The Hindustan Forest Company

Vs

Lal Chand and Others

Civil Appeal No. 161 of 1955

(S. R. Dass, S. K. Das, A. K. Sarkar, K. N. Wanchoo, M. Hidayatullah JJ)

19.08.1959

JUDGMENT

SARKAR J. –

This appeal arises out of suit filed in the High Court of Jammu and Kashmir for recovery of price of goods sold and delivered. The only point involved in it is whether the suit was governed by art. 115 of the Jammu and Kashmir Limitation Act. The courts below held, and this has not been disputed in this appeal, that if that article did not apply, the suit would fail on the ground of limitation.

Sometime in November 1946, the parties entered into an agreement in writing for the supply by the sellers, the respondents, to the buyer, the appellant, of 5,000 maunds of maize 500 maunds of wheat and 100 maunds of Dal at the rates and times specified. The agreement stated that on the date it had been made the buyer had paid to the the sellers Rs. 3,000 and had agreed to pay a further sum of Rs. 10,000 within ten or twelve days as advance and the balance due for the price of goods delivered, after the expiry of every month. It is admitted that the said sum of Rs. 10,000 was latter paid by the buyer to the sellers.

Various quantities of goods were thereafter delivered by the sellers to the buyer and though such deliveries had not been made strictly at the times specified in the contract, they had been accepted by the buyer. The buyer in its turn made various payments towards the price of the goods delivered but not months by month and had not further paid it in full. The last delivery of goods was made on June 23, 1947, and the suit was brought on October 10, 1950, for the balance of the price due.

The learned Judge of the High Court who learned the suit held that art. 115 had no application and dismissed the suit as barred by limitation. The sellers went up in appeal which was heard by two other learned Judges of the High Court. The learned Judges of the appellate bench of the High Court held that art. 115 of the Jammu & Kashmir Limitation Act applied and the suit was not barred. They thereupon allowed the appeal and passed a decree in favour of the sellers. The buyer has now come up in appeal to this Court.

Article 115 of the Jammu and Kashmir Limitation Act which is in the same terms as art. 85 of the Indian Limitation Act except as to the period of limitation, is set out below :

#----------Description of suit Period of Time from which Limitation period begins to run----------For the balance due on a Six years. The close of the year inmutual, open and current which the last itemaccount, where there have admitted or proved isbeen reciprocal demands entered in the

account;between the parties. such year to be computed as in the account.----------##

If the article applied the suit would be clearly within time as the last item found to have been entered in the account was on June 23, 1947. The only question argued at the bar is whether the account between the parties was mutual.

The question what is a mutual account, has been considered by the courts frequently and the test to determine it is well settled. The case of the Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah [(1930) I.L.R. 58 Cal. 649] may be referred to. There a company had been advancing monies by way of loans to the proprietor of a tea estate and the proprietor had been sending tea to the company for sale and realisation of the price. In a suit brought by the company against the proprietor of the tea estate for recovery of the balance of the advances made after giving credit for the price realised from the sale of tea, the question arose as to whether the case was one of reciprocal demands resulting in the account between the parties being mutual so as to be governed by art. 85 of the Indian Limitation Act. Rankin, C.J., laid down at p. 668 the test to be applied for deciding the question in these words :

> "There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Halloway, A.C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations. It is further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant's debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant's liability."

The observation of Rankin, C.J., has never been dissented from in our courts and we think it lays down the law correctly. The learned Judges of the appellate bench of the High Court also appear to have applied the same test as that laid down by Rankin, C.J. They however came to the conclusion that the account between the parties was mutual for the following reasons :

> "The point then reduces itself to the fact that the defendant company had advanced a certain amounts of money to the plaintiffs for the supply of grains. This excludes the question of monthly payments being made to the plaintiffs. The plaintiffs having received a certain amount of money, they became debtors to the defendant company to this extent, and when the supplies exceeded Rs. 13,000 the defendant company became debtors to the plaintiff and later on when again the plaintiff's supplies exceeded the amount paid to them, the defendants again became the debtors. This would show that there were reciprocity of dealings and transactions on each side creating independent obligations on the other."

The reasoning is clearly erroneous. On the facts stated by the learned Judges there was no reciprocity of dealings; there were no independent obligations. What in fact had happened was that the sellers had undertaken to make delivery of goods and the buyer had agreed to pay for them and had in part made the payment in advance. There can be no question that in so far as the payments

had been made after the goods had been delivered, they had been made towards the price due. Such payments were in discharge of the obligation created in the buyer by the deliveries made to it to pay the price of the goods delivered and did not create any obligation on the sellers in favour of the buyer. The learned Judges do not appear to have taken a contrary view of the result of these payments.

The learned Judges however held that the payment of Rs. 13,000 by the buyer in advance before delivery had started, made the sellers the debtor of the buyer and had created an obligation on the sellers in favour of the buyer. This apparently was the reason which led them to the view that there were reciprocal demands and that the transactions had created independent obligations on each of the parties. This view is unfounded. The sum of Rs. 13,000 had been paid as and by way of advance payment of price of goods to be delivered. It was paid in discharge of obligations to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any obligation on the sellers in favour of the buyer; it was not intended to be and did not amount to an independent transaction detached from the rest of the contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and might also have been liable in damages but such liability would then have arisen from the contract and not from the fact of the advances having been made. Apart from such failure, the buyer could not recover the monies paid in advance. No question has, however been raised as to any default on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands. Article 115 of the Jammu and Kashmir Limitation Act cannot be applied to the suit.

The learned Judges appear also to have taken the view that since the goods were not delivered at the times fixed in the contract, and the prices due were not paid at the end of the months, the parties clearly indicated their intention not to abide by the contract. We are unable to agree with this view. Such conduct only indicated that the parties had extended the time fixed under the contract for delivery of the goods and payment of price, leaving the contract otherwise unaffected.

The learned Judges also observed that the contract did not provide how the amount advanced was to be adjusted. But it seems clear that when the contract provided that the advances was towards the price to become due, as the learned Judges themselves held, it followed by necessary implication that the advance had to be adjusted against the price when to became due. So there was a provision in the contract for adjusting the advance.

We think it fit also to observe that it is somewhat curious that any question as to the application of art. 115 was allowed to be raised. The applicability of that article depends on special facts. No such facts appear in the plaint. There is no hint there that the account was mutual. We feel sure that if the attention of the learned Judges of the High Court had been drawn to this aspect of the matter, they would not have permitted any question as to art. 115 being raised, and the parties would have saved considerable costs thereby.

We therefore come to the conclusion that the appeal must be allowed. The judgment and order of the learned Judges of the appellate bench of the High Court are set aside and those of the learned single Judge of the High Court are restored. The appellant will be entitled to the costs in this Court and of the hearing of the appeal before the High Court.

Appeal allowed.

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