
(1917) 02 AHC CK 0014
In the Allahabad High Court

Sheo Charan Lal	Vs	APPELLANT
Taj Bhai Ali Bhai and Sons		RESPONDENT

Date of Decision : 08-02-1917

Acts Referred:

Citation : AIR 1917 All 365(1) : (1917) ILR (All) 368 : 39 Ind. Cas. 524

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—This application for revision arises out of a suit instituted in the Court of Small Causes at Allahabad on the 25th of March, 1916. The applicant is one Babu Sheo Charan Lal, resident of Allahabad, the opposite parties are Taj Bhai Ali Bhai and Sons, residents of Bombay. In addition to the plaint which was filed in the case, the court called upon the parties to state the case between them, vide rubkar, dated the 23rd of May, 1916, and the court in its judgement says that it bases its judgement on admitted facts and that no evidence was taken. Both in the plaint and in the rubkar the plaintiff says that the defendant promised to deliver goods of the sample approved by the plaintiff at Allahabad. The defendant, on the other hand, says that the contract took place at Bombay, the quality of the goods was approved at Bombay, the price was paid at Bombay, and if any breach of contract took place, it took place at Bombay, where the goods were delivered to the Railway authorities to be sent to Allahabad.

2. The Small Cause Court Judge held that the suit was not cognizable by his court, because the fact alleged by the plaintiff that he discovered at Allahabad that the quality of the goods was not up to the mark agreed upon was not sufficient to bring the cause of action to Allahabad. The contract was made at Bombay, where it was complete, its breach can take place at Bombay only; the place of the discovery of the breach is of no consequence, as the contract of sale was complete at Bombay. The only thing that remained was the delivery at the direction of the plaintiff.

3. The learned Judge should have taken evidence as to whether the place of delivery was an essential part of the contract or not, vide Section 48 of the Indian Contract Act of 1872. I set aside the order returning the plaint and direct that the learned Judge take evidence upon this point and then proceed with the case or otherwise as may be decided upon after the evidence is taken. Costs will abide the event.