
(1947) 11 MAD CK 0031
In the Madras High Court

W. Jayaraghavan

APPELLANT

Vs

The Leo Films

RESPONDENT

Date of Decision : 28-11-1947

Acts Referred:

Citation : AIR 1948 Mad 442 : (1948) ILR (Mad) 851 : (1948) 61 LW 173 :
(1948) 1 MLJ 209

Hon'ble Judges : Frederick William Gentle, C.J

Bench : Division Bench

Judgement

Frederick William Gentle, C.J.—This is an appeal by the plaintiff against the amount of damages awarded to the defendants upon their counter-claim. The plaintiff (hereafter called " the appellant,") carries on business as a film distributor. The defendant firm, of which Mr. C.S. Jagannathan is the managing partner (to whom it is convenient hereafter to refer as " the respondent ") were producers of a Tamil talkie picture named " Poompavai." Whilst the film was in course of production, and before it had been completed, a contract dated 6th May, 1943, was made between the respondent (therein called " the lessor ") and the appellant (therein called the "lessee") whereby it was agreed inter alia that (1) the respondent should lease to the appellant the rights of exploiting the picture " Poom-pavai " within the districts specified in the agreement, including the City of Madras, for five years from the date of delivery of the picture; (2) the appellant to pay to the respondent, as rent, the sum of Rs. 32,000 of which Rs. 2,016 was payable on the date of the agreement, three sums of Rs. 5,000 each payable on 16th May, 16th June and 16th July, 1943, and the balance of Rs. 14,984 on delivery of two-copies of the picture; and (3) in case of any infringement by either party, the defaulter should compensate the other for the loss sustained.

2. The appellant duly made the first payment of Rs. 2,016 but he failed to pay any instalment thereafter, the first default taking place on 16th May, 1943, when a sum of Rs. 5,000 then due was not paid. The respondent treated the

appellant's failure as a repudiation of the agreement, thereby entitled him to terminate it, which accordingly he did. The appellant instituted a suit, C.S. No. 22 of 1944, against the respondent claiming specific performance of the agreement and damages for wrongful repudiation and for return of the amount of Rs. 2,016 paid on or about the 8th May, 1943. The respondent counter-claimed for damages, alleging they amounted to Rs. 20,000, but he limited his claim to Rs. 5,000. The suit was tried by Chandrasekhara Aiyar, J., sitting in the exercise of ordinary original civil jurisdiction of this Court, who held that the respondent was in breach and the appellant was not. On appeal, that decision was set aside; the appellate Court found that the appellant was at fault and the respondent was justified in terminating the contract and directed that the counter-claim be remanded to the Original-Side of this High Court to inquire into the damages and to pass a decree for the amount found due to the respondent. The appellate Court upheld a finding that the appellant was entitled to return of the sum of Rs. 2,016. The latter finding clearly was pursuant to the provisions of Section 64 of the Indian Contract Act.

3. Clark, J., inquired into the amount of damages recoverable by the respondent and adjudged the amount to be a sum of Rs. 5,000. This is the appellant's appeal against the amount of damages so awarded; that is the sole question for consideration and no other question arises.

4. The respondent was the only witness who was called. A perusal of his testimony does not reflect that it was very satisfactory or dependable. He said the cost of the picture was Rs. 3,00,000, its production commenced in September 1942 and was completed in August 1944. By May 1943 only Rs. 10,000 had been obtained towards the heavy cost of making the picture, which sum was provided by the respondent himself, that amount was exhausted by May 1943, when the agreement was made, with the appellant, and, when he paid the sum of Rs. 2,016. At that period, the respondent was under obligation to pay salaries and provide board and lodging for the artists who had been engaged and for use of the studio. The complaint made is that production was held up solely because the appellant failed to make his payment of Rs. 5,000 on the 16th May, and the other two instalments of like amounts on 16th June and 16th July. In July, the respondent entered into a very satisfactory arrangement and contract with one S. Venkatararman Chettiar, who subsequently provided all the finance which was needed in consideration of which he was given the exploitation rights in a large part, if not throughout the whole of the Presidency of Madras and other places where the picture would be acceptable for exhibition. The main complaint which the respondent appeared to make in his evidence was that through the appellant's default he was unable to purchase raw films; but nevertheless his accounts show that a sum approaching Rs. 3,000 was spent for such films in April, 1943. In cross-examination, the respondent was forced to admit that he obtained from Venkataraman Chettiar a sum of Rs. 5,000 on the 17th June, and another sum of Rs. 2,500 on the 26th June, for which no interest was payable. He added, that he borrowed Rs. 6,000 between May and June from

a man named Sanjeeva Naidu at interest.

5. In regard to interest, there is one entry in his books, dated November 1944, recording a sum of Rs. 1,266 paid for interest; but there is no information in respect of what principal that amount was paid. The respondent said that the rate of interest which he had to undertake to pay was 12 per cent. per annum. It is quite clear that from about the middle of June, when Venkataraman Chettiar became concerned with the production of the film and provided the necessary finance, there was no lack of funds. The respondent said that between May 16, when the appellant made his first failure to pay an instalment, and 27th July, following a sum of Rs. 20,000 was paid for salaries and board and lodging for the artists. It would seem that that is the sum which was reflected in the counter-claim as the amount of damages actually sustained; but it is beyond doubt, to some extent at any rate, that production was going on during that period.

6. It is manifest that the respondent commenced production of the film, which he says cost about Rs. 3,00,000 when he had not the necessary capital available and that the money which he had was totally inadequate for the purpose. As mentioned earlier, between September 1942 and May 1943, only Rs. 10,000 was: available. The respondent apparently took in two partners, who each provided Rs. 10,000 but that was subsequent to July 1943. It is perfectly clear that, even if the appellant had fulfilled his obligations and made payments totalling Rs. 17,000 by the middle of July, instead of providing Rs. 2,000, even so, the film could not have been completed, and the respondent could not have been able to continue with its production without the intervention and the help afforded by Venkata-raman Chettiar. Until the advent of Venkataraman Chettiar's connection, pro-duction of the film went on in a very lethargic manner; whilst the appellant's money might have assisted the respondent to some extent, it could have done nothing more, but large amounts of other finance would have been needed.

7. The sole matter which arises, as pointed out above, is the question of the amount of damages. The appellant suggests that the learned Judge awarded a sum which is out of all proportion to the loss which is properly recoverable. The agreement provides that in the event of a breach, the party in default should compensate the other for the loss sustained. That term in the agreement, it is not suggested, gives anything more than what is provided by Section 73 of the Indian Contract Act. All that the appellant derived under the agreement was to have two copies of the film for exhibition within the specified territories in consideration for which he was under obligation to pay a rent of Rs. 17,000 in advance and the balance of Rs. 15,000 when the film was delivered to him. No date for delivery was specified, and there-fore had the contract been fulfilled by the appellant, he could not have insisted upon delivery save after expiration of a reasonable time, whatever that might be. The contract contains no provision, and further, there is no evidence, reflecting that any specific circumstances were brought to the notice of the appellant, at the date the agreement was made, by

which his responsibility for damages was to be larger than that which ordinarily flowed from a breach committed by him. It seems to me that the appellant was in the identical position of a person prepared to become a tenant of an unbuilt house and to pay rent for it in advance to the landlord; the landlord himself outside the agreement with the potential tenant, utilising the receipts, by way of advances of rent, to meet the cost of erection of the house. In those circumstances, if the landlord defaulted in payment to his contractors by reason of non-payment of advance rent, could it be suggested that the tenant was obliged to accept responsibility for any loss occasioned to the landlord by reason of being unable to complete the building of his house? In the present instance, by reason of the appellant being agreeable to pay rent in advance for an unproduced film and to be content to take it, or copies of it, when the film was finished, and because he failed to pay advances of the rent, is his liability for loss accruing to the respondent, owing to his own financial embarrassment, to be an additional responsibility? If that be the position, then, it seems to me, that no one will enter into an agreement with a producer, who contemplates making a film, to provide him with rent in advance for copies of it before it is completed, if the renter finds that, thereby, he must shoulder serious and onerous obligation in the event of failing to make payment for the rent in advance.

8. The present circumstances arise solely out of the incident that the respondent was a man who had no finance but who embarked upon an undertaking at a time when he had not the wherewithal to carry it out; and to enable him to do so, he entered into a contract with the appellant by which he would obtain, if the contract had been fulfilled, payment of rent in advance and to use it to discharge his own personal obligations. It is said that because of the appellant's failure, heavy loss has been sustained by the respondent, for which the appellant must be held responsible. That argument can be made only by reason of the financial embarrassment of the respondent and his embarking upon his proposition in that condition. If the respondent had been a man of substance and of financial stability, the failure of the appellant to make his rental instalments in due season, would have occasioned no loss whatever to the respondent.

9. Reference to the authorities is now convenient. It is not suggested that the law in England is different to that in India. It is to be observed, however, that, by Section 73 of the Contract Act, in India, in the absence of proof of damage, nominal damages are not recoverable but that proof of damage is necessary to enable recoverability. It is instructive to refer to the relevant decisions given in England.

10. In *Western Wagon and Property Co. v. West* (1892) 1 Ch. 271 it was observed by Chitty, J., at page 277 that

If A agrees to lend B ₹100 at interest for a week, and makes default, and B, within a few minutes after the time at which ₹100 ought to have been lent, obtains from his bankers a loan of ₹100 at the same rate of interest and for the same period of time, the damages would be merely nominal.

11. In the South African Territories, Ltd. v. Wallington (1897) 1 Q.B. 692 affirmed by the House of Lords 1898 A.C. 309 there was a breach of contract to take debentures in a company; it was held that the damage for the breach was the loss sustained and not the sum agreed to be lent; at page 695, in the judgment of the Court of Appeal, the observations of Chitty, J., in Western Wagon and Property Co. v. West (1892) 1 Ch. 271 were cited with approval, and at page 696 it is observed:

The measure of the damages is the loss sustained by the borrower through breach, the rule in Hadley v. Baxendale (1854) 9 Ex. 341 being applied when the circumstances justify its application. If the intended borrower, being a man of good credit, can readily obtain the loan from another person on the same terms, the damages would be nominal. If he cannot obtain the money except at a higher rate of interest, or for a shorter term of years, or upon other more onerous terms, the damages would be greater and might be very substantial. The burden of proving the amount of the loss sustained rests upon the plaintiff.

12. In Prehn v. Royal Bank of Liverpool (1870) 5 Ex. Cases 92. Martin, C.B., observed as follows at pages 99-100:

Now, with respect to damages in general, they are of three kinds. First, nominal damages; which occur in cases where the Judge is bound to tell the jury only to give such; as, for instance, where the seller brings an action for the non-acceptance of goods, the price of which has risen since the contract was made. The second kind is general damages, and their nature is clearly stated by Cresswell, J., in Rolin v. Steward (1854) 14 C.B. 595 : 139 E.R. 245. They are such as the jury might give when the Judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man. Thirdly, special damages are given in respect of any consequences reasonably or probably arising from the breach complained of.

13. Reference can now be made to two decisions in India. Girish Chandra Das v. Kunj Behari Malo ILR (1908) Cal. 683 was a case where a sub-tenant failed in his obligation to pay to the superior landlords rent of occupied premises and in consequence, it was alleged, his immediate landlords were unable to meet their own obligations to their superior landlord resulting in the premises being lost to them; in an action by the intermediate landlords damages were sought to be recovered from the sub-tenant in respect of the loss of the premises; in his judgment, Sir Francis Maclean, G.J., observed at page 689 as follows:

His (the sub-tenant's) damages for the loss of the plaintiffs' property, which was attributable to their own default, are too remote. It was entirely their fault that they allowed the property to be sold. The plaintiffs were primarily liable for the rent, and directly they found that the defendant No. 1 had broken his covenant and had not paid the rents, they ought to have paid it. If they had done so, the property would not have been sold and they would have sustained no loss. I do not think that the loss, which they sustained, and which is attributable to their

own default, is the natural consequence of the default of the defendant No. 1 to comply with his covenant. It is reasonably clear, if we look at Section 73 of the Indian Contract Act, that the plaintiffs were only entitled to compensation for any loss or damage, which naturally arose in the usual course of things from the breach of the contract.

14. In *Narain Das v. Basant Lal* 18 Ind.Cas. 449 it was observed in the judgment of a Bench of the Allahabad High Court,

The law cannot recognise any loss which does not naturally follow from the breach of the contract between the parties.

15. Before leaving the citation of authorities, it is helpful and illuminating to refer to the observations of Lord Wright in *Liesbosch, Dredger v. S.S. Edison* (1933) A.C. 449 ordinarily known as the Edison case, at page 460:

The law cannot take account of everything that follows a wrongful act; it regards some subsequent matters as outside the scope of its selection, because "it were infinite for the law to judge the cause of causes," or consequence of consequences. Thus the loss of a ship by collision due to the other vessel's sole fault, may force the ship owner into bankruptcy and that again may involve his family in suffering, loss of education or opportunities in life, but no such loss could be recovered from the wrongdoer. In the varied web of affairs, the law must abstract some consequences as relevant, not perhaps on grounds of pure logic but simply for practical reasons.

16. Now, returning to the facts and circumstances of the present case. The appellant was clearly at fault, and his act was wrongful in failing to observe an obligation which he had undertaken in the agreement of the 6th May, 1943, to pay sums of Rs. 5,000 on 16th May, 16th June and the 16th July. But those payments were no more than advances of rent for a film which was not produced and the date of its completion and its delivery were unstated and unsettled. There is no doubt that the respondent was hoping to utilise the moneys, which he expected to obtain from the appellant, to meet the production charges. But there is nothing in the contract or in any part of the evidence which in any way reflects that it was brought to the notice of the appellant that there would be, in consequence of his non-payment any interruption in the production of the film, or, if there was, that he would be responsible for it. Incidentally, it is to be observed that the appellant was paying a sum of Rs. 32,000 for several territories, including the city of Madras; subsequent to the termination by repudiation of the agreement, the respondent resold or relet, whichever may be the correct expression, the territory of Madras city alone for a sum of Rs. 39,000. The consequences, which the respondent alleges fell upon him by reason of the appellant's failure were not such as ordinarily flow from such failure.

17. In May, the appellant failed to pay Rs. 5,000 but it was in that month or early in June that the respondent was able to borrow Rs. 6,000 from Sanjeeva Naidu at interest, and in June, when there was another default, he had been successful

in obtaining Rs. 7,500 advanced by Venkataraman Chettiar towards the production costs without having to pay interest; by the end of the month of July, all financial worry went, since Venkataraman Chettiar was there with such sums, large or small, as might be required. In argument, it was suggested that by reason of the appellant's breach, the respondent was at a disadvantage in selling or letting territories for the exploitation of the film. That may or may not be, but in his evidence the respondent made no complaint about that, and in no circumstances is it a matter which can be taken into account in the assessment of damages.

18. The respondent is entitled to recover a sum in money, so far as it can represent the loss which he sustained, by reason of the damage which naturally flowed from the appellant's breach. He certainly is not entitled to recover in respect of every misfortune indirectly occasioned to him. That is manifested clearly in the succinct observations of Lord Wright in the Edison case (1933) A.C. 499. At the same time, the respondent must have sustained some loss. At any rate, he was without money for some period, and when he obtained it, in the first instance from Sanjeeva Naidu, he had to pay interest on it, he said, at 12 per cent. per annum; whereas no interest would be payable upon the instalments which the appellant was under obligation to pay.

19. Assessment of damages in a matter of this kind is always difficult, and I agree with the learned trial Judge that one would have been most happy to have had the advantage of the assistance of a jury, whose opinion would be valuable in the ascertainment of damages; but that is denied to Judges in this country in civil cases.

20. An appellate Court is always most reluctant to interfere with an assessment of damages either by a Jury or, as in this case, by a learned Judge sitting alone. And it does so only when it is satisfied that the amount of damages is such that, a jury of 9 or 12 reasonable men could not possibly have arrived at the amount awarded, or, in the case of a Judge sitting alone, the amount is one which is beyond reasonable expression of the damage sustained. Bearing that in mind, I have, nevertheless, come to the conclusion that the amount which the learned Judge awarded in this case was incorrect. I think he took into consideration matters which were beyond those which should have been taken into account. I have ventured to set out the principles which should be followed in the assessment of damages in a matter of this sort, and that although perhaps the injured party has, in fact, been occasioned further loss, it is not a loss which can be recovered from the party at fault. Taking into account every aspect, including the interest payable upon money which had to be obtained in the absence of payments which the appellant was under obligation to make, I have come to the conclusion that the correct sum to have been awarded was Rs. 250. It follows that the appeal will be allowed with costs of the appellant. The order and decree of the learned Judge will be set aside and a decree for Rs. 250 will be substituted in place of Rs. 5,000 with costs upon that amount, in so far as they are

recoverable in respect of a counter-claim.