Therefore, the initial negligence on the part of Plaintiff in delivering the bale no where comes to rescue the Defendant No. 3 against a claim for which a cause of action arose on 29.7.1979 which is the date of discovery of mists be because in a commercial transaction, it was obligatory on the part of the Defendant to correct the mistake, bonafidely committed between the parties and discovered by them on a particular date and if such mistake was not rectified and ultimately the obligations were not fulfilled, then, certainly the Defendant would be responsible to pay the amount of bale and also the exceeding interest as per the proviso to Section 34 of Code of Civil Procedure.

17. In the facts and circumstances referred to above, I do not find any merit in this appear The appeal stands dismissed. The judgment and decree passed by the lower appellate court are hereby confirmed. The Appellant/Defendant No. 3 shall bear the cost of the Plaintiff incurred in all the courts.

