(2004) 04 BOM CK 0107

In the Bombay High Court

Case No : Second Appeal No. 664 of 1990

State of Maharashtra APPELLANT

Vs

Madhavdas Mohta and Others RESPONDENT

Date of Decision : 29-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 57
Maharashtra Co-operative Societies Act, 1960 — Section 164
Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 — Section 20, 22, 23, 45

Citation : (2004) 6 BomCR 817 : (2004) 4 MhLj 853

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : K.S. Dhote, A.G.P, for the Appellant;

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—The State of Maharashtra, original defendant No. 1, being aggrieved by the judgment dated 15-3-1988 passed by the learned Additional District Judge in Regular Civil Appeal No. 8/82 has filed this appeal on the contentions that the concurrent findings recorded by both the Courts below directing the appellant defendant to pay Rs. 13,996.25 with future interest @12% per annum from 25-10-1973 till realization, are not sustainable in law.

2. Brief facts are required to be stated as under :

The respondent No. 1 plaintiff is an agriculturist and in the year 1972-73 he had sold cotton of MCU 5 variety. On 9-2-1973 he had tendered cotton of the aforesaid variety weighing about 40.22 quintals worth Rs. 12870.40 to the defendant Nos. 2 and 3 for sale. The cotton was graded in ''B'' quality and the declared rate of the cotton at that time was Rs. 320/- per quintal. The weight of the cotton was taken and after the defendant No. 2 took the possession of the same. The plaintiff was entitled to 80% of the price of the cotton, but the payment was withheld by the defendant Nos. 2 and 3 as the news items was published in the newspaper ''Zanzawat'' dated 19-3-1973. The plaintiff submitted his written application demanding the outstanding amount of Rs. 12,870.40 together with interest of Rs. 1093.95 at the rate of Rs. 12% per annum from 9-2-1973 to 22-10-1973. But, though the defendant Nos. 2 and 3 were jointly and severally liable to pay the same, did not pay and therefore, the plaintiff filed the suit.

3. Defendants resisted the claim by filing their written statement and it has been contended that the plaintiff did not tender cotton for sale as claimed and the receipt dated 9-2-1973 was fraudulently obtained by the plaintiff. The weight of the cotton was not taken nor the grading was done as is required by law. The receipt was tendered by the plaintiff for payment but the payment could not be made as the receipt was invalid. The defendant No. 2 contended that the notice u/s 164 of the Maharashtra Co-operative Societies Act was not served and therefore, the suit is not tenable. It is contended that the defendant Nos. 2 and 3 are small purchasing agents having limited authority to purchase the cotton at the prescribed rate and to handover it to the defendant No. 2 and it was to get only commission for sale. The defendant No. 2 being only an agent, not liable to pay anything to the plaintiff.

4. On the aforesaid pleadings the trial Court framed issues. The plaintiff has examined as many as ten witnesses and relied on oral as well as documentary evidence. The defendants did not adduce any oral evidence on record. The trial Court after considering the evidence, recorded findings that the cotton of the weight of 40.22 quintals worth Rs. 12870.40 was tendered for sale by the plaintiff on 9-2-1973 and that the defendants have failed to establish that the receipt in question was obtained fraudulently. The trial Court also recorded the finding that the notice u/s 164 of the Maharashtra Co-operative Societies Act was not necessary and consistent with these findings, the trial Court decreed the suit by the judgment dated 30-4-1981. The defendant No. 1 State of Maharashtra being aggrieved by the said judgment and decree carried appeal to the District Court. The learned Additional District Judge by his judgment dated 15-3-1988 dismissed the appeal and confirmed the judgment and decree that has been passed by the trial Court. This judgment of the appellate Court is challenged in this appeal.

5. Mr. Dhote, the learned Assistant Government Pleader contended that in fact the plaintiff did not tender the cotton of the weight of 40.22 quintals to the defendant Nos. 2 and 3 and the receipt dated 9-2-1973 was fraudulently obtained in order to get unlawful gain. He contended that the cotton is said to have been tendered by the aforesaid receipt dated 9-2-1973 whereas the plaintiff has adduced the evidence of Octroi Inspector, Ganpat Bhopale (P.W. 1) whose evidence show that the cotton was transported on 6-2-1973. He contended that the cotton is said to have been unloaded in the Bhikamchand Laxmichand Ginning and Pressing Factory at Hinganghat which is owned by the

plaintiff himself. He contended that the cotton which is said to have been tendered for sale through defendant No. 3 to defendant No. 2 was not taken in possession by the Grader Dattatraya Mahajan (P.W. 3) and no grading was also carried out. He contended that the entries were also not recorded in the cotton heap register and no list was also prepared by the Grader in respect of the said cotton along with the cotton tendered by other agriculturists. He contended that in such circumstances the Appellate Court has just ignored all these facts and circumstances. He contended that no notice was served as is required u/s 164 of the Maharashtra Co-operative Societies Act, 1950 before institution of the suit and the suit was not maintainable in view of Section 45 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971. He contended that the plaintiff in collusion with the employees of defendant No. 3 have committed fraud by obtaining the fake and bogus receipt (Exh. 65) and therefore both the Courts below have committed an error of law in granting decree for recovery of the price of the cotton together with interest and as such the impugned judgment cannot be sustained in law.

6. None appeared for the plaintiff or for the defendant Nos. 2 and 3.

7. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. The plaintiff has examined as many as ten witnesses out of whom the evidence of Narayan (P.W. 4) would reveal that the cotton in question was unloaded in the B. L. Ginning and Pressing Factory on 6-2-1973 and the weight of the cotton was taken on 9-2-1973. He is servant working with the defendant No. 3 and he has issued the weighment gradation slip dated 9-2-1973 (Exh. 64). Punjab who was working as Diwanji has been examined to show that the accounts of the agricultural produce have been maintained by him on behalf of the plaintiff. He has stated that on 6-2-1973 cotton was loaded in one tractor and three bullock carts which was brought to Hinganghat. P. W. 10 Gunwant is servant of the plaintiff and his evidence show that the cotton was brought in the tractor and three bullock carts and it was unloaded in the aforesaid Ginning and Pressing factory which was the collection centre for cotton. Ganpat (P.W. 1) is the Octroi Inspector who has proved the Octroi receipts (Exhs. 54 and 55) which show that on 6-2-1973, 2000 Kg. of cotton was brought in municipal area of Hinganghat by a tractor and 2500 Kg. was brought in three bullock carts. Both these octroi receipts indicate that the octroi was paid by the plaintiff. The evidence of P. W. 4 Narayan, P. W. 7 Shioram and P. W. 10 Gunwant indicate that the weight of the cotton was taken on 8-2-1973 and 9-2-1973 and thereafter the receipt dated 9-2-1973 (Exh. 65) was issued under the signature of P. W. 4 Narayan and that receipt is also signed by P. W. 7 Shioram and also the employee of defendant No. 3.

8. Perusal of the receipt (Exh. 65) dated 9-2-1973 would reveal that the weight of the cotton was taken and it was 40.22 quintals and the quality of the cotton is ''B'' quality i.e. MCU-5 variety. It appears that the appellate Court has also considered the oral as well as documentary evidence and there is specific

observation in para 8 of the judgment that from the documents particularly the receipt and also from the heap register, it appears that 40.22 quintals cotton was tendered and given in possession of defendant Nos. 2 and 3 by the plaintiff on 9-2-1973. However, it is relevant to note that in the cross examination of almost all witnesses, the fact of tendering the cotton of the weight of 40.22 quintals has not been seriously challenged by any of the defendants.

9. Dattatraya (P.W. 3) was working as a Grader with defendant No. 2 and his evidence would reveal that on 6-2-1973 the plaintiff had brought one tractor loaded with cotton and on 7-2-1973 he had brought three bullock carts loaded with cotton and all the cotton was put in one heap and he graded the cotton on 3-2-1973 in the evening. He has mentioned the grade in the slip and handed over the slip to the Clerk Shri Deshmukh and asked him to take the weight of the cotton. Though in the cross examination he says that the cotton was not kept in the heap of the federation in his presence and though he himself did not certify the grade, the Sub-Junior Grader had certified the grade of the cotton. Therefore, it would clearly reveal from the evidence brought on record that the plaintiff had tendered the cotton of the weight of 40.22 quintals in the collection centre, i.e. B. L. Ginning and Pressing Factory at Hinganghat which was purchased by the defendant No. 2 Cotton Federation, in accordance with the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act. The defendants did not tender any evidence to show that the receipt (Exh. 65) has been fraudulently obtained and in such circumstances, the findings of fact recorded by both the Courts below that the plaintiff had tendered the cotton to the defendants, is not liable to be disturbed for want of any evidence to show that the receipt was fraudulently obtained by the plaintiff.

10. The grievance put forth by the learned counsel for the appellant-defendant No. 1 is that the notice u/s 164 of the Maharashtra C-operative Societies Act was not served before the institution of the suit and therefore, the suit is not maintainable. On close scrutiny of the evidence adduced on record, it would reveal that there is no force in these submissions because the evidence of the plaintiff would show that notice u/s 80 of the CPC was duly served on all the respondents through post and the postal acknowledgments were also placed on record and therefore, the appellate Court considered this aspect of the matter and recorded the finding that there was statutory compliance of Section 80 of the CPC and in such circumstances no separate notice u/s 164 of the Maharashtra Co-operative Societies Act was required to be served. There is no reason for this Court to take a different view of the matter.

11. It is relevant to note that the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 was brought on the statute after receiving the assent of the President on 4-12-1971 and the agriculturists are required to sell the cotton through the marketing agents and collection centres to the cotton federation compulsorily. It is necessary to reproduce relevant provisions of Sections 20, 22 and 23 of the Maharashtra Raw Cotton (Procurement, Processing

and Marketing) Act, 1971 which contemplate as under:

20. (1) Every grower of cotton shall, after the picking operations are over, sell all kapas produced by him and which he wishes to dispose of, to the State Government, by tendering it at a collection centre :

Provided that, the grower may, where such practice prevails, in the area pay the labourers engaged by him wages in kind, i.e., in Kapas, and then tender the remaining quantity to the State Government as provided in this Section :

Provided further that, where a person is a grower of hybrid, foundation or nucleus cotton seeds and is duly approved by the Department of Agriculture for the cultivation of such seeds, such person shall be permitted to get his Kapas ginned, subject to such conditions (if any) as may be prescribed, but shall then sell his ginned cotton, which he wishes to dispose of, to the State Government by tendering it at a collection centre.

Provided also that, where the grower of cotton is a member of the Growers'' Co-operative Spinning Mill, he may tender and sell the cotton produced by him, in part or full, to such Mill. When any cotton is sold to the Mill by such member, it shall be incumbent on the Mill to make initial payment of the price to the member, which shall not be less than the guaranteed price for the variety or grade of cotton as fixed by the State Government and to make final payment of the price, which shall not be less than the final price for the variety or grade as fixed by the State Government. The Mill shall tender and sell excess cotton so acquired by it to the State Government at the price paid by it.

22. All cotton tendered at the collection centres as required by Section 20 by the growers or the persons holding stocks or on their behalf by the agents for collection authorised by the State Government shall be graded and marked with the grade designation marks in accordance with the provisions of the rules made in this behalf and pooled according to the grades;

23. (1) Weighment of all cotton so tendered at the collection centres shall be done in accordance with the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and the bye-laws of the market committee made thereunder, and every tenderer shall be granted a receipt for cotton tendered by him.

(2) Such receipt shall specify the collection centre at which and the date on which cotton was tendered, the name of the party tendering, the quantity of cotton which was tendered, and the grade thereof, and other particulars as may be prescribed.

12. The agriculturists are prohibited from selling cotton to the traders in the open market or outside the State and Sections 20, 22 and 23 would reveal that every grower of cotton has to sell his produce to the Government and when the cotton is tendered at the collection centres as is required by the law, the ginning and spinning of cotton tendered by the collection centres is to be carried out by the

agents and as per Section 23, prescribed procedure has been laid down by taking the weight and issuing receipt to the tenderer. Therefore, once the receipt is produced, it is obligatory on the part of the State Government to pay the price of the cotton to the tenderer and if the amount is not paid, then the cotton grower can certainly approach the Civil Court for recovery of the price of the cotton sold to the federation. In such circumstances there is no force in the contentions of the learned Assistant Government Pleader for the State that the suit was not maintainable. In view of Section 45 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act.

13. It is significant to note that Section 45 of the Act affords the protection to the State Government or any member, market committee officer, agent or authority functioning under this Act for anything which is in good faith done or intended to be done under this Act or any rules or regulations made thereunder. The provisions of the Act do not specifically ousts the jurisdiction of the Civil Court and in such circumstances, it is not possible to accept the contentions of the learned Assistant Government Pleader that the Civil Court had no jurisdiction to entertain the suit in view of the provisions of Section 57 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 by which the dispute is required to be referred to the Tribunal and the jurisdiction of the Civil Court is ousted. Since there is no specific provisions in the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 ousting the jurisdiction of the Civil Court, this Court is of the considered view that the suit for recovery of the price of the sold cotton was perfectly maintainable in the Civil Court.

14. On close scrutiny of the facts and circumstances, it is obvious that the Courts below have recorded concurrent finding of fact in relation to the sell of cotton by the plaintiff as per the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 and directed the defendants to pay the price of the cotton together with interest and there is no reason for this Court to take a different view of the matter and hence, no case has been made out for interference into the impugned judgment. There is no merit in the appeal, and in the result the appeal is dismissed. Interim stay granted is vacated. In the circumstances there shall be no orders as to costs.

