

Thomas Abraham and Six Others

Vs

The National Tyre and Rubber Co., Kottayam

Civil Appeal No. 301 of 1967

(CJI S. M. Sikri, M. H. Beg, A. N. Ray JJ)

25.01.1972

JUDGMENT

RAY, J. -

1. This is an appeal by certificate from the judgment, dated November 10, 1966, of the High Court of Kerala setting aside the decree passed by the Trial Court save and except for a sum of Rs. 4,037.32.
2. The plaintiffs are the appellants. The appellants claimed a decree for the principal amount of Rs. 29,149-2-10 and interest thereon for Rs. 1,923-13-2 aggregating Rs. 31,073 and further interest at 9% on the said principal amount. The appellants and the respondent had dealings and transactions in latex rubber. The appellants' claim is founded on a letter of acknowledgement, dated March 18, 1955, wherein a sum of Rs. 61,482-9-11 was found due as the price of Latex rubber supplied by the appellants to the respondent and a further sum of Rs. 17,321-1-3 was mentioned to be due by the respondent to the appellants as interest in accordance with the agreement. The aggregate sum due was Rs. 78,803-11-2. The appellants gave credit to the respondent for sums of money paid on diverse occasions. The appellants claimed the balance sum of Rs. 31,073 and further interest.
3. The defence of the respondent was as follows. The amount of interest shown as Rs. 17,321-1-3 could not be interest on the principal amount of Rs. 61,482-9-11 inasmuch as interest on the said principal amount was payable only from August 30, 1954 up to March 18, 1955, when the acknowledgment sued upon by the appellants was made by the respondent. Both the respondent and its allied concern Paratex Corporation Ltd. had dealings and transactions with the appellants. The appellants and the other concern had two accounts of such dealings and transactions. The parties however treated the two accounts as a consolidated one. In the year 1952 the respondent and the allied concern owed large sums of money to the appellants. The appellants demanded payment. Paratex Corporation by a letter, dated August 27, 1952, requested the appellants to obtain financial accommodation from Orient Central Bank Ltd. and agreed to reimburse the appellants in respect of interest to be paid by the appellants to the said Bank on loans incurred by the appellants by reason of sums remaining due and outstanding by the respondent and Paratex Corporation Ltd. to the appellants. The respondent alleged that Paratex Corporation discharged all dues to the appellants on June 24, 1954. On August 30, 1954, a sum of Rs. 61,482-9-11 remained due by the respondent to the appellants. On March 18, 1955, the respondent signed the acknowledgement showing the principal amount of Rs. 61,482-9-11 but there was an error and mistake in regard to their interest calculated as mentioned in the letter of acknowledgement because interest was payable by the respondent to the appellants from August 30, 1954 to March 18, 1955, at the rate of 9% per annum.

4. The Trial Court came to the conclusion that Rs. 96,026-9-11 was outstanding on January 1, 1952, and interest up to February, 28, 1955, less remission amounted to Rs. 17,321. The Trial Court therefore found that the principal amount of Rs. 61,482-9-11 mentioned in the letter of acknowledgement was not disputed and the amount of interest shown as Rs. 17,321-1-3 represented the correct interest. The Trial Court found that the words 'on the said principal' occurring in the letter of acknowledgement were a mistake in expression and decreed the entire suit by holding that the interest amounting to Rs. 17,321-1-3 was interest on the outstanding of Rs. 96,026-9-11 less amounts paid from time to time.

5. The High Court held that the Trial Court totally overlooked the agreement between Paratex Corporation and the respondent to pay interest to the appellants and further that the appellants collected as interest from Paratex Corporation in regard to the liability of the respondent and Paratex Corporation and therefore the appellants were not entitled to any interest from the respondent up to the end of June, 1954. The High Court found that interest was payable by the respondent to the appellants only from August 30, 1954, and the agreement to pay interest from the date was at the rate of 9% per annum. The High Court on that conclusion passed a decree for Rs. 4,037-32 representing interest from August 30, 1954 to March 18, 1955, on the said principal amount of Rs. 61,482-9-11.

6. The evidence establishes these features. First, the appellants and the respondent had dealings and transactions up to the month of June, 1952. The statements of account sent by the appellants to the respondent and in particular the statements, dated October 21, 1952, Exhibit D-15 and the statement, dated February 28, 1954, Exhibit D-24 indicate that the appellants never charged and included any interest on any sum due by the respondent to the appellants. Second, in the month of August, 1952, Paratex Corporation wrote a letter to the appellants undertaking to reimburse the appellants for all interest they had to pay to the Orient Central Bank. Exhibit 1-12 is the statement showing interest charged by Orient Central Bank Ltd. to the appellants from July 1, 1952 to June 30, 1954. Exhibits D-16 to D-22 are the statements of account sent by the appellants to Paratex Corporation Ltd. The amounts of interest debited by the appellants to Paratex Corporation during the years 1952 to 1954 tally with the amounts mentioned in Exhibit P-12 with the result that on June 24, 1954 the entire liability of Paratex Corporation as mentioned in Exhibit D-22 for the sum of Rs. 64,640-4-6 was discharged by payment in cash. Third, the identity of the amount in Exhibit P-12 of interest that the appellants had to pay to Orient Central Bank Ltd. With the amount of interest debited in Exhibits D-16 to D-22 being the statements issued by the appellants to Paratex Corporation establishes beyond any measure of doubt that the appellant acted upon the agreement between the appellants and Paratex Corporation whereby the latter reimbursed the appellants for all interest paid to Orient Central Bank Ltd.

7. In this background of evidence it is common ground that on August 30, 1954, Rs. 61,482-9-11 became the principal sum due from the respondent to the appellants. The question arises as to whether any interest was payable by the respondent to the appellants up to August 30, 1954, on amounts due to the appellants. The statements of account up to February 28, 1954, which represent the course of dealings between the parties and the state of affairs as to accounts indicate that the appellants never charged the respondent interest on dues. Dealings between merchants are reflected in their statements of account. If interest had been payable by the respondent to the appellants they would certainly have figured in the statements of account. It is an admitted feature of the case that apart from Exhibit P-9 the letter, dated August 27, 1952, there was no understanding in writing between the appellants and Paratex Corporation for payment of interest. The evidence establishes that Paratex Corporation paid to the appellants by way of interest larger sums of money than became

payable by Paratex Corporation to the appellants. Exhibit P-29 being the statement of account prepared by the appellants shows that the total interest that the appellants became entitled to from Paratex Corporation was only Rs. 7,015-4-7 whereas Paratex Corporation paid to the appellants as interest Rs. 11,320-14-9. This statement of account Exhibit P-29, is from the month of July 1952, up to June 1954. This statement of account is prepared by the appellants. This statement proves two things. First, that all dues by Paratex Corporation to the appellants were discharged on June 24, 1954. Second, Paratex Corporation paid Rs. 11,320-14-9, to the appellants as interest where as the actual interest as calculated by the appellants was Rs. 7,015-4-7. There is thus an excess payment of Rs. 4,305-10-2, by Paratex Corporation to the appellants.

8. A reference to the letter, dated February 3, 1954, Exhibit P-14 written by the appellants to the respondent shows that in the month of February 1954, a sum of Rs. 1,25,000 was due from the respondent and Paratex Corporation. Therefore when in Exhibit P-14 the appellants in the month of February 1954, demanded from the respondent a sum of Rs. 1,25,000 the appellants referred to the dues of Paratex Corporation as well as the appellants. This is made clear by the letter, dated February 22, 1954 written by the respondent in answer to the appellant's letter, dated February 3, 1954. The respondent stated that a sum of Rs. 35,606-10-6 was due by Paratex Corporation and a sum of Rs. 71,552-15-5 was due by the respondent to the appellants. The two accounts showed a liability of Rs. 1,07,159-9-11 to the appellants. This is why Paratex Corporation paid larger sums of money by way of interest to the appellants. The excess payment was towards the sums that the appellant would have to pay to the appellants' bankers for loans incurred by reason of dues from the respondent remaining outstanding. The position was that though the respondent could not pay dues Paratex Corporation paid interest to the appellants on the amount of indebtedness of the respondent to the appellants. This explains why up to June, 1954 no interest was demanded on any statement of account sent by the appellants to the respondent.

9. The trial court relied on Exhibit-6 the statement of account, dated August 9, 1954, sent by the appellants to the respondent. In that statement the appellants charged interest at 12 per cent. per annum and further charged interest for the sum of Rs. 34,909-11-6 on the accounts of the respondent from March 1, 1952, up to July 31, 1954. The High Court rightly rejected the finding of the trial court by relying on the respondent's letter, dated August 12, 1954 to the appellants where the respondent stated first that the accounts were incorrect; second, that the appellants' method of preparing accounts reflected an entirely different aspect of transaction; and thirdly, the true nature of accounts would be correctly evidenced by the previous statements mutually confirmed by and between the parties. The conclusion of the High Court is supported by two documents in particular, namely, Exhibit D-15, dated October 21, 1952, and Exhibit D-24, dated February 28, 1954. These two statements of account were sent by the appellants to the respondent where no interest was charged. The reason is obvious that from August 9, 1952 Paratex Corporation paid interest to the appellants who could not have any grievance on account of outstandings of the respondent remaining blocked by non-payment.

10. The correct position in regard to the two accounts of the respondent and Paratex Corporation with the appellants will appear from Exhibits D-30 and D-31, prepared by the respondent. It will appear from the accounts that Paratex Corporation made an excess payment of Rs. 8,892-2-10 on account of interest to the appellants. The accounts of the respondent with the appellants show that on July 1, 1952, the respondent owed Rs. 96,026-9-11. There was no dispute on that. The respondent did not have any transaction with the appellants thereafter. That is also common case. The respondent made payments to the appellants from time to time with the result that on June 24, 1954, Rs. 61,482-9-11 was due by the respondent to the appellants. On August 30, 1954, however

Rs. 61,482-9-11 was the principal amount due by the respondent to the appellants. There was no controversy with regard to that amount of principal sum of liability. It will therefore be clear on the basis of Exhibits D-30 and D-31 being the statements from July 1, 1952 to June 24, 1954, as also the other accounts sent by the appellants to the respondent that the appellants did not charge the respondent any interest and Paratex Corporation made excess payment of interest for the sum of Rs. 8,892-2-10. This excess payment was made by Paratex Corporation towards the interest agreed by and between the parties to be paid to the appellants for obtaining credit facilities up to August 30, 1954. The High Court therefore correctly held on the entire evidence that the sum of Rs. 17,321-1-3 appearing on the letter of acknowledgment, dated March 18, 1955, was an error and interest on the principal sum of Rs. 61,482-9-11 from August 30, 1954, up to March 18, 1955, was Rs. 4,037-32 in accordance with the agreement between the parties on March 17, 1955, to pay interest at 9 per cent. per annum. It may be noticed here that Paratex Corporation had all along paid interest at the rate of 12 per cent. per annum.

11. There was no dispute that the principal sum of Rs. 61,482-9-11 was paid. The only bone of contention between the parties was as to the amount of interest.

12. Where accounts between the two parties are shown to be erroneous both in amount and in the number of items or where there is a fraudulent omission or insertion in the accounts the court will open the account, and not merely surcharge and falsify. (See *Williamson v. Barbour*, (1877) 9 Ch D 529 at page 533). It is also well settled that where accounts are drawn up and assented to by parties under a common mistake as to their rights and obligations, the accounts may be directed to be opened. (See *Halsbury's Laws of England*, 3rd ed. Vol. 26, Paragraph 1725 at page 927). It is an established principle of common law that an action for money had and received is a practical and useful instrument to prevent unjust enrichment. The law implies an obligation to repay the money which is an unjust benefit. In the present case, the evidence establishes that the respondent relied on the appellants for calculation of interest. Up to June 30, 1954, Paratex Corporation paid all interest on the outstandings of Paratex Corporation and the respondent. There was no other agreement by the respondent to pay interest to the appellants. The statements of accounts sent by the appellants to the respondent showed that no interest was ever claimed by the appellants. In commercial transactions documents are of importance in showing the character of transactions, conduct of parties as the criteria to be applied in judging the rival oral versions as to transactions. The documents here furnish the guide in holding that there was no liability of the respondent to pay interest up to August 30, 1954, is the one arrived at on March 17, 1955. The High Court correctly held that the calculation of interest at Rs. 17,321-1-3 in Exhibit P-1 was wrong and the correct amount was Rs. 4,037-32. The High Court rightly gave the appellants decree for Rs. 4,037-32.

13. For these reasons, the appeal fails and the judgment of the High Court is upheld. The appellants will pay costs to the respondent.

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