
(1955) 07 MAD CK 0004

In the Madras High Court

Case No : Civil Revision Petition No. 856 of 1953

Virjee Daya and Co.

APPELLANT

Vs

Ramakrishna Rice and Oil Mills, Arakandanallur

RESPONDENT

Date of Decision : 29-07-1955

Acts Referred:

Contract Act, 1872 — Section 30

Citation : (1955) 07 MAD CK 0004

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : M.K. Harihara Iyer, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—This Revision is filed against the decree and judgment in N. T. A. No. 28 of 1952 confirming the decree and judgment of

the trial Judge in S. C. S. No. 6063 of 1951, on the file of the Small Cause Court, Madras.

2. The facts are: The parties to the suit Virjee Daya & Co. and Ramakrishna Rice and Oil Mills, Arakandanallur, entered into a contract Ex. p-1

dated 8-8-1951 for sale by the defendants to the plaintiffs of 50 candies of groundnut oil at Rs. 325/- per candy. Two of the material terms of the

contract were (a) that the plaintiffs have to despatch to the defendants "good, sound and well-cleaned drums" to enable the latter to fill them with

oil and sell them to the plaintiffs; and (b) that the delivery of the oil was to be effected on or before 31-8-1951.

The oil contracted for was not supplied each blaming the other for creating circumstances making it impossible the performance of the contract. It

is stated that the plaintiffs had entered into a contract with a third party for the

supply of the oil to be purchased from the defendants and the latter had to be compensated for non-performance of the undertaking by the plaintiffs. It is in these circumstances that the present suit had been filed by the plaintiffs claiming compensation for Rs. 1900, constituting the difference between the market rate of the oil on the relevant date and the contract rate.

3. The defendants raised three pleas viz., that the plaintiffs failed to supply well-cleaned drums as agreed to in the contract and hence the

defendants were unable to perform the same secondly, the defendants dispute the correctness of the amount claimed and characterised it as

excessive and thirdly, that no compensation as damages is due from them as the contract in question was one prohibited by law.

Both the Courts below negated the first; two contentions but upheld the third contention, and hence this Revision Petition by the defeated plaintiffs.

4. The Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, provides by Cl. 3 as follows:

No person shall, after the specified date for any article to which this Order applies, enter into any forward contract in that article." By Cl. 2, sub-cl.

(iii) of the said Order "forward contract" has been defined as a contract for the delivery at some future date of any article to which this Order

applies. By Cl. 5 of the said Order, it is provided as follows:

The Central Government may, by Notification in the Official Gazette, exclude any contract or class of contracts from the provisions of this Order.

By a Notification, Government of India, Department of India, Department of Commerce, No. P. & S. C. 1 (A)/44, dated 8-1-1944 (Government of India Gazette, Part I, p. 32), it is provided as follows:

In exercise of the powers conferred by Cl. 5 of the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order, 1944, the Central

Government is pleased to exclude the following class of contracts from the provisions of the said Order, namely:

Forward contracts for specific qualities or types of any article to which the said Order applies and for specific delivery at a specified price.

Delivery Orders, Railway Receipts or Bills of Lading against which contracts are not transferable to third parties.

5. A forward contract is an executory contract consisting of two reciprocal promises between two parties viz., the buyer and the seller. In

substance, it is an agreement to sell or buy by one person to another to be performed on a subsequent date fixed by the parties. Delivery and

payment are concurrent conditions. The contract is a contract of goods by description for the purchase or sale of a fixed number or quantity say

100 drums of oil, etc.

It is presumed that on the day of performance the buyer shall be ready and willing to pay and shall apply for delivery and the seller shall procure

the goods of the contract description and quantity and deliver them on receiving payment. It is presumed that the primary purpose of the contract is

the supply of goods.

6. Thus, forward contracts get hit by S. 30, Contract Act only when the primary purpose of the contract with which it was intentionally entered into

by both parties was with a view to breach in order to profit by the rise or fall in the market-value as distinct from regular trading or investment. In

other words, forward contracts become illegal wagering contracts when the parties by common consent agree to speculate only in differences

according to the rise and fall in the prices in the market and the delivery of the goods is not in the contemplation of either and the transaction is

merely a bet on prices and a gamble in differences.

7. The order in question is intended to hit only transactions either "prima facie" a bet on prices or a gamble in differences or colourable transactions

bearing all the indicia of a legitimate transaction but in essence & substance only wagering transactions. In fact parties often camouflage their

wagering transactions by making them appear as real delivery transactions. They insert provisions in order to make it appear as legitimate trade.

But Courts have never been deterred by this camouflage from delving into the true nature of the transactions and avoiding them when the

surrounding circumstances show the true intention of the parties viz., that there was no intention to give or take delivery from the inception and that

the contract was a wagering contract, pure and simple.

8. The usual tests judicially recognised for finding out whether transactions made to wear the appearance of valid contracts are really wagering

transactions and whether the common intention of the parties was to ask, give or

take deliveries or if the contract was merely with a view to breach and gamble on differences are:

- (i) the position in life of the parties;
- (ii) had the purchasers godowns and warehouses?
- (iii) had the sellers the capacity to deliver?
- (iv) were the transactions extravagant and out of proportion to the resources of the parties and secondly, whether this was also the case with the stock on hand and the quantities sought to be imported with reference to the buyers themselves and the local market?
- (v) have these forward contracts to a very large and almost complete extent been discharged by cross-contracts and balances only adjusted by payment of differences?
- (vi) whether delivery was ever asked for, taken or given?
- (vii) does the correspondence between the parties consist almost with monotonous regularity only of calls to pay up differences unrelieved by demands for delivery?
- (viii) are the damages calculated not upon, differences between the contract rate and the? market rate of the goods on the date of performance but between the correct rate and the cutting price fixed by a Panch for the settlement of forward contracts?
- (ix) is the plea of wagering put forward when differences have started to operate against the purchaser and after receiving differences while they operated in his favour? and
- (x) is there any direct evidence of bargain between the parties not to demand or give delivery?

9. The order in question recognises that a distinction should be drawn between legitimate forward contracts and speculative contracts which alone

the Government of India wanted to prohibit. Otherwise, the entire commercial life of the country would have come to a standstill. One illustration

will show this. For instance, if a man went to a shop on a busy Saturday evening: and placed an order for half a dozen bottles of castor-oil, which

the shop-keeper had not readily on hand at the shop window, for his household use and agreed to come and take delivery of the same after paying

for them on his way back from the office on Monday, this would certainly be art

illegal transaction under the Order. That is why the Government of

India have added the Notification reproduced above. It clearly shows the type of cases to which this order applied.

10. The transaction under consideration had all the indicia of a transaction not hit by this order. The purchasers were a well-known firm dealing in

the sale of oil. The seller was an equally well-known firm of preparers and sellers, in bulk of oil. The dates on which the order was placed and the

drums were to be supplied and the delivery was to be made show that this is not one of those cases of wagering contracts with "Vaidas" where the

object is merely to enforce the breach and settle the differences.

On the other hand, the oil was to be delivered at the godown of the purchasers in Madras and for which purpose well-cleaned drums were

supplied to the sellers. It is nobody's case that the buyer and the seller have been speculating in oil and that there had been other transactions

between them evidencing it. Nor is it anybody's case that the transactions were of such a magnitude that "prima facie" speculation has got to be

inferred.

11. In fact the only point of substance urged is that in this case there was no Insertions. in the contract of a term that it was not transferable and that

therefore it would have been possible for the purchaser to endorse the delivery in favour of another and thereby speculate. But the facts of this

case show that there was no such intention and in fact the goods were to be supplied in drums given by the plaintiffs and delivered at the godown

of the plaintiffs.

The complaint of the defendants was that they were unable to perform the contract on account of the drums supplied to them being not well-

cleaned and not that the plaintiffs intended to transfer the delivery to another. When it is implicit from the circumstances of the case that no such

transfer of the delivery was ever intended and this was a, normal transaction of a dealer in oil purchasing from an oil-mill and trading legitimately

therein, the mere fact that it was not explicitly stated in the contract as a term would not make any difference because even if it had been explicitly

stated and it was found to be a mere cloak for speculation, Courts would hold that such transactions would be hit by the Order in question.

It is not the form but the substance of the contract which determines whether it

comes within the purview of the order or not.

12. The learned Advocate for the defendants relied upon the following decisions in support of his position. I shall now briefly examine them. In -

"Firm Hansraj v. Vasanji", 1949-4 IDLR (Bom) 7, it was held that

a forward contract for spot delivery lends itself to as much speculation as any other contract. The only classes of cases of forward contracts which

were exempted by the Notification were those which contained in them the guarantee against speculation by reason of a provision that the Delivery

Orders, Railway Receipts or Bills of Lading should not be transferable to third parties.

In other words, the persons in whose favour the Delivery Orders, Railway Receipts or Bills of Lading were issued were to be the very persons

who should get these goods & that would check speculation. The property in such cases would not pass by the negotiation of the documents nor

delivery be made possible to any person who became the holder of the documents.

It will be seen how the facts of the present case are different. Here there was no question of a Railway Receipt or a Bill of Lading and in regard to

delivery. Order, I have already pointed out how an essential term of the contract was that the goods were to be delivered in the godown of the

plaintiffs. This would have effectively prevented in the circumstances of this case speculation and the very person who should get these goods

would be getting them.

In the case of a document, as in the instant case before us, the property could not pass by negotiation of the document or delivery made possible

to any person who became the holder of the document. Therefore on the facts of this case the reasoning in the above decision would not apply.

In "Ganapatrai Gupta v. Moody Brothers Ltd., 85 Cal LJ 136 (A), it was held that in order to attract the benefit of the Notification four conditions

have to be satisfied viz., that the contract must be of specific quality or type; that it must be for specific delivery; that it must be for specified price

and that the delivery order, railway receipt or bill of lading against the contract must not be transferable to third party and that the order was

promulgated during the last War for maintaining supplies essential to the life of the community and for securing the efficient prosecution of the War

and that for that purpose it was essential to prevent trafficking in certain essential articles by transfer of documents of title to the goods from hand

to hand which led to inflation of prices.

In this case I have pointed out how there is no allegation that the delivery order was intended or capable of being transferred to third parties and

therefore this case is no authority for the proposition that the transaction in question is illegal.

In "Seetharamaswami v. Bhagavathi Oil Co.", 1951-1 Mad LJ 147 (B), it was held that unless there is a prohibition in the contract preventing the

parties from transferring a delivery order or a railway receipt or a bill of lading even though the contract on its face does not contemplate such

delivery order, the benefit of the exclusion does not apply.

But if the contract itself is of such a nature as in this case wherefrom it cannot be legitimately spelt that it was intended to be transferred or could

normally have been transferred, the plaintiffs would be entitled to the benefit of the exclusion and the contract would be enforceable and they

would be entitled to damages for breach of contract by reason of which they had to pay their own clientele for not supplying them with oil which

they had undertaken to do on the foot of the contract entered into with the defendants for spot delivery at their godowns in their own drums.

In " Illuru Hanumanthiah Vs. Umnabad Thimmaiah and Others, it has been held that a contract to sell goods is assignable by the seller and equally

a contract to buy goods is assignable by the buyer as actionable claims and there being nothing on the face of the suit contracts to show that they

were not transferable to third parties, the suit contracts do not come within the exemption granted to certain contracts by the Government

Notification.

This decision followed - P.L. Rangiah Chettiar Vs. Parthasarathy Iyengar, and did not follow - "J. H. Tod v. Lakshmidas Purshotamdas", 16 Bom

441 (E). On the facts, I have said, the instant case before us is distinguishable from the facts of this decision.

In " Hussain Kasam Dada, represented by Sakoor Dawood, agent and Another Vs. Vijayanagaram Commercial Association (Regd.) and

Another, , it has been held that in order to obtain the benefit of the exemption granted to forward contracts not transferable to third parties under

the Oil Seeds (Forward Contracts Prohibition) Order, 1943. there should be a specific recital on the face of the contract itself that it is not

transferable. This decision followed the earlier decisions in - "Satyanarayanamurthy v. Sitaramayya & Co.", 1950-1 Mad LJ 557 (G); 1951-1

Mad LJ 147 (B), the unreported decision in Appeal No. 97 of 1948 (Mad) (H). as well as the decision in - "Firm Hansraj v. Vasanji", 1949-4

DLR (Bom) 7.

Once again it has to be pointed out that on the facts of the instant case both parties clearly entered into the contract that the goods were to be

transported to the godown of the plaintiffs in the well-cleaned drums supplied by them and therefore no question of any transferability to any one

else arose.

In fact the facts of this case fulfil the requirements laid down in the Bench decision in "1950-1 Mad LJ 557 (G)", where it was laid down that the

Intention underlying the Notification of 13-1-1944, issued under Cl. 5 of the Vegetable Oils and Oilcakes (Forward Contracts Prohibition) Order

(1944) appears to be to grant the exemption only to cases of forward contracts in respect of which there could be some guarantee that they would

not be subject to speculation and that before any forward contract could fall within the notification, it must also be established that one of the terms

of the contract is that a delivery order or railway receipt or bill of lading relating to it is not transferable.

In the present case it has been shown that one of the terms of the contract, though not explicitly stipulated, must have been that it was not

transferable because the goods were to be supplied in the drums of the plaintiffs and delivered at their godown and within a short date thereafter

the plaintiffs themselves have entered into contracts of their own to supply others up-country and which the plaintiffs could not do later and which is

the cause of the damages claimed by them because they had to compensate their own clientele for not keeping up their part of the bargain.

So this is not a case, as pointed out in this decision, where there was nothing to prevent the buyers sending the delivery order in respect of the

goods covered by the contract and there being no provision in the contract to make such delivery order non-transferable. The mischief

contemplated in the decision was the fact that the delivery was to be at the

Ellore boat or platform.

That is why this decision held that the result would be that the very mischief sought to be prevented by the Order and the notification would occur

and which would not occur in this case when the plaintiffs were going to receive the oil in their own drums at their godowns within a few days of

the placing of the order and there would not be any question of transferring the same before they could deal with it as their own after delivery. Such

a transaction is not legally impossible but factually wholly improbable.

13. In the result, I hold that the judgments of the lower Courts cannot be upheld. I allow this Revision Petition and set aside the decrees and

judgments of the lower Courts and direct that the suit be restored to file and disposed of according to law in the light of the observations made

above. The costs of this Revision Petition will abide by and be provided for in the revised decree and judgment of the lower Court.