

(1923) 12 MAD CK 0027
In the Madras High Court

S.S. Ramudu Ayyar and Another

APPELLANT

Vs

N.K. Ramayyar and Brothers, by their Managing Partners
N.K.N. Ramayyar

RESPONDENT

Date of Decision : 18-12-1923

Acts Referred:

Contract Act, 1872 — Section 118

Citation : 78 Ind. Cas. 1051

Hon'ble Judges : Venkatasubba Rao, J;Phillips, J

Bench : Division Bench

Judgement

1. In this case plaintiffs entered into a contract to sell 60 bales of yarn of various counts to defendants. Ex. A, dated 21st August 1918, is the first written record of the contract and in respect of the count of 50"s with which we are mainly concerned, it was agreed that 30 bales should be supplied at Rs. 16-12-0 per bundle of 5 lbs. On 23rd August 1918 plaintiffs wrote another letter (Ex. C.) stating that the bales sold were those purchased from Rayalu Aiyar Nagasami Iyer and Co., which the latter were buying from the Mills at Rs. 14 per bundle. These two letters were accepted by defendants in Ex. B, and we may take the three documents together as embodying the terms of the contract. Plaintiffs delivered 28 bales, including 7 bales of count No. 50, between 9th September 1918 and 14th October 1918. The first 3 bales of 50"s were paid for in full after deducting the advance paid in respect of them. All the bales were left in defendants"s godown and no objection was taken until 19th December 1918 (Ex. II). It then transpired that Rayalu Iyer Nagasami Iyer and Co., had purchased 50"s from the Madura Mill at Its. 9-8-0 per bundle as well as at Rs. 14 per bundle, and some of the former bales were supplied to defendants. It is admitted that the goods in all the bales were of the same quality and description, except that some were sold by the Mills at Rs. 14 per bundle and some at Rs. 9-8-0 per bundle. As the contract was in respect of bales sold at the former price, and goods of the latter price were delivered, on the authority of Sivarama Iyer v. Subbiyer and Sons 70 Ind Cas. 346 : 15 L.W. 9; AIR (1922) (M.) 28, this

amounted to a breach of a condition of the contract and we may take it as such. On this footing the Subordinate Judge has held that plaintiffs broke the contract and has refused to decree their suit for the balance of purchase-money due in respect of these six bales. In appeal it is contended that, in spite of the breach of condition, the defendants accepted the goods and cannot, therefore, plead breach of contract, but are confined to their remedy u/s 118 of the Contract Act, that is, the damages sustained owing to the breach of warranty. It is then contended for respondents that they were entitled to a reasonable time within which to reject the goods and that their rejection 3 or 4 months after delivery was within a reasonable time. In Section 118 the words are, "time reasonably sufficient for examining and trying" and it is not suggested that, during the three months after delivery, defendants made any attempt to examine or try the goods, nor did they make any enquiries as to their origin. Undoubtedly, 3 months is an excessive period for mere examination or trial, but it is argued that, inasmuch as defendants were not in a position to find out the breach of warranty by mere examination the reasonable time must be extended so as to cover the time that actually elapsed before its discovery. This, however, is not what the section provides, and when delivery is accepted, money paid, and the goods stored in the buyer's premises, it is not unnatural that the seller should consider that they have been accepted and he is entitled to protection equally with the purchaser. We must, therefore, hold that the time was not reasonable. (Vide Original Side Appeal No. 13 of 1921) in this Court and *Kissendoyal v. Askaran*, 34 Ind. Cas. 290 : 23 Cri.L.J. 415, In this view we hold that defendants accepted the 6 bales of 50's which form the subject-matter of this appeal and can only claim compensation for the damage caused by the breach of warranty which is admittedly nil, for the goods delivered were in texture and quantity the same as the goods contracted for. Plaintiffs are, therefore, entitled to the balance of purchase money claimed by them. The Subordinate Judge has awarded them Rs. 14-2-0 per bundle, the price realized on re-sale, but the contract price is Rs. 16-2-0 and plaintiffs are entitled to an additional Rs. 2 per bundle, that is, Rs. 960. The Subordinate Judge has also allowed defendants to set off the advance paid by them in respect of the 32 bales, which were admittedly not delivered, but they do not form the subject-matter of this suit. The right to the money paid in advance will depend upon a number of considerations in reference to the contract as a whole and these questions have not been put in issue. With regard to this sum, therefore, defendants will be referred to a separate suit. The decree is modified by awarding plaintiffs Rs. 35,190 plus Rs. 960 minus Rs. 19,360, that is, Rs. 16,790 with interest at 9 per cent, from 2nd April 1919 to date of plaint and subsequent interest on the aggregate at 6 per cent; and parties will pay and receive proportionate costs. Respondents will pay appellants' costs in appeal.