Firm Girdhar Mal Kapur Chand

Vs

Firm Dev Raj Madan Gopal

Civil Appeal No. 240 of 1961

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

11.02.1963

JUDGMENT

DAS GUPTA, J. -

The respondent a partnership firm carrying on business as commission agents in the town of Khanna in Punjab brought the suit out of which this appeal has arisen against the appellant firm for recovery of Rs. 17,615/10/- claimed to be due to it on account of the purchases and sales made on behalf of the appellant firm. Between December 1946 and February 3, 1947, 7600 bags of cotton seeds were, according to the plaint purchased by the respondent on behalf of the appellant firm at various rates, out of which 5300 bags are said to have been sold by it on behalf of the appellant firm between the dates of January 2, 1947 and February 3, 1947. Thus, on February 3, 1947, 2300 bags of cotton-seeds were left on its hands. In May 1947 the market for cotton-seeds was falling and so the respondent firm asked the appellant either to remove the goods within 48 hours on payment of the full price or pay something more by way of margin and informed them that otherwise the goods would be sold. As no reply was received these 2300 bags were sold on May 24 - some at the rate of Rs. 11/11/6 per maund and the rest at the rate of Rs. 11/12/- per maund. Apart from these transactions in cotton-seeds the respondent firm, according to the plaint, also purchased 100 bales of cotton of which 50 bales were also sold on behalf of the appellant firm, so that after February 14, 1947, 50 bales of cotton purchased by the appellant firm were lying with the respondent. These 50 bales were also sold by the respondent on May 24, 1947 at the rate of Rs. 27/12/- per maund, as the appellant took no action when the respondent asked them either to take away these bales on payment of the price or to put in more money by way of margin. On the accounts, it was said, Rs. 15,556/10/- remained due to the plaintiff firm from the defendant firm. The suit was brought for the recovery of this amount together with interest.

In contesting the suit the appellant while admitting trade relations with the plaintiff firm disputed the correctness of the accounts. The plaintiff's case about the purchase of cotton-seeds and cotton bales and the fact that 2300 bags of cotton seeds and 50 bales of cotton purchased by it remained with the plaintiff firm was also denied. It was also urged that the transactions were wagering contracts, and so void in law, that they being forward transactions were prohibited by law and further that the plaintiff firm was not a registered firm under the Indian Partnership Act, and therefore the suit did not lie.

The Trial Court rejected all the contentions in law and accepted the plaintiff's story as regards the transactions but held as regards the accounting, on a consideration of the evidence, that the plaintiffs were bound to give credit to the defendants for the sale of 2300 bags of cotton-seeds at the contract rate of Rs. 14/5/- per maund even though these were actually sold at a lower rate, and that the debit

for the purchase of 2300 bags would be calculated at the rate of Rs. 13/8/- and Rs. 13/10/- per maund, the rates at which they were actually purchased even though they were agreed to be purchased at the rate of Rs. 14/5/- per maund on February 3, 1947. The price of 2300 bags of cotton seeds and 50 bales of cotton on the final sale was directed to be credited in favour of the defendant at the market rate on May 28, 1947. Other directions as regards calculations of incidental charges and interest were also given. The Court appointed an Advocate as Commissioner for the purpose of calculating the amount due after ascertaining the market price. After consideration of the report submitted by the Commissioner, the learned Judge passed a final decree in favour of the plaintiff for Rs. 9,749/3/9 with proportionate costs.

Against this decree both the plaintiff and the defendant appealed to the High Court of Punjab. In the defendant's appeal it was contended that the suit was not properly entertained as the plaintiff firm was not registered under the Indian Partnership Act, 1932. It was also urged that the transactions were illegal being forward transactions in cotton and edible oil-seeds and thus prohibited by law. Both these contentions were rejected by the High Court. Two other minor points which were taken before the High Court and were rejected by it have not been repeated before us.

In the plaintiff's appeal, it was urged that the Trial Court had erred in its directions as regards the debits and credits for 2300 bags of cotton seeds for the purchases and sales on February 23, 1947. The High Court accepted the plaintiff's contention in part and held that the plaintiff was entitled to an extra amount of Rs. 3,244/12/-. In the result, the High Court dismissed the defendant's appeal but allowed the plaintiff's appeal to the extent that the decretal amount was increased by Rs. 3,244/12/- thus making the decree one for Rs. 12,694/.

On the strength of the certificate granted by the High Court under Art. 133(1)(a) of the Constitution; the defendant firm has preferred the present appeal.

The appellant's first contention is, as in the courts below, that the suit should have been dismissed altogether. Two grounds of law are urged in support of this. The first is based on the requirement of s. 69(2) of the Indian Partnership Act. It is no longer disputed that the firm was registered by the Registrar of Firms, Punjab, on August 16, 1946, under the Indian Partnership Act, 1932, as it stood on that date. That was an order made before the partition of India took place. The entire Province of Punjab was then within British India; there was one Registrar for the entire Province and it is not disputed that that registration made by the Registrar whose office was at Lahore was up to August 14, 1947 good registration for the whole of what was then British India. The appellant contends that as soon as the partition of India took place that registration caused to be effective for that part of the old British India which became the Dominion of India and it so continued to be ineffective for this entire area also after the Constitution of India came into force. It is argued that the Registrar of the Punjab, within his office at Lahore, ceased to be a Registrar under the Indian Act, when on the partition of India Lahore became part of a foreign country. So, it is said, the registration became the registration of a foreign country and thus ceased to be a registration for India. In our opinion, this argument is wholly unsound. Once there was registration under the Indian Partnership Act that registration, in our opinion, continues to operate as registration under that Act and continues to be effective - in other words, valid registration in the eye of law as administered in India so long as the registration is not cancelled in accordance with law.

In coming to this conclusion, we have not overlooked the fact that difficulties may in certain circumstances arise as regards the recording of alterations in the firm name or its principal place of business (s. 60); noting of closing and opening of branches (s. 61); noting of changes in the name

and address of partners (s. 62); recording of changes on dissolution of a firm and recording withdrawal of a minor from the firm (s. 63); rectification of mistakes in the register (s. 64); and amendment of register by order of court (s. 65), by the fact of the Register, on whom duties are laid by these sections in connection with the above matters, being now at Lahore, that is, outside India. We have not thought it necessary however to investigate in the present case as to what arrangements have been made to cope with these difficulties. For, it is clear to us that the presence of such difficulties cannot in any way change the legal position that registration that was good registration under the Indian Act does not cease to be good registration under the same Act, so long as it is not cancelled in accordance with law. This view of law was taken by the Bombay High Court in Bombay Cotton Export & Import Co., v. Bharat Sarvodaya Mill Co. [I.L.R. Bom. (1958) 1351.], and is, in our opinion, the only possible view.

It is unnecessary for us to consider, for the purpose of the present appeal, whether such a registration would be effective registration, in an area which was outside British India, at the time of the registration; and on that we express no opinion.

For his next legal contention, viz., that the transactions were prohibited by law, Mr. Aggarwala argued, first that forward contracts in cotton as also oil seeds were prohibited by the orders made in 1943 under the Defence of India Rules and these prohibitions remained effective up to the date of the contracts in the present case by virtue of s. 5 of the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946). That these were forward contracts is not disputed. It does appear that forward contracts in cotton and in oil-seeds including cotton seeds were prohibited by the Cotton Options (Forward contracts and prohibition) Order, 1943 of May 1, 1943 and oilseeds (Forward Contracts and Prohibition) Order, 1943 of May 29, 1943 respectively. The Defence of India Rules under which these orders were made had however ceased to be in force long before the date of the contracts in the present case. Unless therefore the prohibition orders were kept alive by some other provision of law the present transactions would not be hit by the prohibitory orders. To show that they had been kept alive, Mr. Aggarwala relied on s. 5 of the Essential Supplies (Temporary Powers) Ordinance, 1946 and the same section of the Essential Supplies (Temporary Powers) Act, 1946 by which it was replaced. The section is in these words :-

> "5. Continuance in force of existing orders. Until other provisions are made under this Ordinance any order, whether notified or not, made by whatever authority under rule 80-B, or sub-rule (2) or sub-rule (3) of rule 81 of the Defence of India Rules, in respect of any matter specified in s. 3, which was in force immediately before the commencement of the Ordinance shall, notwithstanding the expiration of the said rules, continue in force as far as consistent with this Ordinance and be deemed to be an order made under s. 3; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance."

The Act continued the same phraseology. These provisions of the Ordinance or the Act, are however clearly no assistance to Mr. Aggarwala's arguments. It is clear that before the order made under rule 81 of the Defence of India Rules continues in force notwithstanding the expiration of the Defence of India Rules, it is necessary that the order must be in respect of any matter specified in s. 3. Section 3 empowers the Central Government to make various orders but only in connection with essential commodities. No order can therefore be considered to be "in respect of any matter specified in s. 3" unless it is in respect of an essential commodity.

> "Essential Commodity" is defined in s. 2 to mean any of the following classes of commodities :- (i) foodstuffs, (ii) cotton and woollen textiles, (iii) paper, (iv) petroleum and petroleum products, (v) spare parts of mechanically propelled vehicles, (vi) coal, (vii) iron and steel and (viii) mica, "Foodstuffs" was also defined thus : "Foodstuffs" shall include edible oilseeds and oils." Cotton seed is an oilseed but it cannot be for a moment be suggested that it is fit for human consumption. So, clearly, it is not an oilseed which is edible. Mr. Aggarwala as a last resort argued that what "edible oil seed" means is a seed from which edible oil can be prepared. Such an argument has only to be mentioned to deserve rejection. The phrase "edible oil-seed" can never mean what the learned Counsel suggests and can and does mean only an oil seed which is edible as an oil-seed. Cotton-seed, not being edible, falls outside the class of "edible oil-seed" and so is not foodstuff within the meaning of s. 2 of the Ordinance or the Act of 1946. The Cotton Seeds Order of 1943 which has been mentioned above is therefore not in respect of a matter specified in s. 3 of the Ordinance or the Act so was not kept alive by s. 5. The Cotton Order has also not been kept alive, for raw cotton is not one of the articles included in the definition of "essential commodity" in s. 2. It may be added that s. 5 continues only such previous Orders as are consistent with the new law and clearly, as cotton and cotton-seeds are not included in the definition of Essential Commodity, any previous Order with respect to them will be inconsistent with the new Order and cannot continue under s. 5.

Mr. Aggarwala drew our attention to a Notification by the Central Government dated on November 4, 1949 by which cotton seed was excluded from the operation of the Oilseeds Forward Contracts Prohibition Order, 1943, by omitting it from the schedule to the order, Mr. Aggarwala rightly contends that such exclusion would be unnecessary unless as a result of s. 5 of the Essential Supplies (Temporary Powers) Act, 1946, the Oilseeds Order had remained alive up to November, 1949. We do not know what led the Central Government to make this Notification. It is not improbable that a question having arisen before the Government whether or not forward contracts in cotton seeds continued to be prohibited, in view of the provisions of s. 5 of the Ordinance or the Act as mentioned above, the Government thought it proper to put the matter beyond doubt by making the notification excluding cotton seeds altogether from the Schedule to the Prohibition Order. It is unnecessary for us to investigate the circumstances under which the order was made. For, the fact that Government thought that the effect of s. 5 was to keep alive the Oilseeds Forward Contracts Prohibition Order, 1943 is not relevant at all. For the reasons mentioned earlier, we are clearly of opinion that s. 5 cannot have that effect. Mr. Aggarwala's contention that the Forward contracts in cotton-seeds which are the subject matter of the present litigation were prohibited by law has therefore no substance.

This brings us to the question whether the High Court erred in allowing the plaintiff's appeal in increasing the amount decreed by Rs. 3,244/12/-. It appears that before the High Court it was urged on behalf of the plaintiff that there had been a clerical error in preparing the statement. Ex. P-8, an extract from the Saudabahi - in that the purchase price and sale price for the transactions of February 3, 1947 was shown as Rs. 14/5/- and Rs. 14/8/- instead of the correct figures which were, according to Saudabahi Rs. 13/5/- and Rs. 13/8/-. It is obvious that this mistake would not affect the result as the difference between the credit entry and the debit entry for these transactions would remain the same. What the Trial Court did was that it took the sale price for February 3, transaction to be Rs. 14/5/- as shown in Ex. P-8; but for the purchase price which had to be debited against the defendant it rejected the figure of Rs. 14/8/- shown in Ex. P-8 but took the figure of Rs. 13/8/- and

Rs. 13/10/- as shown in the plaintiff's account book. It seems to us likely that the arrangement between the parties was that the debits and credits in the running account should be on the basis of the rate at which the purchases and sales were actually made and not at the rate mentioned in the Saudabahi. This is clear from the fact that for both the sale and the purchase the account book shows the actual rates at which the purchases and sales were made (the purchase price being at the rate of Rs. 13/8/- and Rs. 13/10/- per maund and sales being at the rate of Rs. 13/5/- and Rs. 13/7/- per maund). It is difficult to understand why the Trial Judge, though making the debits against the defendant at the lower rate of actual purchase thought it fit to accept the Saudabahi rate for the sale. If for both debits and credits the actual rates at which the purchases and sales were effected are accepted, it is clear that the Trial Court's direction had resulted in crediting the defendant with Rs. 3,244/12/- more than what was the correct figure. The High Court was therefore right in increasing the decretal amount by this sum of Rs. 3,244/12/-.

It may be pointed out that if the actual rates of purchases and sales in respect of these transactions of February 3, 1947 for 2300 bags of cotton-seeds are rejected and the Saudabahi rates (according to Ex. P-8) of Rs. 14/5/- for the sale and Rs. 14/8/- for the purchase are accepted as the basis for making the credits and debits, as Mr. Aggarwala asks us to do, the defendant would gain nothing at all.

We have therefore come to the conclusion that the High Court was right in allowing the plaintiff's appeal in part and increasing the decretal amount by Rs. 3,244/12/-.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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