

M. N. Gangappa (Dead) By L. Rs.

Vs

Atmakur Nagabhushanam Setty & Co. and Another

Civil Appeal No. 205 of 1967

(A. N. Grover, M. H. Beg JJ)

21.01.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from the judgment and decree of the Mysore High Court.

2. A suit was filed for the recovery of Rs. 22,274-4-0 as damages for breach of contract by the plaintiff (first respondent herein) against M. N. Gangappa now deceased and represented by his legal representatives. The second respondent was also joined as defendant. According to the case of the plaintiff, the defendants had entered into two contracts with him for the supply of groundnut seeds. It was claimed that both the contracts were for a specified quality of groundnut seeds, for specific delivery at a specified price and were not transferable. The first contract (Ex. P-20) was entered into on November 1, 1950, and the delivery was stipulated to be made by January 31, 1951. The damages relating to this contract were claimed at the difference between the contract rate and the market rate which was stated to be Rs. 224/- per candy, on the date of breach, i.e., January 31, 1951. The second contract (Ex. P-29) was entered into on November 21, 1950. The damages relating to the contract were claimed on the basis of the difference between the contract rate and the market rate, namely, Rs. 218/- per candy on the date of the breach which was stated to be February 28, 1951.

3. On or about January 22, 1951, the plaintiff despatched 954 empty bags to Bellary by rail and sent the Railway Receipt by registered post addressed to the defendants asking them to despatch the stipulated quantity of groundnut seeds agreed to be supplied under the first contract (Ex. P-20) by rail and to send the Railway Receipt through the Imperial Bank. It was alleged that the registered letter was returned as refused. On January 27, 1951, the plaintiff sent a telegram to the defendants stating that the registered cover containing the parcel Way Bill relating to empty bags had been refused by them and they were called upon to take delivery of the empty gunny bags by giving an indemnity bond to the Railway authorities. The defendants sent a telegram in reply saying that the transaction in question was of a "satta forward contract and was illegal and unenforceable." This was followed by other telegrams which need not be mentioned. On February 12, 1951, the plaintiff sent a telegram to the defendants asking them to deliver the quantity of groundnut seeds agreed to be sold by means of the second contract (Ex. P-29). The defendants were informed that gunny bags would be sent to them on hearing from them. There was similar correspondence with regard to this contract as well. The defendants took up the position that the contract was illegal. In the written statement also it was asserted by the defendants that the contracts were void under Section 30 of the Contract Act and the Oil Seeds (Forward Contracts Prohibition) Order, 1943 (hereinafter called 'the Order'). The material issues which arose for decision were as follows :

- "1. Did the suit contracts not intend delivery of goods but only payment of difference in prices and hence void and unenforceable ?
2. Do the suit contracts contravene the provisions of the Oil Seeds (Forward Contracts Prohibition) Order, 1943, and hence void and unenforceable ?
3. What is the quantum of damages to be awarded ?"

The District Judge, Bellary who tried the suit, held that the defendants by means of the contracts Ex. P-20 and Ex. P-29 had undertaken to supply groundnut seeds to the plaintiff and that those contracts were not transferable. They were thus not hit by the provisions of the order. After determining the damages, the suit was decreed for Rs. 18,759-8-0 with interest at 6% per annum from the date of the suit till the date of payment.

4. The defendants filed an appeal to the High Court. The High Court gave the following findings :
 - (i) The groundnut seeds which were agreed to be supplied by the two contracts were of "expeller quality" which was used for extracting oil, the other variety being "company quality" which was used for the purpose of export to foreign countries.
 - (ii) The plaintiff carried on the business of extracting groundnut oil and sending the same. Although the plaintiff did not produce his books of account, but there was no reason to disbelieve his evidence that he had entered into the suit contracts for the purpose of obtaining groundnut seeds for his oil extracting business.
 - (iii) The fact that the plaintiff had sent empty gunny bags to the defendants asking for despatch of groundnut seeds in those bags supported the plaintiff's case that actual delivery of goods was contemplated.
 - (iv) There was overwhelming evidence that the contracts were genuine and true transactions intending delivery of goods and that the defendants plea that the parties intended only to pay or receive the difference in prices was clearly an after-thought.
 - (v) It was well-settled that the mere fact that there was no express mention in the contracts that they were non-transferable was not sufficient to treat them as transferable contracts.
 - (vi) The express mention in the contracts that the goods sold were 'loose' showed that it was contemplated by the parties that the groundnut seeds were to be put in the bags which were to be supplied by the plaintiff.
 - (vii) Under the contracts two obligations were imposed on the plaintiff one to supply empty bags and the other to pay the price of goods against delivery by the Railway Receipt.
 - (viii) Looking at the surrounding circumstances, it was established that the plaintiff required the groundnut seeds for use in his own mills and he had no intention of transferring them.

5. On the above findings the view of the District Judge was upheld with regard to the nature of the

contracts. As regards the quantum of damages, the High Court observed that no evidence had been led with regard to the rates prevailing on the dates of breach but from the admissions contained in the defendants' evidence, it was established that the rate could not be less than Rs. 210/- per candy on the material dates. The damages were then assessed and the decree of the District Judge was modified accordingly.

6. In order to decide the points which have been agitated before us we may refer to the relevant provisions of the order which was promulgated in 1943 under sub-rule (2) of Rule 81 of the Defence of India Rules then in force. By clause 2(ii), "forward contract" was defined to mean a contract for the delivery of oil-seeds at some future date. Clause 3 provided - "no person shall after the specified date, for any class of oilseeds enter into any forward contract in any of those oil-seeds". Under clause 5, the Central Government could by notification exclude any contract or class of contracts from the provisions of the order. A notification was issued on May 31, 1943, excluding forward contracts for groundnut etc., of specified qualities and for specific delivery at a specified price not transferable to third parties. One of the questions that has been canvassed and which calls for determinations is whether the two contracts Ex. P-20 and Ex. P-29 fell within the exception. In other words, if they were not transferable to third parties, the prohibition contained in the Order was not applicable to them. These contracts may be reproduced :

"EXHIBIT P-20 Bellary, Date 1-11-1950.M. N. Gangappa,Merchants,Mundlur Narasemhappa Gangappa,Merchants, Bellary.As per the contracts executed by the above addressee infavour of M. R. Nandyal Atmakur Nagabhushanam Setty and Co.,we have given to you business by agreeing to supply 75 (seventyfive) tons of groundnut seeds at the rate of Rs. 173-0-0 percandy, (Rs. one hundred and seventy three) at Bellary f.o.r. onthe 'Vaida' in the month of January 1931. We shall deliver (thegoods) on the above said 'Vaida'. The goods referred to above areof Expeller quality loose in accordance with the conditions ofthe company.(Sd.) M. Gangappa,1-11-50."##

"EXHIBIT P-29 Bellary, Date 21-11-1950.M. N. Gangappa,Merchants,Mundlur Narasemhappa Gangappa,Merchants, Bellary.The contract from executed by the above addressee this dayin favour of M. R. Nadyal Atamakur Nagabhushanam Setty andCo., is as follows : We shall deliver to you 50 (fifty) tons ofgroundnuts seeds of expeller quality, loose of the 1951 January andFebruary, vaida at the rate of Rs. 190/- (one hundred and ninety)per candy in accordance with the practice of the Company (aftergetting) Rly pass.(Sd.) M. Gangappa,21-11-50."##

7. In *Hemraj Keshavji v. Shah Haridas Jethabhai*, ([1964] 2 SCR 686 : AIR 1964 SC 1526) a question arose whether certain contracts which were described as ready delivery contracts and were subject to the rules and regulations of the Veraval Merchants Association were prohibited by the Saurashtra Groundnut and Groundnut Products (Forward Contracts Prohibition) Order, 1949. It was laid down that a contract for delivery of goods at a future date, even though for a specified price and specific quality could be excluded from the definition of forward contracts only if the contracts were non-transferable. But from the mere absence of an express stipulation as to non-transferability in the contract it could not be deemed to be transferable and outside the exception. The conditions of the contracts and the surrounding circumstances were taken into consideration in that case and it was held that the contracts were not transferable to third parties and could not be regarded as forward contracts within the meaning of the Saurashtra Order. It is thus apparent that the mere omission or non-mention of any words which would expressly show that the contracts were not transferable

would not make them transferable. The main criticism of the learned counsel for the appellant before us is that the High Court as also the Trial Court did not attach sufficient importance to the omission on the part of the plaintiff to produce the books of account which would have shown whether the groundnut seeds which were the subject-matter of the two contracts were being purchased for use in the oil expelling business of the plaintiff or whether they were intended to be transferred to third parties. It has also been suggested that the High Court acted on mere conjecture in considering that the statement in the contracts that the goods sold were 'loose' showed that the bags were to be supplied by the plaintiff. It is next pointed out that the payment of price of goods against delivery of the railway receipt could not be regarded as an obligation of a nature contemplated by law which would make it necessary to obtain the consent of the defendants if the contracts were to be assigned to third parties. On behalf of the plaintiff it has been pointed out that the courts below have not only looked at the terms of the contracts but have also taken into consideration the following material circumstances -

(1) The contracts and transactions were for actual delivery of groundnut seeds and were not for payment of differences.

(2) The plaintiff as well as the defendants carried on the business of expelling oil from groundnut seeds. It was, therefore, mere natural and probable that the contracts which they were entering into were meant for the purpose of the businesses of the plaintiff and not for being transferred to third parties.

(3) The use of the word 'loose' in the contract was significant and when read with the evidence produced by the plaintiff leads to the conclusion that the obligation to supply the bags was on the plaintiff.

(4) The goods which were the subject-matter of the contracts were of expeller quality which reinforced the view that they were intended for the oil expelling business of the plaintiff.

8. After a careful consideration of the contentions of both sides and the findings of the courts below, we do not consider that any interference is called for with the concurrent conclusion of two courts that the suit contracts were non-transferable. The question whether a particular contract was of one category or the other, namely, transferable or non-transferable, can only be decided on the facts of each case and we are unable to find any such infirmities in the reasoning of the two courts particularly with regard to the surrounding circumstances and other evidence which showed that the contracts were non-transferable.

9. The only other question which has been agitated relates to the quantum of damages. It is common ground that no evidence was produced with regard to the actual rates prevailing on the date of breach but it was fully established by Ex. P-46, the validity and genuineness of which has not been disputed, that on January 13, 1951, the rate was Rs. 210/- per candy. Again on February 3, 1951, the rate was Rs. 224/- per candy vide Exs. P-1 and P-2. It was admitted by the defendant in his evidence that the price was rising from the month of November 1950, to March 1951, the rate finally going up to Rs. 220/- per candy. The High Court, therefore, took the lowest rate, namely, Rs. 210/- per candy which prevailed on January 13, 1951, as the rate for computing the damages. We do not find anything illegal or unreasonable about the process by which the damages were computed.

10. In the result the appeal fails and it is dismissed but we leave the parties to bear their own costs in

this Court.

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