Sunil Kumar Roy

Vs

M/s. Bhowra Kankanee Collieries Ltd. and Others

Civil Appeal No. 2428 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

15.12.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Patna High court. The facts may be shortly stated. By a registered indenture of lease, dated December 18, 1900, the Eastern Coal Co. Ltd. was granted a lease by the Zamindar of Jharia of certain land in Mauza Gourkhanti in pargana Jharia. The Eastern Coal Co erected buildings for manufacture of coke and also constructed office and the quarters for the staff and the labourers. On May 17, 1946, the Eastern Coal Co. sold the machineries on the demised land to the appellant and also granted a lease of the land on which the buildings stood to him. One of the terms of the lease was that royalty would be paid by the appellant at the rate of Re. 1/- per ton on despatches of coke. The rate was subject to being revised from time to time by mutual arrangement between the parties "as may be justified by market condition". According to the appellant the Eastern Coal Company came to an arrangement in 1950 with him by which royalty on breeze coke was to be paid at the rate of 2 As. per ton. In December, 1951, another arrangement was arrived at by which royalty on hard coke was to be paid at the reduced rate of 8 As. per ton instead of Rs. 1 per ton stipulated in the lease dated May 17, 1946. This arrangement was to be given effect to from July 19, 1952. On January 5, 1955, the Eastern Coal company informed the appellant that the colliery had been sold to the Bhowra Kankanee Collieries Ltd., respondent No. 1, the sale being effective from January 1, 1955. Respondent No. 1 claimed royalty on all despatches of coke including breeze coke at the rate of Re. 1 per ton. The appellant took up the position that by mutual agreement Eastern Coal Company had agreed to the royalty being payable on hard coke at the rate of 8 As. per ton and on breeze coke at 2 As. per ton. The appellant paid to respondent No. 1 the amount calculated according to the above rates.

2. On January 31, 1956, respondent No. 1 instituted a suit against the appellant claiming a sum of Rs. 23,287-4-3 on account of royalty on all kinds of coke despatched during the period January, 1955 to November, 1955 at the rate of Re. 1 per ton. The Company further claimed damages at 6% per annum amounting to Rs. 1,212-11-9. The appellant contested the suit, his main plea being that by virtue of the arrangement arrived at with the Eastern Coal Company in accordance with the terms of the lease, dated May 17, 1946, the royalty was payable at the rate of Re. 1 per ton for hard coke and 2 As. per ton for breeze coke. The Trial Court accepted the plea of the appellant about reduction of the rates of royalty in terms of the arrangement arrived at with the Eastern Coal Company. It was further held that the document Ex. A-4 in which this agreement or arrangement was incorporated did not require registration compulsorily and was admissible in evidence. The suit was dismissed. Respondent No. 1 preferred an appeal to the High Court. Although the point with regard to the admissibility of Ex. A-4 for lack of registration was raised before the High Court it did not give any

decision on it. The Judgment of the High Court rested on the finding that the appellant had failed to prove that the reduction in the rate of royalty had been given effect to from July 1952.

3. Mr. B. Sen for the appellant sought to raise the question about the admissibility of Ex. A-4 for want of registration. In the first place his contention cannot be entertained so long as the finding of the High court on the only point which was canvassed before it about the reduction of the rate of royalty is not set aside. The High Court had held after an examination of the evidence that it had not been proved that there was any change in the market condition in July or in December, 1953, to call for a reduction in the rate of royalty or that there was any mutual arrangement or agreement between the lessor or the lessee for such a reduction which was to become effective from July 1952. No attempt was made by Mr. Sen to persuade us to reverse this conclusion. Even on the assumption that a mutual arrangement or agreement as evidenced by Ex. A-4 was arrived at between the appellant and the Eastern Coal Co. Ltd., we are unable to agree that any reduction in the rate of royalty could have been effected by means of Ex. A-4 which had not been registered under the provisions of the Indian Registration Act. It is well-settled by now that a document which varies the essential terms of the existing registered lease, such as the amount of rent, must be registered : See Durga Prasad Singh v. Rajendra Narain Bagchi, (ILR 37 Cal 293 : 10 CLJ 570 : 4 IC 713) which was approved by the Full Bench in Lalit Mohan Ghosh v. Gopal Chuck coal Company Ltd. (ILR 39 Cal 284 : 16 CWN 55 : 12 IC 723 : 14 CLJ 411) The decision of the Madras High Court in Obai Goundan v. Ramalinga Ayyar (ILR 22 Mad 217 : 8 MLJ 256) taking a contrary view has not been followed by the High courts in India and the consistent view that has been taken is that registration of an agreement is necessary which reduces the rent of an existing registered lease. (See Mulla on Indian Registration Act, 7th Edn., pp. 75-76.)

4. The other contentions faintly raised before us arising out of issue No. 3 and that Ex. A-4 had been acted upon do not survive in view of the conclusions arrived at by the High court and the view that we have taken about the admissibility of the aforesaid document. The Civil Miscellaneous Petitions which were filed in this Court shall stand dismissed as, in our opinion, no ground has been made out for admitting additional evidence or for impleading the Oriental Coal Co. Ltd., as a party respondent here.

5. The appeal fails and it is dismissed with costs.

</html