
(2016) 07 SHI CK 0057
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 280 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Shamsher Chauhan

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Constitution of India, 1950 — Article 299(1)
Contract Act, 1872 — Section 70

Citation : (2016) 3 SimLC 1350

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Bhupender Gupta, Senior Advocate, with Mr. Janesh Gupta, Advocate, for the Respondent; Mr. V.S. Chauhan, Additional Advocate General, with Ms. Parul Negi, Deputy Advocate General, for the Appellant

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J. - By way of the present appeal, the State has challenged the judgment and decree passed by the Court of learned Additional District Judge, Shimla in Civil Appeal No. 4-R/13 of 2004/01 dated 25.02.2006 vide which, learned Appellate Court has allowed the appeal and set aside the judgment and decree passed by learned trial Court and decreed the suit of the plaintiff for recovery of Rs. 95,000/- along with interest pendente lite and future @ 6% till realization.

2. This appeal was admitted on the following substantial questions of law on 10.03.2008:

"1. Whether the provision of Section 70 of the Indian Contract Act as discussed by the learned Lower Appellate Court is attracted in the facts and circumstances of this case?

2. Whether in absence of any express agreement and contract between the parties and on account of unilateral act of one party, the second party can be

held responsible?

3. Whether the learned Appellate Court below has misread and misconstrued the oral as well as documentary evidence of record?"

3. Brief facts necessary for the purpose of adjudication of the present case are that the plaintiff filed a suit for recovery of Rs.1,22,075/- on the grounds that the plaintiff was a registered potato grower with the Agriculture Department of Himachal Pradesh and used to sell his produce in the market and he also used to supply the same to the Department on demand. According to him, on the instructions/orders placed by the representatives of District Agricultural Officer, Kinnaur confirmed on telephone by Shri R.S. Verma, District Agriculture Officer, Kinnaur, plaintiff supplied 100 bags of certified seed potato in the month of December, 1998 @ of Rs. 950/- per bag to defendant No. 3 at Reckong Peo, District Kinnaur through challan dated 17.12.1998 from Tikkar to Reckong Peo by Truck bearing registration No. HP-51-1535, which was duly received by defendant No. 3. His further case was that the said consignment of 100 bags after being duly received was supplied by the Department to the Growers of Kinnaur District under some Government subsidy Scheme and the value of the said consignment @Rs.950 per bag for 100 bags came to Rs. 95,000/-. Despite requests and reminders, the defendant No. 3 did not care to pay the said amount to the plaintiff. It was averred in the plaint that several other growers had also sent potatoes on demand to defendant No. 3 and out of these growers, about 8 growers had been left high and dry to whom payment had not been made. In these circumstances, the suit was filed by the plaintiff for recovery of the said amount along with interest.

4. In the written statement, the defendants denied the case of the plaintiff. As per the defendants, defendant No. 3 never gave any supply order to the plaintiff for the supply of seed potatoes. The plaintiff prepared the challan along with bill in the name of defendant No. 3 from Tikkar and unloaded 100 bags of seed potatoes at Bhawanagar of Nichar Block at his own on 17.12.1998, though no supply order had been placed by defendant No. 3. Plaintiff also managed receipt for 55 bags from some grass root level officers of the same station and some other farmers of Shimla District followed the same course which was adopted by the plaintiff and unloaded potatoes at Nichar Block. Defendant No. 3 issued telegrams to those growers, who unloaded the seed potato without any supply order, to lift back their seed potato, but of no avail. This resulted in piling up of huge quantity of 1006 bags of seed potato in Nichar Block. Out of this, 532 bags of seed potato could be sold by making all out efforts by the defendants and remaining 470 bags got rotten. It was further the case of the defendants that it had become very difficult to identify as to whose consignment was sold and whose had become rotten.

In these circumstances, in order to know the factual position, an inquiry was ordered by defendant No. 3 and as per the averments made in the written statement, the decision regarding release of payment of the seed potato could be

made after finalisation of the said enquiry which was in progress.

5. On the basis of the pleadings of the parties, learned trial Court framed the following issues:

Issue No. 1: Whether the plaintiff is entitled to a decree for the suit amount? OPP

Issue No. 2: Whether the suit is not maintainable in the present form? OPD

Issue No. 3: Whether the suit is bad for non-joinder of necessary parties? OPD

Issue No. 4: Whether the suit is not within limitation? OPD

Issue No. 5: Whether there was no supply order/contract? If so, its effect? OPD

Issue No. 6: Whether the suit is bad for want of better particulars? OPD

Issue No. 7: Relief.

6. The following findings were returned on the issues so framed by the learned trial Court on the basis of the pleadings of the parties:

Issue No. 1: No.

Issue No. 2: Yes.

Issue No. 3: Yes.

Issue No. 4: No.

Issue No. 5: Yes.

Issue No. 6: No.

Issue No. 7: Suit dismissed.

7. Learned trial Court thus dismissed the suit of the plaintiff after holding that in view of the fact that neither written orders were placed nor potatoes were received by any authorised officer at Bhawanagar, the plaintiff was not entitled to get the payment of potatoes, since for any contract to be entered with the State Government, the same has to be entered with the Governor or with the Officer authorised by the Governor in this behalf and that agreement must be in writing and unless an agreement is in writing, no enforceable agreement can be said to be in existence in between the parties. Learned trial Court also held that any contract between the State and an individual has to be in writing, which is a pre-requisite of Article 299 (1) of the Constitution of India.

8. Feeling aggrieved by the said judgment passed by the learned trial Court, the plaintiff filed an appeal. The appeal of the plaintiff was allowed by the Court of learned Additional District Judge, Shimla vide its judgment dated 25.02.2006. Learned Appellate Court held that the absence of contract or order for supply of seed potato is not sufficient to exonerate the defendants from the liability for the payment of the amount, as the defendants after sending telegrams to the

plaintiff had retained the proceeds and exercised control over disposal thereof. Learned Appellate Court held that out of 1006 bags received by the plaintiff, the defendants sold 532 bags of seed potato and remaining 474 bags got rotten. The defendants did not bring any material on record to substantiate that the consignment sent by the plaintiff was not sold. It was the own case of the defendants that it was difficult to identify the ownership of the consignment. Learned Appellate Court further held that the seed potato retained by the defendants had been sold by it and, therefore, it did not lie in the mouth of defendants to assert that the plaintiff was not entitled to the payment of the price of the same. It further held that selling of part of the consignment without establishing the identity makes it evident that presumption has to be drawn that the consignment of the plaintiff was also sold by the defendants. Learned Appellate Court also held that in view of the provisions of Section 70 of the Indian Contract Act, the State was bound to make compensation to the plaintiff. Learned Appellate Court further held that the defendants had sent telegrams to many growers, namely Pradeep Ranta, Harender Chauhan, Durga Singh, Krishan Lal, Jitender, Surinder Ranta, Rajinder Paul, Keshav Ram, Purshotam Ranta, Narian Singh, Joginder Singh and Het Ram and afterwards, the defendants had made payments of the amount to S/Sh. Pradeep Ranta, Durga Singh, Krishan Lal, Jatinder, Surinder Ranta, Rajinder Paul, Kashev Ram, Purushotam Ranta, Narian Singh, Partap Singh, Joginder Singh and Het Ram as was evident from the testimony of DW-1 Sh. Sadhu Ram, District Agriculture Officer, Kinnaur. Therefore, as per the learned Appellate Court, it was evident that the defendants had accepted the receipt of consignment of the growers and as such, they were liable to make payment of the bags of seed potato supplied by the plaintiff. Accordingly, learned Appellate Court decreed the suit of the plaintiff for recovery of Rs.95,000/- along with interest pendente lite and future @ 6% till realization. These findings returned by the learned Appellate Court are under challenge by way of the present Regular Second Appeal.

9. I have heard the learned counsel for the parties and also gone through the records of the case as well as the judgments passed by both the learned Courts below.

10. Section 70 of the Indian Contract Act provides as under:

"70. Obligation of person enjoying benefit of non-gratuitous act.-Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.¹ -Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them. (a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them."

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously. (b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously."

11. The factum of receipt of 100 bags of seed potato from the plaintiff is not disputed by the defendants. Case of the defendants is that the supply of the said seed bags by the plaintiff was a unilateral act and there was no order placed by the defendants to the plaintiff in this regard. It is further the case of the defendants, as is evident from the contents of the written statement that plaintiff managed receipt of said 100 bags from some grass root level officers who were at the station where said seed bags were supplied. In other words, receipt of the said seed potato bags by the defendants supplied by the plaintiff against receipt is not disputed, but as per the defendants, the receipt was issued by some grass root level officer. It is not the case of the defendants that the receipt was not issued by a Government Officer. It is further evident from the material on record especially the deposition of DW-1 that bags of potato seeds were received by defendant No. 3 not only from the plaintiff but from various other growers in the same mode and manner in which it was received from the plaintiff. In fact, it is the defendants own case that after the consignment of seed potatoes was received, it issued telegrams to the land owners to lift the same and when the same was not lifted, part of it was sold and part of it rotted. It is also apparent and clear from the records of the case that other growers similarly situated as the plaintiff have been duly compensated by the Government and they have been made payments for the supply of said seed potato by the defendants. It is also relevant to refer to the testimony of DW-1 Salu Ram who has stated that payments have been made to land owners named by him in his statement in April, 2001.

12. Therefore, here is a case where produce of the plaintiff and similarly situated land owners after receipt by the defendants was sold by it and money was received by the defendants in lieu of the sale of the same. It is defendants' own case that it was not possible to establish that produce of which land owner had been sold and produce of which land owner was destroyed on account of its getting rotten.

13. In my considered view, learned Appellate Court has rightly decreed the suit of the plaintiff in view of the provisions of Indian Contract Act. The provisions of Section 70 of the Indian Contract Act are in fact attracted in the facts and circumstances of the case, as has been rightly discussed and held by the learned lower Appellate Court.

14. Section 70 of the Contract Act envisages that where a person lawfully does

anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

15. In the present case, it stands proved on record that the produce of the plaintiff was received against receipt by the defendants. No material has been produced on record by the defendants to demonstrate that "grass root officers" who received the consignment of the plaintiff were not authorised to receive the same. Be that as it may, it is the own case of the defendants that part of the produce which was received was sold by it and the remaining part rotted down. It is also the admitted case of the defendants that many owners similarly situated as the plaintiff have been compensated by them by making payments for the seed potatoes supplied by them. In these circumstances, in my considered view, the defendants cannot apply a different yardstick for the plaintiff.

The defendants having sold the produce so received from the plaintiff and similarly situated owners are bound to compensate the plaintiff in respect thereof, especially keeping in view the fact that the defendants have already compensated other owners similarly situated as the plaintiff.

16. It has been held by the Hon'ble Supreme Court in *Mulamchand v. State of Madhya Pradesh*, AIR 1968 Supreme Court 1218 that a person whose contract is void for noncompliance with Article 299 (1) of the Constitution would be entitled to compensation under Section 70 of the Contract Act if he had adduced evidence in support of his claim. The relevant paragraphs of the judgment are quoted herein below:

"6. In our opinion, the reasoning adopted by the trial court and by the High Court for rejecting the claim of the appellant is not correct. It is now well-established that here a contract between the Dominion of India and a private individual is not in the form required by section 175 (3) of the Government of India Act, 1935, it was void and could not be enforced and therefore the Union of India cannot be sued by a private individual breach of such contract (See the decision in *Seth Bikhrai Jaipuria v. Union of India*,. It was stated in that case that under section 175(3) of the Government. of India Act, 1935, the contracts had (a) to be expressed to be made by the Governor General, (b) to be executed on behalf of the Governor-General and (c) to be executed by officers duly appointed in that behalf and in such manner as the Governor-General directed or authorised.

The evidence in the case showed that the contracts were not expressed to be made by the Governor General add were not executed on his behalf. It was held by this Court that the provisions of section 175 (3) were mandatory and the contracts were therefore void and not binding on the Union of India which was not liable for damages for breach of the contracts. The same principle was

reiterated by this Court in a later case-State of West Bengal v. Ms. B.K. Mondal and, Sons, (2). The principle is that the provisions of section 175(3) of the Government of India Act, 1935 or the corresponding provisions of Article 299 (1) of the Constitution of India are mandatory in character and the contravention of these provisions nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that the provisions of section 175(3) of the Government of India Act and the corresponding "provisions of Article 299 (1) of the Constitution have not been enacted for the sake of mere form but, they have been enacted for safeguarding the Government against unauthorised contracts. "The provisions are embodied in s."175(3) of the Government of India Act and Article 299(1) of the Constitution on the ground of public policy-on the ground of protection of general public and these formalities cannot be waived or dispensed with. If the plea of the respondent regarding estoppel or ratification is admitted that would mean in effect the repeal of an important constitutional provision intended for the protection of the general public. that is why the plea of estoppel or ratification cannot be permitted in such a case. But if money is deposited and goods are supplied or if services are rendered in terms of the void contract, the provisions of section 70 of the Indian Contract Act may be applicable. In other words, if the conditions imposed by section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party, to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing he must, not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing done or delivered. The important point to notice is that in a case falling under section 70 the person doing something for another delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something to whom he delivers something. So where a claim for compensation is made by one person against another under section 70, it is not on the basis of any subsisting contract between the parties but a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi contract or restitution. *Fibrosa v. Fairbairn*(1) Lord Wright has stated the legal position as follows "..... any civilised system of law is bound to provide remedies for cases of that kind which have been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.

Such remedies in English Law are generally different from remedies in contract or

in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution."

7. In *Nelson v. Larholt* (2) Lord Denning has observed as follows:

"It is no longer appropriate to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

17. The five Judges Bench of the Hon^{ble} Supreme Court in *State of West Bengal v. B.K. Mondal and sons*, AIR 1962 Supreme Court 779 has held as under:

"14. It is plain that three conditions must be satisfied before this section can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied section 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In appreciating the scope and effect of the provisions of this section it would be useful to illustrate how this section it would operate. If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it; in that case section 70 would not come in to operation. Similarly, if a person does something for another it would be open to the latter person not to accept what has been done by the former; in that case again section 70 would not apply. In other words, the person said to be made liable under section 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under section 70 arises.

16. It is true that section 70 requires that a person should lawfully do something or lawfully deliver something to another. The word "lawfully" is not a surplus age and must be treated as an essential part of the requirement of section 70. What then does the word "lawfully" in section 70 denote? Mr. Sen contends that the word "lawfully" in section 70 must be read in the light of section 23 of the said Act; and he argues that a thing cannot be said to have been done lawfully if the doing of it is forbidden by law. However, even if this test is applied it is not possible to hold that the delivery of a thing or a doing of a thing the acceptance and enjoyment of which gives rise to a claim for compensation under section 70 is forbidden by section 175(3) of the Act; and so the interpretation of the word "lawfully" suggested by Mr. Sen does not show that section 70 cannot be applied to the facts in the present case.

17. Another argument has been placed before us on the strength of the word "lawfully" and that is based upon the observations of Mr. Justice Straight in *Chedi Lal v. Bhagwan Dass* (1). Dealing with the construction of section 70 Straight, J., observed:

"I presume that the legislature intended something when it used the word "lawfully" and that it had in contemplation cases in which a person held such a relation to another as either directly to create or by implication reasonably to justify an inference that by some act done for another person the party doing the act was entitled to look for compensation for it to the person for whom it was done." It is urged that in the light of this test it cannot be said that the respondent held such a relation to the appellant as to be able to claim compensation from the appellant. With respect, we are not satisfied that the test laid down by Straight, J., can be said to be justified by the terms of section 70. It is of course true that between the person claiming compensation and person against whom it is claimed some lawful relationship must subsist, for that is the implication of the use of the word "lawfully" in section 70; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful relationship arises between the two and it is the existence of the said lawful relationship which gives rise to the claim for compensation. This aspect of the matter has not been properly brought into the picture when Straight, J., laid down the test on which Mr. Sen's argument is based. If the said test is literally applied then it is open to the comment that if one person is entitled by reason of the relationship as therein contemplated to receive compensation from the other section 70 would be hardly necessary. Therefore, in our opinion, all that the word "lawfully" in the context indicates is that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of section 70 gives rise to a claim for compensation."

18. It has been reiterated by the Hon^{ble} Supreme Court in *Union of India v. Sita Ram Jaiswal*, AIR 1977 Supreme Court 329 that in order to attract the provisions of Section 70 of the Act, it has to be proved that the goods are delivered lawfully or anything has to be done for another person lawfully, the thing done or the goods delivered is so done or delivered "not intending to do so gratuitously" and the person to whom the goods are delivered "enjoys the benefit thereof."

19. The Hon^{ble} Supreme Court has further held in *K.S. Satyanarayana v. V.R. Narayana Rao* (1999) 6 Supreme Court Cases 104 that where a person got money not intended to receive it gratuitously, then that person is liable to return the same.

20. In *Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise and Customs* (2005) 3 Supreme Court Cases 738, it has been held by the Hon^{ble}

Supreme Court that no person can be allowed to enrich himself inequitably at the expense of another and that a right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity.

21. In my considered view, in view of discussion held above, the provisions of Section 70 of the Indian Contract Act, 1872 are attracted in the facts and circumstances of the case and the findings returned in this regard by the learned Appellate Court are in consonance with the law as declared by the Hon"ble Supreme Court of India as applied on the facts of the present case and I agree with the same. The substantial question of law is answered accordingly.

22. Thus, there is neither any perversity nor any infirmity with the judgment and decree passed by the learned first Appellate Court and the same is accordingly confirmed and the present appeal being devoid of any merit is dismissed.