
(1971) 04 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Appeal No. 9 of 1967

The Mewar Textile Mills Ltd.

APPELLANT

Vs

Sita Ram Basanti Lal Jain.

RESPONDENT

Date of Decision : 14-04-1971

Acts Referred:

Contract Act, 1872 — Section 221

Sales of Goods Act, 1930 — Section 19, 20, 21, 22, 23

Citation : (1971) RLW 379 : (1971) WLN 200

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.B. Bhargava, J.—This is an appeal from the judgment and decree dated 5th October, 1966, of the District Judge, Bhilwara, decreeing the plaintiffs suit for a sum of Rs. 18200/-against the appellant Company.

2. The appellant is Textile Mills and Limited company (hereinafter called the company). It was allotted wagon of coal for its use by the Deputy Coal Controller, Government of India. The Company used to send permits of coal to the plaintiff with a letter of authority in their favour. The plaintiff then used to obtain priority sanction in the name of the Company, then it apply reached the Collieries, paid the moneys for the coal and got the coal loaded in railway wagons. The railway receipts were got prepared by the Collieries as consignors in the name of the Company as consignee. Plaintiff's case is that between 15th October and 6th December, 1959. 25 wagons of coal were despatched to the Company and the sum of Rs. 11936/70 P. for its bills is due to the plaintiff from the Company. Although the coal wagons had reached the destination station, the company did not take delivery of the goods on taking the railway receipts from the bank after making payment of the Hundis which were drawn by the plaintiff on it and which were sent along with the railway receipts. On account of the Company not taking delivery of the coal wagons the amount of wharfage and demurrage swelled to

extent of Rs. 46800/- which being not paid, the Railway appropriated the coal to itself. Plaintiff's case is that it had paid the price of the coal to the Collieries on behalf of the Company and so it was entitled to recover it from the Company. The amount of 11936/70 P. also includes the amount of plaintiff's commission.

3. The suit was contended by the Company. It denied its liability for the suit amount mainly on two grounds (1) that the plaintiff had acted in violation of the agreement in the course of dealings between the parties in as much as instead of sending the railway receipts direct to the Company, it sent them through the Bank knowing full well that the Company was short of funds with the result that the payment of the Hundis could not be made by the Company to the Bank and so the consignment remained undelivered and wharfage and demurrage charges rose up to Rs. 46,800/- and (2) that after coming to know that the delivery of the coal wagons has not been taken by the Company and the amount of demurrage and wharfage had risen to Rest. 46,800/- the plaintiff took upon itself the responsibility of recovering the price of the coal from the railway and also requested the railway to forego the amount of demurrage and wharfage as a special case. The plaintiff also gave a notice to the railway for the recovery of the price of the coal and to institute a suit for it in case the Railway failed to pay it. On the request of the plaintiff, the power of attorney was also given by the Company to it but the plaintiff did not file any suit against the Railway and returned the Railway receipts to the company after the limitation for filing a suit against the railway had expired. In these circumstances, the defendant Company could not be made liable for the suit amount to the plaintiff. Bar of limitation was also pleaded.

4. It may be stated that the Company was a Relief Undertaking from 26th December, 1960, to 26th December, 1965 under the provisions of the Rajasthan Relief Undertaking (Special Provisions) Ordinance, 1960, so the plaintiff had claimed exclusion of the period during which the company remained as a Relief Undertaking. Objection was also raised that the plaintiff could not institute the suit because it was not a registered firm. Further it was stated that the plaint did not disclose any cause of action.

5. On the pleadings, the following issues were framed:

(1) Is the plaintiff's firm duly registered (P)

(2) (a) Whether there was agreement and practice between the parties that the plaintiff would send the Railway receipts in respect of the coal direct to the defendant and not through Bank and the plaintiff went against that agreement in sending the railway receipts through the Bank?

(b) If so, what is its effect upon the suit? (D)

(3) Is the plaintiff's suit the time barred (D)

(4) Is the defendant not liable to pay any amount to the plaintiff for reasons mentioned in para Nos. 11 to 14 of the written statement?(D)

(5) Is the plaintiff firm entitled to a sum of Rs. 11936.70 P. as cost of the coal and Rs. 6263.30 P. as interest upon it?. (P)

(6) Does the plaint not disclose any cause of action and there fore is liable to be rejected? (D)

(7) Is the defendant entitled to special cost (D).

(8) What relief?

In support of these issues, plaintiff Besantlal examined himself as P.W. 1 and also produced Guirunlal Dosi P.W. 2. In rebuttal, the Company produced Bhanwarlal and Damodarlal D.W. 1 and D.W. 2 respectively as its witnesses. Besides the above oral evidence, both parties produced documentary evidence in support of their contentions.

6. The learned Judge, found that the plaintiff was a registered firm, that the plaintiff had not violated any agreement between the parties in sending the railway receipts through the bank and not directly to the Company, that the suit was within the limitation, that the defendant company could not be absolved from its liability because of the pleas raised in paras Nos. 11 to 14 of the written statement and that the plaintiff having paid the price of the coal to the Collieries on behalf of the defendant was entitled to recover it back from it along with interest at the rate of 9% which the parties had been paying to each other in their dealings. On these findings the plaintiff's suit was decreed.

7. It will be noticed that there was no specific pleading by either party about their relationship for the transaction in question nor was it the case of defendant that it was not liable for payment of the price of the coal as the title in the goods had not passed to it. In the written statement, stress was laid mainly on two grounds which were the subject-matter of issues Nos. 2 (a) and 4. Besides this, a vague objection was taken that the plaint did not disclose any cause of action. At the time of arguments in the lower court, it seems that objection was raised that if the plaintiff is taken to be a seller of coal under the provisions of the Sale of Goods Act, it cannot maintain a suit for the price of the coal, because it did not raise the defendant had instead a suit for damages ought to have been filed. The learned District Judge dealt with this objection under issue No. 5 and held that the provisions of the Sale of Goods Act were not applicable to the dealings between the parties and it could not be said that the plaintiff was seller and the defendant a buyer, and in view of the provisions of the Colliery Control Order, 1910, the sale of coal by the plaintiff to the defendant was out of question. The plaintiff had paid the price of the coal to the Collieries on behalf of the defendant and as such it was entitled to recover from it. Even at this stage, the question about the passing of title in the goods was not raised by the defendant.

8. It will be noticed that most of the facts giving rise to this litigation are uncontroverted namely that the Company got permits of coal from the Textile

Commissioner and sent them to the plaintiff with a letter of authority, and the plaintiff on its behalf obtained priority of wagons in the name of the Company, paid the price of the coal to the Collieries who got it loaded. In the name of the Company as consignee, the Colliery itself being the consigner, and the consignment being sent F.O.R that the railway receipts along with the Hundis drawn by the plaintiff on the company were sent through the bank, that the Company did not obtain the railway receipts from the bank on payment of the money due in respect of the Hundis and that the demurrage and wharfage charges rose to Rs. 46800/-. The demurrage and wharfage charges being not paid the railway appropriated the coal to itself.

9. In this court, two contentions have been raised on behalf of the appellant: (1) that the jural relationship between the parties in regard to the transactions in dispute was that of a seller and purchaser and (2) since the plaintiff had purchased the coal from the Collieries in its own name the bills for the same had also been issued in its name, it is not entitled to recover the price from the company because the property in the goods vested in the plaintiff and did not pass to the company until the price for the goods was paid. Reference is made to Sections 55 and 56 of the Indian Sale of Goods Act. Reliance is also placed on the following decisions:

Kahu and Kaha v. Premsukh AIR 1931 Lah. 560, Ford Automobiles v. Delhi Motor Co. AIR 1922 Bom. 125, Co. of I.T. Madras v. Mysore Chromite Ltd. AIR 1955 S.C. 95 M. Mohammed Sherif and K.A. Palaniswamy and Co., Tiripur and Another Vs. Official Liquidator, The Seetharam Spinning and Weaving Mills Ltd., (in liquidation) Trichur and Another, Mussandi Lal v. Union of India AIR 1964 P&h. 20 , State of Bihar Vs. Union of India(UOI), Ramniwas v. Commer. of Taxes AIR 1952 Gau. 178 , Joint family firm of Girdharilal Prabhu Dayal Vs. Jethmal, proprietor of firm Chatarbhoj Jethmal, Hingoli, , Kedarnath v. Ramchandra RLW 1962 286, Harilal v. Pehladrai & Co. AIR 1929 Bom. 290 , Majety Balakrishna Rao Vs. Mooke Devassy Ouseph and Sons, .

It is contended that the defendant's objection in the written statement that the plaint did not disclose any on cause of action should be taken to include the objections now raised before this court.

10. Before I deal with the contentions raised on behalf of the appellant, I would refer to certain provisions of the Colliery Control Order, 1945, which was made in exercise of the power conferred by Sub-rule (2) of Rule 21 of the Defence of India Rules by the Central Government.

12A. The Central Government may, by notification in the Official Gazette, specify the authorities competent to allot quotas of coal to any person or class of persons and every such authority shall allot such quotas subject to such instructions as the Central Government may issue from time to time.

12BA person who has been allotted coal under this order shall not use it otherwise than in accordance with the conditions contained or incorporated in the

document containing the order of allotment and shall not divert or transfer any such coal to any other person except under a written authority from the Central Govt., and at such price as may be fixed by that Government; and in fixing such price, the Central Government shall have due regard to the prices fixed under Clause 4 of this order and the freight, cess taxes, middleman's commission and other incidental charges, including supervisory and storage charges, paid by the original allottee.

6(1) Where a colliery owner sells coal through a middleman employed by him as broker, such middleman shall not in respect of such transaction, charge or receive from the colliery owner a commission exceeding thirty-seven naya paise per ton or per tonne.

(2) Where a consumer purchases coal through a middleman who acts as del(sic)credre agent, such middleman shall act in respect of such transaction, charge or recieve from the consumer a commission over the price fixed under Clause 4, which exceeds:

- (a) one rupee per ton or ninety eight naya paise per tonne in the case of coal; or
- (b) one rupee and fifty naya paise per ton or one rupee and forty eight naya paise per tonne in the case of soft coke; or
- (c) two rupees and fifty nay a paise per ton or two rupees and forty six naya paise per tonne in the case of hard coke.

(3) Where in any transaction a middleman acts both as a broker for the colliery owner and as a del credere agent for the consumer, such middleman may be paid commission under Sub-clause (1) as well as under Sub-clause (30).

It would appear from the above provisions that coal was allotted to;the defendant Company by the Deputy Coal Controller (Distribution) Calcutta; and it was to be purchased through the plaintiff, a middleman who was to act as to del credere agent and was entitled to receive commission over the price fixed at the rate mentioned in Clause 6 (2) of the Order. The plaintiff in its own right could not purchase the coal from the Collieries nor was the Company entitled to use, divert or transfer any coal allotted to it except under the written authority from the Central Government. The plaintiff Basantilal has described the procedure followed by the plaintiff in purchasing coal for the defendant and he stated that he had been supplying coal to the defendant Company from its inception. The Company used to send the permits which it obtained from the Textile Commissioner with a letter of authority to the plaintiff and the plaintiff as middleman obtained priority sanction. The plaintiff would then pay the price of the coal and the colliery would have it loaded in the wagons and the R/Rs would be prepared in the name of the company as consignee. The R/Rs were then sent to the Company. The R/Rs used to be F.O.R. Collieries. After the coal had been despatched from the Co-1 lories the plaintiff was absolved of all responsibility whether the wagons reached the destination or not or for any shortage in the

goods. The above statement of the witness was not challenged in cross-examination except that it was brought out in cross examination that the Collieries issued bills in the plaintiffs name because the payment was made by it and that the bills did not mention that the payment had been made on behalf of the defendant Company and that the Collieries only maintained the account of the plaintiff and not of the defendant. In cross-examination he also stated that the railway receipts were got prepared by the Collieries itself in which the collieries was shown as consignor and the defendant Company as consignee, and in name of the Company coal was used to be supplied by the plaintiff.

11. In the circumstances mentioned above, it would not be possible to maintain that the relation between the parties was that of a vendor and a vendee. The plaintiff only worked as a middleman to purchase coal on behalf of the Company. It did not buy, and indeed it could not, buy the coal for itself. It, received its commission for the purchase so made. It was the defendant Company who was to determine as what amount of coal and from where coal was to be purchased. It was on the basis of the permits issued to the defendant Com. that the coal was sold by the Collieries. It was on the Com.y's responsibility that the coal used to be purchased, and, in my opinion, the relation ship between the parties in these transactions does not change simply because the price of coal was to be paid by the consignee after sale. Nor from the fact that the plaintiff drew a Hundi upon the defendant and sent the R/Rs along with the Hundi to be delivered to the defendant on payment of the amount of the Hundi to its banker. In the following instance (1) where A in New-Zealand gave B in England a written order to ship goods from England on account of A.B ordered goods from manufacturer in England to be shipped in pursuance of A's order. It was held that B was agent of A and not seller, *Butler v. Roope* 1192 N.Z.L.R. 549.(2) A foreign merchant X, employed A to purchase goods on commission. A purchased goods from B, who knowing that the goods were sold to X made out the invoice against A's acceptances payable at 8th months. Held, A was agent of X and not seller *Seymoner v. Pychhon* 1 b & Aid. 14. It is, therefore, futile to urge that there was a sale of coal by the plaintiff and then another sale by the plaintiff to the defendant. In fact there was only one sale, the seller being the Collieries and the purchaser the defendant Company in whose favour permits were issued against which the coal was sold. The plaintiff merely as an agent of the defendant Company paid the price of the coal on its behalf to the Collieries. The coal was directly consigned by the Collieries to the defendant Company.

12. Learned Counsel in support of his argument referred to Ex. A-4 dated 19-5-60 It is a letter by the plaintiff to the General Manager, Western, Eastern and Northern Railways, calling upon the latter to arrange to deliver goods of the aforesaid consignment or pay the sum of Rs. 11936. 70 np to it. It is urged that this letter was addressed to the Railways by the plaintiff because it considered itself the owner of the goods. However the letter speaks for itself and shows that it was written as having been authorised by the consignee and not by the plaintiff in its own right. The Company its in letter Ex. 6 dated 29th March, 1960,

had also requested the railways to forego the wharfage and demurrage etc, and deliver the consignment to it or pay the cost of the consignment as per supplier's bills. It also mentions that if the railway has consumed the coal, the amount of coal may be arragened to be paid to the plaintiff who has been authorised by it in this respect and to whom payment of cost of the coal had not been made. Prior to this the defendant Company had also requested the plaintiff to request its bankers to detain the Hundis of coal wagons for some time more and as soon as the Mills resumed working it would retire all the Hundis. Ex. 9 dated 31st August, 1960, also shows that a letter of authority was given by the defendant company to the plaintiff to deal with the railways for retirement of the claim. It, therefore, cannot be argued on the basis of Ex. A-4 that the plaintiff considering itself as the owner of the goods had asked the railways to pay its price. In writing that letter plaintiff has simply obliged the Mills as pointed out in Ex. 1 dated 16th May, 1962.

13. Keeping all the above circumstances in view, and the provisions of the Colliery Control Order, 1945, it cannot be held that the relationship between the parties was that of a vendor and vendee and the plaintiff cannot maintain the suit for the price of coal and its only remedy is to file a suit for damages.

14. Now coming to the second contention it will be noticed that throughout the defendant's case has been that there was an agreement between the parties that the Rly. receipts shall be directly sent to it and it was in contravention of this agreement the past dealings between the parties that the plaintiff sent the Railway Receipts of the 25 wagons in question through its banker. This is also the evidence of the defendant's witness Bhanwarlal D.W. 1. He has stated that the payment to the plaintiff used to be made after delivery of the consignment was taken. If such was the agreement between the parties, then it is clear that it could not have been intended by the plaintiff that the title to the goods would not pass unless its price was paid. Having taken this plea in the written statement, it did not lie with the defendant to say that the plaintiff was not entitled to claim the price of the goods because the title in the goods had not passed to the defendant Company. The entire argument is now based on the plaintiff's statement that payment to the Collieries used to be made by the plaintiff and the bills were also issued in its name. The Collieries only maintained the account of the plaintiff and not of the defendant. But the question as to when property in the goods passes depends upon the intention of the parties having regard to the terms of the contract, their conduct and the circumstances of the case. Sections 20 & 24 of the Sale of Goods Act lay down the rules for ascertaining the intention of the parties as to the time when the property in the goods is to pass to the buyer. Learned Counsel says that even though the plaintiff might be the agent of the defendant for the purchase of coal, having purchased the coal in its own name and the bills having been issued by the Collieries in its name, the title to the goods vested in it and did not pass to the Company until it paid for the goods. Bowstead on Agency (Thirteenth Edition) in Article 82 at page 239 states:

Where an agent by contracting personally, renders himself personally liable for the price of goods brought on behalf of his principal, the property in the goods as between the principal and the agent, vests in the agent and does not pass to the principal until he pays for the goods, or the agent intends that it shall pass, and the agent has the same rights with regard to the disposal of the goods, and with regard to topping them in transit, as he would have had if the relation between him and his principal had been that of seller and buyer.

The Bombay High Court in *Harilal v. Pehladrai & Co.* (Supra) after quoting the above passage observed that "this precise statement is not found in the Indian Contract Act, but the Indian Contract Act is not exhaustive and speaking for myself, this provision appears to me to be good sense". It was a case where the agents were acting for an undisclosed principal and the commission agents were held entitled to re sell or to stop the goods in transit. The right of an agent who has himself paid or has indirectly paid for the price of the goods, to a lien on goods or of stoppage in transit or to resell has been given statutory recognition under the Sale of Goods Act, 1930, and it was this principle of English Law which was recognised by the Indian High Courts in several decisions before the Sale of Goods Act was enacted. However simply for the fact that the agent has paid the price of goods on behalf of its principal, it cannot be held that the property in the goods vests in it until the price is paid by the principal. The question whether an agent who has made a contract on behalf of his principal is to be deemed to have contracted personally and if so the extent of his liability in the contract depends upon the intention of the parties to be deduced from the nature and terms of the particular contract and surrounding circumstances including any binding custom. See *Bowstead on Agency* Article 118, pages 374 and 375). The decisions relied upon on behalf of the appellant lay down the same principle as is contained in Section 19 to 25 of the Sale of Goods Act regarding the passing of title in the goods, and, as already observed, it is intention of the parties which is a determining factor for it.

15. It is, therefore, not necessary to consider each case. In *Mohd. Sherif v. Official Liquidator* (Supra) it was held that the fact that the railway receipt was taken in the name of the consignee did not show that the property in the goods passed as soon as the goods were appropriated and handed over to the railway. It was under the terms of a contract of sale that the buyer had to pay 65% of the price on arrival of the goods and a bill was drawn for that purpose and though the railway receipt was taken in the name of the consignee it was not sent to the consignee but was sent to a bank along with the bill for the 65% of the price and the railway receipt was to be received by the consignee after relating the bill, and the consignee obtained delivery of the goods from the railway not by retiring the bill and producing the railway receipt but by giving a letter of indemnity to the railway.

16. In *Mussadi Lal v. Union of India* (Supra) though the railway receipt was drawn in the name of the consignee it was sent to the bank for delivery to be

consignee on payment of the price of the goods. The consignor also sent a letter to the Station Master on the same day stating that the goods were not to be delivered to the consignee until he purchased the R/R merely on his furnishing an indemnity bond. It clearly indicated that the property in the goods was not to pass unless the price was paid.

17. In *Balkrishana Rao v. M.D.O. & Sons* (Supra) the railway receipt was obtained by the consigner in his own name. Then it was endorsed in favour of the bank which was directed to deliver receipt to the buyer only when the Hundi was honoured and the price of the goods was paid. Therefore having regard to the principles laid down in Section 19 to 25 of the Sale of Goods Act, the property in the goods passes to the buyer when the goods are delivered to the buyer or to the common carrier for its transmission to the buyer. This is however, subject to the reservation of the right of disposal of the goods by the seller notwithstanding delivery of the goods to the buyer or to the common carrier or other bailee for the purpose of transmission of goods to the buyer, the property in the goods does not pass unless the condition is fulfilled by the buyer. So the mere fact that the railway receipt is made in the name of the buyer or that the goods are delivered to the common carrier for transmission to the buyer or that the railway receipt is sent through bank along with the Hundi drawn for the price of the goods for the collection of the price would not be decisive of the intention of parties as to when the property in the goods was to pass.

18. In *Chunilal v. State of Madras* AIR 1958 A.P. 670 it was held that

Prima facie the property passes to the buyer upon the goods being delivered to the railway or the common carrier. But that inference may be rebutted. For instance where seller deals with the railway receipt in such a way as to show that he did not intend to part with the goods until payment in cash. Again the mere fact that payment was to be made against the delivery of railway receipt in an F. O R. contract was not conclusive of the fact that the property in the goods had not passed to the buyer on the seller delivering the goods to the railway. It was necessary to see what the intention of the sellers was to the passing of the property to the buyer.

In the present case the property in the goods could not have vested in the plaintiff at any stage because of the provisions of the Colliery Control Order. The coal could only be sold to a person or concern to whom it was allotted by the officer authorised to do it under the Control Order. The Collieries could neither have sold coal to the plaintiff nor the plaintiff could purchase it from the Collieries. The plaintiff was only purchasing on behalf of the defendant Company and was to receive his commission at the rate prescribed under the Order. According to the defendant's own showing the agreement between the parties was that the buyer will take possession of the goods and the price was to be paid subsequently. Thus the passing of the title in the goods was not made to depend upon the payment of the price. It is true that the learned District Judge has found that there was no agreement between the parties that the plaintiff was always to

send the railway receipts directly to the defendant. But he has also held that formerly the railway receipts used to be directly sent to defendant. There is nothing to show that any change was intended to be brought about in the passing of the title in the goods when the plaintiff instead of sending the railway receipt directly to the defendant sent through the bank with Hundi drawn for the bill on it. In fact the plaintiff occupied a dual capacity (1) as agent for purchasing coal on behalf of the defendant and (2) as a lender of a money to the defendant for the purchase of coal. As agent, the plaintiff had a lien over the goods for the money during the course of transit or before the actual delivery of goods, but he had no property in the goods. The property in the goods was never intended to vest in the plaintiff. The following decisions which are on all fours with the facts of the present case can be cited with advantage. *Kishun Das and Another Vs. Ganesh Ram and Others*, *K. Muneyya and Co. Vs. K. Varadarajulu*, .

In the above cases in similar circumstances it was held that the title in the specific goods never vested in the agent and that he had only a lien in the goods for the money. In both these cases the price was paid by the agent and the railway receipt was sent to the bank with a demand draft.

19. Thus having regard to the provisions of the Colliery Control Order 1945, and the course of dealings between the parties, I am of the view that the property in the goods never vested in the plaintiff and it is entitled as agent to recover the price of goods along with the amount of its commission from the defendant, the course of dealings between the parties as found by the learned District Judge show that they had been charging interest at the rate of 9% from each other. Section 221 of the Contract Act fully governs the case. The lower court has rightly decreed the suit. I do not find force in the contentions raised on behalf of the appellant.

20. The appeal is accordingly dismissed with costs.