

Pratapray Manmohandas

Vs

Bombay Bullion Association Ltd

Civil Appeal No. 437/60

(J. L. Kapur, K.C. Das Gupta, Raghuvar Dayal JJ)

02.03.1962

JUDGMENT

KAPUR, J. -

This is an appeal against the judgment and decree of the High Court of Bombay confirming the decree passed in its original jurisdiction. The appellant, who was the plaintiff in the suit, was trading under the name and style of Messrs. Pratapray Manmohandas as a bullion merchant and trader in Bombay. He was a member of the Bombay Bullion Association Ltd., which was defendant No. 1 in the suit and is respondent No. 1 in the appeal. Respondents 2 to 7 were defendants 2 to 7 and at all material times were members of the Clearing House Committee appointed under the Bye-laws of the 1st respondent. The appellant had also added as parties in the suit defendants 8 to 12 but they are no longer parties as their names were struck off in the trial court.

The appellant entered into certain forward transactions with defendants 8 to 12 during the period from May 30, 1949 to June 30, 1949. On June 13, 1949, the Hawala rate of these transactions was fixed and on June 14, 1949, the appellant "admitted a clearance sheet under bye-law 131 of the bye-laws of 1st respondent in which outstanding transactions for the Valan day" (settlement) were entered. They included the transactions which had been entered into with defendants 8 to 12. All these transactions were Rajued (tallied) on the following day. According to the bye-laws of the respondent Association the balance sheet had to be submitted and money Kiplis (vouchers) had to be given. In this balance sheet which was submitted the appellant did not include the amounts which were due to defendants Nos. 8 to 12 or the transactions he had entered into on the ground that he disputed the transactions entered into with those defendants as they were fictitious and illegal. On June 21, 1949, which was the Valan day (settlement day) the appellant claimed reference to arbitration in regard to those items under bye-law 38. On that day defendants 8 to 12 complained to the respondent Association that the appellant had not issued the necessary kaplis (vouchers). At 3 p.m. on the same day the appellant received a notice from the Clearing House Committee, respondents 2 to 7 calling upon him to appear before them. The appellant appeared with his solicitor and counsel and his contention before the Clearing House Committee was that it had no jurisdiction to proceed with the matter because he was claiming arbitration and the dispute between him and defendants 8 to 12 had to be settled by the arbitrators. The Committee heard the explanation and passed a resolution under bye-law 155(4) declaring the plaintiff a defaulter and it is this resolution which is the matter in controversy between the parties.

On June 20, 1952, the appellant brought a suit for declaration that the resolution in dispute dated June 21, 1949, was bad in law, inoperative, ultra vires and not binding on the appellant and also for damages against the respondents. He also prayed for reinstatement as a member of the respondent

Association.

The plea taken by the respondent was that the transactions in dispute were not phatak (fictitious and inoperative); that at the meeting on June 21, 1949, defendants 8 to 12 had complained that amounts of money had become payable to them from the appellant; that at the said meeting the appellant had made it clear that he would not give any kaplis (vouchers) and had therefore defaulted and they were therefore entitled to declare him defaulter under bye-law 155(4) of the respondent Association.

The suit was tried by Tendolkar J. Several issues were raised but the appellant led no evidence and respondents 1 to 8 examined Mr. Trikandas Dwarkadas a solicitor of Bombay, who was present at the meeting of the Clearing House Committee on June 21, 1949. On June 6, 1956, the suit was dismissed and an appeal was taken to the Appeal Court which was also dismissed and the appellant has come in appeal by Special Leave.

The trial court had held that the plea taken by the appellant that after he and his counsel were heard they were made to leave the meeting and the hearing proceeded in their absence was not established; that for bye-law 38 relating to arbitration becoming operative, it was necessary to have a genuine dispute between the parties and mere pretence of a dispute in order to evade or postpone the liability on the Valan Day is not sufficient, that where the defaulter appears before the Clearing House Committee and denies liability on some flimsy pretexts and thereby makes it abundantly plain that he does not wish to give a kapli giving him an opportunity for giving a kapli was a mere formality the failure to observe which does not lead to the conclusion that the decision of the Clearing House Committee is void. Considering the evidence of Mr. Trikandas Dwarkadas it was clear that the appellant had no intention of admitting the liability or discharging it. He also held :

"Moreover, it is not the plaintiff's case that if time had been given he would have given the kaplis and therefore assuming that it is necessary under bye-law 155(4) - a point which I did not wish to decide in this case - in the present case to give such time would have been perfectly futile and therefore failure to give such time does not invalidate the action which was taken by the Clearing House Committee".

The Appeal Court concurred in dismissing the appeal. It held that on a proper interpretation of bye-law 155(4) it was necessary for the Clearing House Committee to give an opportunity to the appellant to submit his kaplis because that was the meaning of the words "and can thereafter, if such a kapli is not submitted, the Clearing House Committee can declare him a defaulter". In other words the Committee had to give the member a locus penitentiae and that after giving his explanation a member could still submit a kapli and escape the penalty of being a defaulter. From the conduct of the appellant and his counsel however it appeared quite clearly that having challenged the jurisdiction of the Committee and having told them that they could not proceed in the absence of reference to arbitration the appellant had no intention of giving the kaplis.

Two questions have been raised in this appeal; (1) the question of interpretation and (2) that no opportunity was given after the decision was made against the appellant to give the kaplis. The submission of the respondents on the other hand was that the appellant had deliberately made a false allegation that after he made a submission he was asked to leave. This was to buttersay his plea that the matter was decided in his absence. The court below have found that whether an opportunity had been given to the appellant or not, he had no intention of giving his kaplis. Issue No. 5 was specific on this point. That issue was "whether the appellant and his legal advisers voluntarily left the meeting after indicating that the appellant was not going to give the kaplis" and that was the

principal question which has been raised throughout the course of these proceedings. Even in the statement of the appellant's case he has put in the forefront of the question for decision the question whether the appellant left the meeting dated June 21, 1949, voluntarily after indicating his unwillingness to submit the kaplis. The finding of both the courts on this question was against the appellant. In our opinion that is fully justified by the evidence on the record. According to the evidence days were fixed by the Association for the settlement of all transactions which had been entered into for that period. According to the char of Bombay Bullion exchange settlement had to be made, i.e. the monies had to be paid by 3-30 p.m. on June 21, 1949. The appellant made it clear, however, that he was not going to make the payment in accordance with the requirements of the Valan day; on the other hand he stated that he will pay after the arbitration award was made. The evidence produced by the respondents makes it abundantly clear that the contention of the appellant was that no action should be taken unless the arbitration which he had asked for had been disposed of and after saying that he went away. This is clear from the Attendance Book of Mr. Trikandas Dwarkadas solicitor. The respondent Association was therefore justified in taking the action that it did. The minutes of the proceedings of the Clearing House Committee dated June 21, 1949, also show that the appellant and his legal advisers stated that they wanted to go to arbitration and that no action should be taken against them until the arbitrators had given their award. It is stated therein that the appellant admitted that the transactions which his solicitor said were fictitious were entered in his books and they had been rajued (tallied) and that he had shown the transaction in his "olias" (clearance sheet). All this indicated that the contentions raised by the appellant were false and had been raised in order to gain time. In these circumstances it cannot be said that the respondent Committee acted without giving due consideration to the facts of the case or in any precipitate manner.

Bye-law 155(4) reads :

"If any member does not submit a kapli in the prescribed form in respect of the amount found climbable from him to his party (creditor), the Clearing House Committee shall call him and demand an explanation from him and can thereafter, if such a kapli is not submitted the Clearing House Committee can declare him a defaulter".

That clause requires that in the event of default of submission of a kapli the Clearing House Committee shall call the defaulter and demand an explanation and thereafter, if such kapli is not submitted, declare him a defaulter. It was contended that the meaning of this is that first the Clearing House Committee is to demand an explanation and after such an explanation is given, time has to be given for the purpose of enabling the person not giving the kapli to submit his kaplis. In our opinion the interpretation of the learned Chief Justice of the High Court is in consonance with the language used. i.e. first the explanation is called and after explanation is given and some decision is arrived at in regard to the validity of the reasons for not giving the kaplis then the person complained against can file the kapli but it does not mean that the time to be given has to be one or half an hour or any other specific period.

As we have said above the appellant had made it clear that he was not going to make the payment and had just left after making his submissions. It is not a requirement of the bye-law that the Clearing House Committee should call the person defaulting either by telephone or by letter or by giving him a notice and considering the promptitude with which the payments have to be made and the dates fixed for the finishing of all the transactions it will be unreasonable to hold that such is the procedure contemplated by cl. (4) of bye-law 155. The period of time, must, in each case, depend

upon the circumstances, but where it is made absolutely clear that no payment is going to be made the giving of time is wholly without utility.

In our view the High Court has given a correct decision and we therefore dismiss this appeal with costs.

Appeal dismissed.

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