L. Ishwar Dass and Others

Vs

The Haryana Woollen and General Mills Ltd.

Civil Appeal No. 1754 (N) of 1967

(K.K.Mathew, A. K. Mukherjea, M.H. Beg JJ)

17.10.1973

JUDGMENT

MUKHERJEA, J. –

1. This appeal by certificate from a judgment and order of the Punjab and Haryana High Court raises a very simple point which has unfortunately been laid over with a thick cloud of confusion caused by the long and chequered history of the litigation. The facts and circumstances out of which this appeal arises may be set out in the beginning.

2. On December 1, 1950 the appellants entered into a partnership agreement with the respondent for the purpose of carrying on the business of supply of blankets to the Army. The formal deed of partnership was executed on March 6, 1951. The partnership deed recite that the appellants (who were parties Nos. 2 and 3 to the deed) used to do the work of spinning woollen yearn. It further recites that the three parties had formed a partnership for the purpose of supplying 5,000 blankets to the Government of India in conformity with Specification No. I.M. 2689. The deed of partnership indicates the proportion of shares held by the three parties in the venture in the following manner :

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Haryana Woollen and General Mills Ltd.,

Party No. 1. .. .. ..

2/16 shares Young & Co., Party No. 2 .. .. ..

7/16 shares Ishwar Das, Party No. 3 and

Appellant No. 1 in this case .. .. .. 7/16 shares

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The partners were to be responsible for profit and loss in the ratio of their shares. The respondent, Haryana Woollen and General Mills Ltd. (hereinafter briefly described as the defendant or the defendant mill) was to spin the yarn and the appellants were to manufacture the blankets and produce the finished products according to the aforesaid specification. We are not concerned with all the terms of the partnership deed and it is not necessary to set them out here. We shall, however, be concerned with three terms which are set out below :

"20. That the parties No. 2 and 3 will purchase and supply wool to party No. 1 for spinning. If parties No. 2 and 3 could not supply wool, party No. 1 will not at all be responsible, but in that event, the said firm will be responsible for all the losses.

21. That the party No. 1 will have to spin yarn of 35-40 counts for the contract. Party No. 2 and party No. 3 will continue to enter in a register the verification of correctness of count at the time of receiving yarn. If party No. 1 could not prepare yarn of this count, then the parties No. 2 and 3 will not at all be responsible for the supply of the material, blankets and loses. If the yarn of the specified count is continually received, then the said firm will be liable for any loss that may make place.

22. That, if the party No. 1 had to dispose of any yarn or wool of the said firm, then the party No. 1 would endorse in favour of paris No. 2 and 3 and payment of the bill of sale and would not himself receive any payment."

3. It appears that thought the supply of blankets was to be made by April 30, 1951, no supply in fact was made. Indeed, no supply was ever made. It further appears that neither party to the contract sued the other party for breach of contract. In October 1951, the appellants filed a suit against the defendant mill for dissolution of partnership and for rendition of accounts. We shall, for the sake of convenience refer to the appellants as 'plaintiffs' hereinafter.

4. The plaintiffs; case in the plaint was mainly on the following lines. Though the plaintiff No. 1 had invested Rs. 21,411-12-9 and plaintiffs Nos. 2 and 3 had invested Rs. 21,450-10-0 the defendant mill had to invested its share of the capital. Further, though the defendant mill was required under the agreement of partnership to spin yarn of 35-40 counts, the defendant mill did not do so and the yarns prepared by the defendant mill were of a much lower count from which blankets could not be manufactured according to the specification. The defendant mill had also, it is alleged, prepared yarn much below the normal yield and misappropriated a part of the wool supplied by the plaintiffs by mixing it with inferior wool supplied by the defendant mill. In respect of a total quantity of 174 mds., 32 srs. and 8 chs. of wool supplied by the plaintiffs the defendant mill had not rendered any account whatsoever.

5. It was contended that the contact for supply of blankets could not be executed on account of the negligence, carelessness and breach of the partnership agreement on the part of the defendant mill and the Government department concerned had in consequence cancelled the contract by a letter, dated June 11, 1951. Since the contract for which the partnership firm had been formed had been cancelled the plaintiffs wanted dissolution of the partnership and rendition of accounts. It was claimed that if accounts were to be taken of the firm's transactions the defendant would be found liable to pay a sum of Rs. 40,000 to the plaintiffs.

6. In the written statement the defendant mill denied that the defendant was liable to prepare yarns of 35-40 count. It is claimed that the original understanding between the parties was that the defendant would prepare the yarn according to the instructions of the plaintiffs and that this the defendant had been doing. Subsequently on March 6, 1951 the plaintiffs had persuaded the Managing Director of the defendant mill by use of undue influence to agree to the condition that the yarn to be spun by the mill should be of 35-40 count. The defendant further states that the defendant prepared yarn according to the instructions of the plaintiffs and that the failure of the venture was because of the inexperience of the plaintiffs in the making of blankets. The defendant also claimed

that whatever wool had been received by them from the plaintiffs had been returned in the shape of yarn and wool.

7. On these pleadings four issues were raised when the matter came to the stage of trial and they were as follows :

> " (1) Which of the parties committed breach of contract and is liable for damages, if any ?
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> (2) What damages, if any are due and from which party ?
>
> (3) Whether the defendant is not bound by terms Nos. 20 to 22 of the partnership agreement ?
>
> (4) Relief."

8. The trial Court decreed a dissolution of the partnership but dismissed the plaintiffs suit for accounts and damages. The trial Court also held that conditions Nos. 20 to 22 had been inserted in the partnership deed at a later stage and that condition No. 21 relating to the count of the yarn and the liability of the defendant to manufacture yarn of 35-40 count was to come into operation only from March 6, 1951. The trial Court came to the further finding that defendant had not committed any breach after March 6, 1951. As to whether there had been any breach previous to March 6, 1951, there was no finding by the trial Court. On appeal the senior subordinate Judge varied the decree and allowed the plaintiffs' prayer for rendition of accounts. However, the earlier findings of the trial Court that the condition as to the count of the yarn being 35-40 came into operation on March 6, 1951 and that there had been no breach of contract after March 6, 1951 were both confirmed. Upon an appeal to the high Court the judgment and decree of the senior subordinate Judge was confirmed. It appears that the High Court in course of its judgment also found as follows :

> (a) Out of the 21 mds. of wool supplied in March 1951 by the plaintiffs to the defendant, only 3 mds. 24 srs. and 2 chs. of yarn had been returned.
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> (b) It had not been proved that the defendant had committed any breach of the contract in the matter of supply of yarn of 35-40 count.

9. The plaintiffs thereupon brought the matter on appeal to this Court by special leave. This Court on that occasion held that clause No. 21 of the terms of partnership which laid down the condition regarding spinning of yarn of 35-40 count was operative as from December 1, 1950. To that extent the finding of the lower Courts on the question whether there had been any breach before March 6, 1951, this Court held that this question should be gone into at the time of giving the final decree. In any event final accounting was to be done on the basis that all the conditions of the deed of partnership were operative from December 1, 1950. This Court also gave a direction that the question as to what happened to the balance of 21 mds. of wool given by the appellants after March 6, 1951 would have to be determined in accounting and at the time of final decree and further, provided that in regard to the question of damages the matter was to be dealt with in accordance with Section 13 of the Partnership Act. The appeal was, therefore, allowed by this Court to the extent we have just indicated and the preliminary decree was modified accordingly. The case thereupon went back for further hearing.

10. On May 11, 1963 the learned subordinate Judge First Class, Panipat after hearing evidence adduced by the parties came to a finding that the defendant had committed a breach of condition No. 21 of the partnership deed and would under the same condition be liable for the entire loss suffered by the partnership in its venture. The learned sub-ordinate Judge appointed a Local Commissioner for assessing the loss suffered by the partnership by this breach. On the second question which this Court had directed to be determined, namely as to what happened to the balance of 21 mds of wool supplied after March 6, 1951 by the plaintiffs to the defendant the trial Court came to the finding that the defendant had returned only 20 mds. 10 srs. and 10 chs. of wool in the shape of yarn and waste and that the remaining weight must have diminished in the process of cleaning, washing, etc. With regard to this balance quantity of wool there was no direction give to the Local Commissioner.

11. On August 28, 1963 the Local Commissioner submitted a report that the firm had suffered a loss of Rs. 69,069-14-3 if interests were included within the expenditure. Without calculating the interests whether paid to the creditors or due to the partners, the net loss turned out to be Rs. 33,749-9-6. The Local Commissioner left the matter of interest to be decided by the trial Court.

12. The defendant mill in the meantime went on appeal against the aforesaid order of the trial Court to the senior subordinate Judge who treated the order, dated May 11, 1963 as a supplementary preliminary decree and observed that the final decree to be passed in the suit was to be controlled by that order. On the merits the learned senior subordinate Judge dismissed the appeal of the defendant and confirmed the finding of the trial Court that under condition no. 21 the defendants had undertaken to become responsible for all losses if the yarn of proper count was not manufactured. He further found that the defendant had in fact committed breaches of condition No. 21 of the partnership before March 6, 1951. The learned Judge observed, however, that the main controversy between the parties hinges "as to the period after March 6, 1951". As to 3 mds. 24 srs. and 2 chs. of yarn supplied by the defendant mill to the plaintiffs there was no dispute. The dispute that remained outstanding was as to the remaining quantity of 21 mds. which had been admittedly supplied by the plaintiffs to the defendant mill after March 6, 1951. This, according to the learned Judge had been left to be determined by the Supreme quantity of wool had been returned in the shape of wool and waste by the defendant mill. The learned subordinate Judge, however, observed that the question whether the defendant had committed breaches after March 6, 1951 had not been left open by the Supreme Court since the finding of the High Court on this point that no breaches had really been committed by the defendant after March 6, 1951 had not been disturbed by this Court, so that as to what had happened after March 6, 1951 the previous finding was conclusive and could not be gone into again. On the basis of these findings the learned subordinate Judge dismissed the appeal.

13. Both parties took up the matter to the High Court. The defendant mill filed an appear and the plaintiffs filed cross-objections. A single Judge of the High Court who heard the appeal and the cross-objections held as follows. Since there had been a concurrent finding of two Courts below that the defendant mill had committed breach of condition No. 21 prior to March 6, 1951 the defendant mill was clearly responsible for all the losses that resulted from that breach.

14. The High Court and the subordinate Course had previously recorded their findings only with regard to 2 mds. 24 srs. and 2 chs. of yarn which had been supplied by the defendant mill to the plaintiffs after March 6, 1951. According to that finding this 3 mds. 24 srs. and 2 chs. were of the required count. This finding could not be traversed again and was to be taken as final. The question, however, still remained as to what had happened to the balance quantity of wool supplied by the plaintiffs to the defendant mill. Could it be said that the return of some wool and waste by the

defendant mill as found by the trial Court after remand was in compliance with the terms and conditions of the partnership ? The question that the high Court's judgment and decree "the question whether 3 mds. 24 srs. and 2 chs. supplied after the 6th of March was in accordance with the terms of the contract, was not left open but the question whether the balance of 21 mds. was properly accounted for in terms of the agreement, had to be determined by the trial Court". The High Court found that the trial Court had not decided this matter, and directed that the records be sent to the trial Court to determine whether in returning the balance wool the defendant mill had committed any breach of the terms of partnership or not. The High Court through the senior subordinate Judge. The High Court gave other ancillary directions. Pursuant to this direction the learned subordinate Judge First Class, Panipat recorded the evidence of Ishwar Das plaintiff and Jai Narain, Managing Director of the defendant mill on August 31, 1965 and submitted a report to the High Court. In the report the learned subordinate Judge gave the opinion that the defendant mill had committed breach of contract with regard to the balance quantity of 21 mds. of wool also. The learned subordinate Judge found that the entire quantity of 21 mds. of wool supplied by the plaintiff in March 1951 was for spinning and that the defendant, when he returned carded and mixed wool on march 13, 1951 without spinning the same, committed a breach of the contract. The High Court then considered this report and accepted the finding of the trial Court "that the entire quantity of 21 mds. was given for spinning and.... 12 mds. 24 srs. and 15 chs. out of it was returned unspun and this amounted to a breach". The High Court therefore directed that the Commissioner appointed by the trial Court should in addition to the matter already referred to him in regard to the breach prior to March 6. 1951 go into the breach after March 6, 1951. In the final result, there-fore, the appeal of the defendant was rejected and the cross-objections filed by the plaintiffs were accepted by the High Court.

15. Against this decision of a single Judge of the High Court there was a Letter Patent appeal in which the Division bench of the High Court held that the wool supplied by the plaintiffs to the defendant mill on or after March 6, 1951 had been duly and properly returned and accounted for by the defendant mill and therefore the defendant mill had committed no breach of contract with regard to it. The plaintiffs had filed cross-objections before the Division Bench in connection with the Letters Patent appeal on the ground that the learned single Judge should not have directed the Local Commissioner to take any accounts between the parties because he had already done so and submitted a report to the trial Court. With regard to this cross-objection the Division Bench held that since they had found that there had been no breach of condition No. 21 between the parties after March 6, 1951 the additional direction given by the learned single Judge was unnecessary and it was not therefore necessary for the matter to go back to the Local Commissioner any further. To this extent the Local Commissioner was directed not to take any further accounts. But since this was the result of the partial success of the defendant mill the cross-objections of the plaintiffs were dismissed. As a result of the part success of the defendant mill the Division Bench directed that the accounting between the parties was to be done only with regard to the period before March 6, 1951 on the basis that the defendant mill has committed breach of condition No. 21 of the deed of partnership between the parties and that he has committed no breach of contract after that date. The plaintiffs have now come on appeal against this judgment of the Division Bench of Punjab High Court in the Letters Patent appeal.

16. The main contention of the appellants before us was that the Division Bench of the High Court misunderstood the real issue between the parties. The appellants make out their case in the following manner. In the order dated May 111, 1963 of the trial Court there had been a finding that since the defendant mill had committed a breach of the contract it alone was responsible for the loss suffered by the partnership. The significance of this finding which in effect is based on condition

No. 21 of the partnership deed is that a single breach of condition No. 21 will make the defendant mill responsible for the entire loss during the whole period of partnership. Conditions 20 and 21 have to be read together to understand the real purport of these conditions. If the plaintiffs were to fail in their obligation of purchasing and supplying wool to the defendant mill the entire responsibility for all the losses of the partnership firm were to be borne by the plaintiffs and the defendant mill was not to take any share of it at all. Likewise if the defendant mill was to fail in its obligation of spinning yarn of the requisite count i.e. 35-40 count then the plaintiffs "will not at all be responsible for the supply of the material, blankets and losses". That is to say, the plaintiffs will in that event be absolved from supplying further material i.e. wool to the defendant mill and also from supplying blankets to Government and they would also not be responsible for the loss which would be borne entirely by the defendant mill. If, however, the defendant mill discharged its own obligation i.e. to say "if the yarn of the specified count is continually received" then any loss that arose after that would accrue to the firm. Such loss apparently would be treated as the loss of the firm to be distributed among the partners in the shares specified in the partnership deed in the ordinary way. According to the plaintiffs, the learned trial Court had decided that since the breach of contract had been committed by the defendant mill, the defendant mill alone would be responsible for the loss suffered by the partnership firm. The plaintiffs contended that this finding of the trial Court had not been challenged by the defendant mill either before the learned senior subordinate Judge or before the High Court at any stage and consequently the defendant mill should not be permitted to challenge that finding in this Court. Our attention was drawn by the appellants to the copy of the report of the Local Commissioner appointed by the subordinate Judge's preliminary decree dated May 11, 1963 where the Local Commissioner had recorded the following finding :

> "I hold, that the 'Suppliers' firm purchased Mds. 616, Sr. 27, 3 wool of different quality vide Ex.P. Z/1 for Rs. 99,219-5-6 pie. The total expenditure with interest is Rs. 1,42,633-10-3. The total sale proceeds of the 'Suppliers' is Rs. 73,568-12-0. The net loss vide ex. P. 24 is Rs. 33,749-9-6, less Rs. 5,992-10-6 the spinning charges of the defendants mill. The total of loss is Rs. 27,756-15-0. The plaintiffs demanded interest on the sums invested by them in the firm but as the firm has gained no profit rather it suffered a heavy loss and so under Section 13-C of the Partnership Act, the interest cannot be allowed even if there be a stipulation in the partnership deed to the effect unless it be specially provided that interest will be paid on investments in case that any firm is sustaining loss. I however leave this decision on the learned Court. I have the decision regarding costs of the litigation as well as on the learned Court. I therefore hold that the plaintiffs are entitled to recover the losses amounting to Rs. 27,756-15-0 from the defendant. " (This obviously contains certain mistakes which are in the copies supplied to the Court.)

The plaintiffs have, of course, objected to two findings of the Local Commissioner, viz. one as to the spinning charges and the other as to the question of interest. But these questions are still to be determined by he learned subordinate Judge at the time of giving the final decree. The plaintiffs urged that the Division Bench of the High Court had made an obvious error in holding that accounting was to be done only with regard to the period before March 6, 1951. The learned Counsel on behalf of the defendant mill sought to challenge the finding of the trial Court that the defendant No. 1 was to be responsible for the entire loss of the partnership firm under condition 21 but though we asked him to show whether this finding of the learned trial Court had been challenged at any stage either before the learned senior subordinate Judge or before the High Court, he has not been able to satisfy us on this point. There is no doubt that his particular finding is being challenged for the first time before this Court. We therefore, accept the plaintiff's contention that the

finding of the trial Court on this point is final and conclusive. The learned single Judge of the High Court in so far as he sustained the order of single Judge of the High Court in so far as he sustained the order of the trial Court is correct. The learned single Judge was wrong in directing the trial Court to send the case against to the Local Commissioner to report on the breach committed after March 6, 1951. The plaintiffs' cross-objection was quite correct that in view of condition No. 21 no fresh report was called for to ascertain the loss suffered by the firm on account of breach committed before and after March 6, 1951 separately.

17. IN the circumstances we allow the appeal with costs and set aside the order of the Division Bench of the High Court except to the extent that they upheld the plaintiffs' cross-objections - which they had, in our respectful opinion done correctly though on erroneous grounds. This case has taken an extraordinarily long time and it is desirable to put a finale to it as quickly as possible. The Local Commissioner has already submitted his report to learned trial Court. We direct that the matter should now go down to the learned trial Court through the usual channels as early as possible so that the learned trial Judge can after hearing the objections if any of the parties to the report of the Local Commissioner pass a final decree and dispose of the matter expeditiously.

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