
(1990) 07 MAD CK 0114
In the Madras High Court

The Kanyakumari District Co-operative Spinning Mills Ltd.	APPELLANT
Vs	
Vermurugan Cotton Traders	RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Citation : (1991) 46 MLJ 1

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The Kanyakumari District Cooperative Spinning Mills Limited (hereinafter referred to as the plaintiff-spinning mills) is the appellant in both these appeals. This Spinning Mills Ltd., filed a suit O.S. No. 23 of 1979 against two defendants viz., (1) M/s. Velmurugan Cotton Traders, and (2) M/s. M.P. Kalyanasundaram & Company claiming damages for breach of contract. Of the said two defendants the first defendant M/s. Velmurugan Cotton Traders (hereinafter referred to as the first defendant) filed a suit O.S. No. 108 of 1979 against the Spinning Mills Limited for recovery of alleged money due from the Spinning Mills Limited. The fight in both the suits are only between the Spinning Mills Limited and M/s. Velmurugan Cotton Traders, and the second defendant in O.S. No. 23 of 1979 has been impleaded only as an agent of the first defendant-Velmurugan Cotton Traders. In both the suits the parties pleaded same facts. Therefore the suits were taken up together for trial and a common Judgment was rendered. In that judgment the suit O.S. No. 23 of 1979 was dismissed and the suit O.S. No. 108 of 1979 was decreed for Rs. 8,951.91. Aggrieved by this common Judgment the Spinning Mills Limited which is the plaintiff in O.S. No. 23 of 1979 and the defendant in O.S. No. 108 of 1979 has filed these two appeals one against the dismissal of its suit O.S. No. 23 of 1979 and the other against the decree passed against it in O.S. No. 108 of 1979. The First defendant in O.S. No. 23 of 1979 which is the plaintiff in O.S. No. 108 of 1979 has filed the cross objection in A.S. No. 1291 of 1980. In this common judgment the parties will be referred to as they are arrayed in O.S. No. 23 of 1979.

2. The case of the Spinning Mills Ltd., i.e., the appellant in both the appeals is that it was carrying on business at Aralvaimozhi and M/s. Velmurugan Cotton Traders-first defendant in O.S. No. 23 of 1979 i.e., the plaintiff in O.S. No. 108 of 1979 are dealers in cotton. On 21.1.1976 the first defendant through the second defendant in O.S. No. 23 of 1979 negotiated with the plaintiff and entered into a contract in Contract No. 2 of 1976 for sale to the plaintiff Spinning Mills of 50 bales of Theni M.C.U. 5, 40s. cotton as per sample No. 37 at the rate of Rs. 3,506 per candy. Again M/s. Velmurugan Traders entered into another agreement under Contract No. 21 of 1976 to sell 50 bales of Uganda and Lakshmi 20s. type cotton at the rate of Rs. 2,776 per candy directly with the plaintiff, but they failed to supply cotton as agreed to the plaintiff in spite of repeated letters and telegrams sent by the plaintiff. The matter was reported to the Regional Cotton Purchase Committee which fixed the compensation at the rate of Rs. 400 per candy in the meeting held at Madurai on 10.3.1977 or to sell the contracted cotton bales on or before 31.3.1977. But the defendants neither supplied the cotton nor paid the compensation. The first defendant has deposited a sum of Rs. 10,000 with the plaintiff and the sum with interest of Rs. 1,856.46 was adjusted by the plaintiff towards the compensation due from the first defendant. After deducting the aforesaid sum the plaintiff is entitled to Rs. 6,334.65 as on 18.4.1978 and the same is liable to be paid by the first defendant.

3. As against this the case of the first defendant is that it did not enter into any contract either through the second defendant or directly by itself with the plaintiff. The Regional Cotton Purchase Committee has no right to fix the compensation and hence the decision of it is not binding on the first defendant. Since there was no concluded contract between the parties no question of breach of contract would arise and so the plaintiff was not entitled to claim any amount as compensation. It is the further case of the first defendant that it has deposited a sum of Rs. 10,000 with the plaintiff on 20.9.1975 as security deposit. Subsequently there was dealings between the parties and in that connection a sum of Rs. 1,904.42 is due from the plaintiff as on 9.6.1976. The first defendant is also entitled to claim interest on the said deposit amount at the rate of 7 1/2% per annum. Thus the first defendant is entitled to a total sum of Rs. 11,856.46 with interest thereon at the rate of 7 1/2% per annum on the principal of Rs. 10,000/- from 18.4.1978 upto 1.4.1979. The plaintiff was also liable to pay interest at 12% per annum on the amount as per the dealings. On these grounds, according to the first defendant, the first defendant is not liable to pay any amount to the plaintiff Spinning Mills but the plaintiff-Spinning Mills is liable to pay a sum of Rs. 15,117.87.

4. The trial Court, as said above, tried both the suits jointly and delivered a common Judgment. It held that the plaintiff has proved only one contract i.e., contract No. 2 of 1976 and not the other contract i.e. contract No. 21 of 1976. On the question of the claim of damages the trial Court held that the first defendant is liable to pay the plaintiff damages at the rate of Rs. 200 per candy totaling to Rs. 5,000. It further held that the first defendant is entitled to receive

from the plaintiff the security deposit of Rs. 10,000 and apart from that the amount of Rs. 1,904.42 due on dealings and also interest, totaling in all to Rs. 8,951.91. Thus deducting the amount payable by the first defendant to the plaintiff the trial Court decreed the suit (O.S.108 of 1979) filed by the first defendant Velmurugan Cotton Traders for a sum of Rs. 8,951.91.

5. Now in these appeals it is argued on behalf of the appellants-plaintiff Spinning Mills that the trial Court was in error in holding that the alleged contract No. 21 of 1976 was not true. It is further argued that the compensation amount fixed at Rs. 200 per candy is low. As against this on behalf of the first defendant which has filed cross objection it is submitted that the trial court was wrong in holding that the contract No. 2 of 1976 was proved whereas there is no acceptable evidence in proof of such contract. It is further submitted that the trial court was wrong in granting compensation at the rate of Rs. 200 per candy totaling to Rs. 5,000 as there is absolutely no evidence to show that the plaintiff has sustained any damage due to the alleged breach of contract.

6. As regards the contention of the appellant plaintiff that the trial court erred in holding that there is no proof of the alleged contract No. 21 of 1976 find no reason to differ from that finding of the trial Court. It is alleged that the plaintiff and the first defendant directly entered into a contract on 6.4.1976 but the first defendant denied that there was any such contract. As the trial Court has found there is absolutely no document whatsoever in proof of such alleged contract, nor there is any reliable oral evidence in this regard. Therefore this point raised by the appellant-plaintiff has to be rejected.

7. Coming to the first contract i.e., contract No. 2 of 1976, this is a contract, according to the appellant-plaintiff, entered into by the first defendant through the agency of the second defendant. On a reading of the Judgment of the trial Court I find that this contract has been proved is unassailable. Mr. V. Radhakrishnan, learned Counsel for the first defendant also does not seriously dispute this finding. But he would argue that assuming this contract is true and there was a breach on the part of the first defendant, no damage has been proved at all by the appellant-plaintiff and the lower court has therefore seriously erred in granting damage at the rate of Rs. 200 per candy. Hence we can immediately take up the question as to the damages claimed.

8. Whereas the appellant-plaintiff would submit that the damages of Rs. 200 per candy granted is too low for the first defendant it is contended that, as aforesaid, there is absolutely no evidence as to any damages sustained by the appellant-plaintiff due to the alleged breach of contract and therefore the trial Court ought not to have granted any damages. A careful perusal of the plaint would show that the appellant-plaintiff has claimed damages on the ground that the appellant-plaintiff reported about the breach of contract to the Regional Cotton Purchase Committee and it fixed the compensation at Rs. 400 per candy on 10.3.1977 and therefore the first defendant is liable to pay compensation at that rate. The trial court itself has stated in its Judgment that the first defendant is

not bound by any rate of compensation fixed by the Regional Cotton Purchase Committee. There is nothing to show that the first defendant was a party to any proceedings before the Regional Cotton Purchase Committee regarding the question of compensation claimed by the appellant-plaintiff, nor there is any other document which would bind the first defendant to any proceedings of the Regional Cotton Purchase Committee.

9. Now, in the agreement no amount of compensation has been fixed for any breach of contract. This being the position if the appellant-plaintiff has sustained any damages due to any breach of contract there should be a plea and proof as to the quantum of damages sustained by the appellant-plaintiff. First of all, as stated above, the plaintiff has claimed damages only on the basis of the rate fixed by the Regional Cotton Purchase Committee and that cannot be taken as a relevant matter in the suit. Apart from that there is no other plea with regard to the quantum of damages sustained by the appellant-plaintiff. It appears the appellant-plaintiff has let in evidence to show that due to the failure to supply cotton by the first defendant it had to purchase cotton from the market and that would show that the appellant-plaintiff had to pay much higher price than the price fixed in the agreement. But as correctly pointed out by the trial court the subsequent purchases made by the appellant-plaintiff as evidenced by Exs. A. 9 and A. 10 extract of the Cotton Contract Register were one year after the alleged breach. Therefore these purchases have no proximity to the date of breach. Hence the trial Court correctly rejected this evidence. However the trial Court, stating that the trend is rise in price of every commodity, has fixed the damages at Rs. 200 per candy. But Mr. Radhakrishnan, learned Counsel for the first defendant would contend that there used to be fluctuations in the cotton price and therefore the trial court is not correct in saying that the trend is always rise in price in cotton. I find much force in this contention of the learned Counsel.

10. As regards the question of damages it must be pleaded and proved. If there is no such plea and proof then no damages can be awarded. The appellant-plaintiff ought to have proved that within a reasonable time after the breach of contract it made purchases and sustained damages. There is absolutely no such evidence. This being the case the appellant-plaintiff cannot be granted any damages. Hence the finding of the trial Court that the appellant-plaintiff is entitled to damages at the rate of Rs. 200 per candy is set aside. It follows therefore that the deduction of Rs. 5000, from the security deposit of the first defendant is not correct and the first defendant is entitled to that amount also.

11. In the result the two appeals filed by the appellant-plaintiff-Spinning Mills are dismissed without costs. The cross objection is partly allowed. The first defendant would be entitled to the entire security deposit. In all other respects including the rate of interest allowed by the trial Court the finding of the trial court are confirmed. There will be no order as to costs in the cross objection.