
(1920) 01 MAD CK 0033
In the Madras High Court

V.M. Naina Marakayer, partner in V.M. Naina Marakayer and Co. APPELLANT

Vs

A.R.A.R.S.M. Somasundaram Chettiar, by Agent Annamalai Chettiar RESPONDENT

Date of Decision : 15-01-1920

Acts Referred:

Citation : 56 Ind. Cas. 604 : (1920) 11 LW 593

Hon'ble Judges : Abdur Rahim, O.C.J.;Phillips, J

Bench : Division Bench

Judgement

1. The appellant's firm carries on business at Penang, and the plaintiff, who lives at Negapatam in this Presidency and does business there, sent several consignments of rice to the defendant for sale on commission. He now sues for recovering the price of the last two consignments, amounting to 200 lags of rice. The only question that requires decision on appeal is whether the Negapatam Court had jurisdiction to entertain the suit. The contention of the appellant is that the defendant was not to make payment to the plaintiff at Negapatam but all that he was under obligation to do was to send Hundials from Penang to the address of the plaintiff and the plaintiff was to receive money due on those Hundials.

2. The main basis of his defence rests on the decision of the House of Lords in Comber v. Leyland 79 L.T. 180. There the question was whether the English Court could issue writs out of jurisdiction under Order XI, rule 1 (e), with respect to a breach of contract on the part of the respondent who carried on business at Perumbuco and to whom the plaintiff (appellant) had sent goods for sale there and who was to keep the sale proceeds, apart from other moneys, to convert that money into first class bank bills on England and to remit such bills to the plaintiff in England. Lord Herschell, who may be taken to have delivered the leading judgment in the case, proceeded entirely on the special terms of the contract in the case and says: "The only agreement was that he" (the defendant)

" was to hold this money for the plaintiffs and then turn it into first class bank bills in favour of the plaintiffs and remit those." Then he observed "I cannot doubt that the word " remit " there means this and nothing beyond this, that the bank post bills, when obtained in favour of the plaintiffs, should be sent in the ordinary course and the ordinary manner in which such documents are sent by commercial men, namely, by mail, and that as soon as that had been done all obligation and all liability of the defendant ceased. I think it is impossible on these words to maintain that there was an obligation and a liability incumbent upon him until these bank post bills had reached the hands of the plaintiffs in England. Therefore, what he had to do was all to be performed and could all be performed (it is enough to say that it could all be performed) in Pernambuco. There was no obligation resting on him after he had received that money of which he could not discharge himself in Pernambuco." There is no written contract here. But the contract between the parties must be inferred from the evidence, especially from the correspondence that passed between them and the accounts of the plaintiff filed in the case. From that evidence what appears is that the defendant was to send Hundis drawn on some firm in the Madras Presidency it is not quite clear whether it must be on some one at Negapatam itself, but it is certain that it must be on some one in the Madras Presidency in payment of the sale proceeds for the plaintiff's goods By agreement, therefore, the plaintiff was entitled to have the payments for the consignments in dispute made in that manner and there is no reason to doubt that that was the mode of payment contemplated by the parties. It is not the case here as in the English case, that the defendant consignee of the plaintiff's goods was to hold the money for a particular purpose, that is, for conversion into particular bills and to send those bills alone to the plaintiff. It can hardly be disputed that, in this case, if the Hundis sent by the defendant to pay for the goods, or rather account for the sale proceeds of the goods in some other way. That amounts to this, that the payment was to be made to the plaintiff in Negapatam. It is quite true that the defendant may have had no agent or a branch firm in Negapatam or in the Madras took to account for the sale proceeds of the goods held, without any evidence of special usage, more or less on general principles that, as the debtor is required by law to pay the creditor where the creditor may be, the defendant was liable to make the payment at Bombay and, therefore, the cause of action for non-payment arose there. In *Kedarmul v. Surajmal* 3 Ind. Cas. 441 this proposition was confirmed by the learned Judges, though in that case there was evidence of special usage with reference to pakki adat transactions. We may also refer to a case in *Llewellyn v. Chunni Lal* 4 A. 423 , which seems to bear a close resemblance to the facts of this case. There the payment was to be made by the defendant, who received the goods by approved drafts on Calcutta or Cawnpore payable 30 days after receipt of the goods or by Government Currency Notes. It was held that part of the cause of action arose within the meaning of Section 17 of the old CPC in Cawnpore, that is, payment of the price of the goods was to be made in Cawnpore and, therefore, the Court at Cawnpore had jurisdiction to entertain the suit. There can be no doubt that the correct principle enunciated by

the House of Lords in *Comber v. Leyland* 79 L.T. 180 is that if all the acts to be performed by the defendant are to be performed outside the jurisdiction of the Court in which the suit is instituted, that Court would have no jurisdiction. But it must be a question of evidence in each case or of inference to be drawn from the facts of each case whether any portion of the contract was to be performed within the jurisdiction of the Court in which the suit is instituted. As already mentioned, we have come to the conclusion that the payment was to be made at Negapatam. It was also suggested in the argument of the learned Pleader for the appellant that the proper suit was one for accounts. But the defendant has not in any way sought to account for the goods sent to him by the plaintiff. There is no question but that he received the goods and if he accounted for them in any way, it was open to him to prove it. But he has not taken any such course and it does not look as if he had really any defence to the suit on the merits, The result is that the appeal is dismissed with costs.

3. The memorandum of cross objections is not pressed and is dismissed with costs.