

(1997) 03 BOM CK 0028

In the Bombay High Court

Case No : Civil Revision Application No. 172 of 1987

Union of India

APPELLANT

Vs

M/s. Navilakha and Sons

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 63
Provincial Small Cause Courts Act, 1887 — Section 25
Railways Act, 1890 — Section 78

Citation : AIR 1997 Bom 209 : (1997) 2 MhLj 737

Hon'ble Judges : P. S. Patankar, J

Bench : Single Bench

Advocate : A. N. Samant, for the Appellant; B. R. Patil, for the Respondent

Judgement

1. These Civil Revision Applications which are filed u/s 25 of the Provincial Small Cause Courts Act involve common question of law. Hence they are disposed of by this common judgment.

2. The facts involved in these Revision Applications are broadly similar. In all these matters the respondents sent certain goods through Central Railway owned by the petitioner. There was negligence on the part of the petitioners and hence respondents suffered damages. The opponents issued notices u/s 78(b) of the Indian Railways Act, 1890 making claims. The petitioners sent cheques for various amounts. They also informed the opponents that the cheques are sent in full and final settlement of the claims and the cheques should be sent back if the amount was not acceptable. As the cheques were for lesser amounts than the claims made, the opponents accepted the cheques under protest, and except in the case of Civil Revision Application No. 138 of 1988. In fact in Civil Revision Application No. 319 of 1989 and Civil Revision Application No. 259 of 1989 the opponents communicated as under :

"If your have any objection for out acceptance under protest as part payment,

you may inform us within ten days from the receipt of this letter. If you do not reply this letter within 10 days, we will encash said cheque under protest and accepts as part payment, please note." There was no reply. The opponents thereafter sent notices u/s 80 of the CPC claiming the balance amount. The same was not paid by the petitioners, hence various suits came to be filed.

3. The suits came to be heard by the learned 5th Additional Small Cause Courts, Pune. Various defences raised on behalf of the petitioners came to be negatived and the claims made by the opponents came to be decreed. The same is under challenge in these revisions.

4. The learned counsel for the petitioners has pressed only one point i.e. there was accord and satisfaction and the provisions of Section 63 of the Contract Act are attracted in view of the letter written by petitioners while sending cheques and the opponents have not returned the cheques but encashed them. Therefore the question that arises for my consideration is whether there was accord and satisfaction and the provisions of Section 63 of the Contract Act, 1872 are attracted in the present case.

5. The learned counsel for the petitioners submitted that the Court below has mainly relied upon the judgment delivered by this Court reported in 69 BLR p. 843. Union of India v. M/s. Babulal Uttamchand Bhandari. He submitted that it has no application in the present case and therefore it was an error to rely upon it. According to him as the petitioners have sent cheques along with letter which specifically mentioned that the cheques are sent in full and final settlement of the claim and the cheques should be sent back, if not acceptable, then the opponents ought to have sent back the cheques. But, when they encashed the cheques there was accord and satisfaction and Section 63 was attracted. In 69 Bombay Law Reporter 843, it was contended on behalf of the Railways that as the amount was paid in full and final settlement of the claim, the claimants were not entitled to sue for the balance. In the said case, the Railway Administration has sent the cheques along with printed form signed by the Chief Commercial Superintendent stating that it was sent in full and final settlement of the claim. The cheques were encashed. The question arose when the claimants had accepted the smaller amount without informing the Railways that they would claim the balance, whether they were entitled to sue for the balance. It was held that the provisions of Section 63 are not attracted and there cannot be said to be any satisfaction of the claim and the claimants were entitled to claim the balance. Broadly this can also be applied in the present case and it cannot be said that the Court below was wholly wrong in relying upon it.

6. The learned counsel for the petitioners then relied upon Kapur Chand Godha Vs. Mir Nawab Himayatalikhan Azamjah, It was the case where the plaintiffs after some initial protest expressed readiness to accept the sum sent in full satisfaction of his claim and discharge the promissory note by making endorsement of full satisfaction and received the payment. Thereafter the plaintiffs filed the suit claims the balance amount. In these circumstances was

held that the case was completely covered by Section 63 of the Contract Act. The plaintiff having accepted payments in full satisfaction of the claim, it would amount to discharge of full claim by defendants. Here illustration "C" to Section 63 was also relied upon. But in my opinion, this is not attracted in the present case, in view of the facts stated above.

7. In Union of India (UOI) and Another Vs. Gangaram Bhagwandas, the claimants did not accept the cheque remitted by the Railway stating that it was in full and final settlement of their claim for damages. The cheque was encashed but no receipt was sent. On the contrary after receiving the said cheque was encashed out no receipt was sent. On the contrary after receiving the said cheque, the claimant prosecuted the suit for the balance amount they laid evidence to show that intention of the claimants was not to accept the cheque in full and final satisfaction of the claim. It was held the railway failed to prove that there was case of accord and satisfaction.

8. In my opinion, merely because the petitioners have sent cheque along with the letter mentioning that: "A cheque for this amount will be sent to you by the Chief Cashier, Central Railway, Bombay V.T. please note that this payment is in full and final settlement of your claim. The cheque should be sent back if it is not so acceptable to you," and the cheques were encashed would not amount to accord and satisfaction in the present case.

9. The cheques were encashed by the opponents, but they accepted the cheques under protest as part payment and communicated the protest except in case of Civil Revision Application No. 138 of 1988. In fact in Civil Revision Application No. 319 of 1989 and Civil Revision Application No. 259 of 1989, the opponents have specifically written to the petitioners that if they are having any objection to accept the cheques under protest as part payment then they may be informed within 10 days, and if no reply is received then the cheques would be encashed under protest. There was no reply. In view of this the encashment would not disentitle those Opponents to claim the balance who have accepted the same under protest. The acceptance under protest was communicated immediately. It cannot be said that there was satisfaction and those Opponents have foregone the balance. Petitioners cannot be said to be discharged from liability for balance. Encashment of cheque in this case does not amount to promise to release the petitioners from the obligation to pay the balance. Acceptance under protest and communication thereof shows that there was no intention on the part of those opponents to accept the cheques in full satisfaction of their claims. Mere encashing the cheques in the facts and circumstances cannot amount to agreement to accept lesser amount. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If a person sending a sum of money on the term that it is to be taken, of so desire, in satisfaction of a larger claim and if money is kept, then the question of accord and satisfaction has to be decided considering the facts. It was possible for the petitioners to write in reply to the notice u/s 78(b) to the opponents that

particular amount is only payable and if the opponents communicate accepting the same and thereafter the petitioners send the cheques then it would amount to accord and satisfaction and Section 63 of the Contract Act are attracted, except in the case of Civil Revision Application No. 138 of 1989. In civil Revision Application No. 138/89 I find that there was no protest made and the cheque was accepted unconditionally.

10. In view of this I pass the following order: Rule in Civil Application No. 172 of 1987, Civil Revision Application No. 391 of 1987, Civil Revision Application No. 259 of 1989, Civil Revision Application No. 319 of 1989, Civil Revision Application No. 330 of 1989, Civil Revision Application No. 331 of 1989, Civil Revision Application No. 382 of 1989, is discharged. Rule in Civil Revision Application No. 138 of 1988 is made absolute. In the facts and circumstances there shall be no order as to costs.

Ordered accordingly.