

Madan Gopal Kanodia

Vs

Mamraj Maniram and Others

Civil Appeal Nos. 707 and 708 of 1968

(R.S. Sarkaria, Syed M. Fazal Ali JJ)

15.01.1976

JUDGMENT

FAZAL ALI, J. –

1. Civil Appeal No. 707 is the plaintiff's appeal by certificate granted by the Allahabad High Court against its judgment and decree passed in First Appeal 252 of 1953 dated July 10, 1962. The defendants/respondents have also filed their appeal 708 of 1968 for recovery of Rs. 10,000 from the plaintiff.

2. The plaintiff had brought a suit in the Court of the First Civil Judge, Kanpur for recovery of Rs. 39,956/8/- from the defendants on account of three main items. The plaintiff's case was that he was carrying on wholesale cloth business at Kanpur in the name and style of Anant Ram Madan Gopal. The defendants' firm was also carrying on cloth business at Kanpur and the defendants' firm was known as Mamraj Maniram. The plaintiff's case further was that apart from certain business dealings, the defendant firm used to borrow monies from the plaintiff on various occasions and used to purchase cloth from the plaintiff on credit. Similarly the plaintiff also purchased cloth from the defendants' firm and used to send bales of cloth to the defendants' firm for retail sale. Badri Prasad one of the partners of the defendants' firm was a close friend of the plaintiff. They were on very good terms and each of them was willing to cooperate with the other in carrying on the business of the two firms. The plaintiff's case further was that some time in April, 1948 both the plaintiff and the defendants' firm had purchased 400 bales of cloth from M/s. Sidh Gopal Gajanand of Bombay. Out of the total goods the plaintiff had purchased 200 bales and the remaining 200 bales had been purchased by the defendants' firm. The plaintiff further averred that the purchase of the entire quantity of 400 bales was actually a joint venture, though both the plaintiff and the defendants' firm ordered separately for the same, the plaintiff having paid the money through the defendants' firm. The plaintiff further alleged that the goods were received at Phaphund and were brought to Kanpur in trucks through the employees of the plaintiff as also the defendants and were unloaded and dumped in the shop and godown of the defendants as the plaintiff's godown was not sufficient to contain the huge quantity of the goods purchased from the Bombay firm. Thereafter the modus operandi was that the bales of cloth belonging to the plaintiff as also to the defendant were sold through Harish Chandra Bagla who was the commission agent and who arranged for purchasers of the bales of cloth belonging to both the parties. A large number of invoices regarding the goods sold were prepared at the defendants' shop and after the purchases were arranged by Harish Chandra Bagla the defendants used to send their peons or bill collectors to realise the money and give delivery to the purchasers. Thereafter the defendants used to pay the sale proceeds of the cloth belonging to the plaintiff to him. Unfortunate friction between the two friends resulted from the fact that the defendants having sold 21 bales of cloth did not pay the price thereof to the plaintiff in spite

of several demands. It was also pleaded in the plaint that the defendant Badri Prasad admitted having sold 21 bales by mistake and asked the plaintiff of debit the cost of the cloth to his account and accordingly an amount of Rs. 21,686-11-3 being the price of 21 bales of cloth was debited in the account books of the plaintiff in the name of the defendants. This was the first item which was claimed by the plaintiff in his plaint. It was further alleged that the plaintiff had sent cloth worth Rs. 8824-8-3 for being sold by the defendants on behalf of the plaintiff which was actually sold by the defendants through Ramesh Chandra Jagdish Prasad of Naughada, but the plaintiff was not paid the price thereof. The third claim related to a sum of Rs. 3819-14-6 which is said to have been borrowed by the defendants from the plaintiff. The plaintiff further claimed a sum of Rs. 5625-3-0 being the interest at the stipulated rate of -/10/- ten annas per cent, per month on the three items mentioned above. Thus the total amount sought to be recovered by the plaintiff from the defendants came to Rs. 39,958-5-0.

3. The suit was contested by the defendants, who, inter alia, pleaded that they had not at all sold 21 bales of cloth as alleged by the plaintiff nor was the purchase of 400 bales a joint venture or enterprise entered into between the plaintiff and the defendants, nor were the goods brought from Phaphund and unloaded in the godown of the defendants. The defendants further denied all the allegations made by the plaintiff and submitted that the plaintiff had purchased 200 bales of cloth from Bombay firm and had paid for the same separately had sold the same through Harish Chandra Bagla. The defendants, however, admitted that they had also bought 200 bales of cloth from M/s. Sidh Gopal Gajanand which were also sold through Harish Chandra Bagla and in fact the entire cloth was unloaded in the shop of Harish Chandra Bagla situated in Morayawala Gola in the city of Kanpur. The defendants also averred that the accounts of the plaintiff were wrong and fabricated as would be evidenced from the fact that a sum of Rs. 10,000 had been paid by the defendant to the plaintiff for which no credit was shown in the account books of the plaintiff. The defendants, however, admitted that there were some monetary transactions between the plaintiff and the defendants relating to borrowing of monies from time to time which were shown in the accounts books of the defendants.

4. The plaintiff after perusing the written statement of the defendants immediately conceded the fact that he had received Rs. 10,000 and it was not credited to the account of the defendants by mistake and he accordingly reduced his claim from Rs. 39,956-5-0 to Rs. 29,958-5-0. Subsequently counsel for the plaintiff gave a statement before the trial Court that if the plaintiff succeeds, a decree to the extent of Rs. 28,671 only may be passed against the defendants.

5. After the plaint was filed by the plaintiff, the defendants filed an application before the trial Court praying that the allegations made in the plaint being vague and ambiguous, the plaintiff may be directed under Order 6, Rule 4, Code of Civil Procedure to file better particulars in support of his case. The trial Court directed the plaintiff to file better particulars by way of written statement by August 9, 1952. As the plaintiff could not file his written statement containing the better particulars by August 9, 1952, he was allowed to file the same by August 16, 1952. On this day the plaintiff filed his written statement containing better particulars and the details of his claim and along with his written statement he also filed 13 documents and prayed that the same may be allowed to be produced after condoning the delay. The trial Court accordingly accepted the prayer of the plaintiff, condoned the delay, and directed the defendants to record their admission or denial on the documents filed by the plaintiff on August 16, 1952. In pursuance of the order of the court the defendants recorded their admission or denial on those documents. We have mentioned these facts, particularly because the High Court seems to have made a huge capital out of the fact that the plaintiff had filed the Nakal Bahi and other documents at a late state of the suit without obtaining

the permission of the court - a fact which is not at all borne out from the order sheet of the trial Court. We shall deal with this aspect of the matter a little later.

6. The trial Court framed a number of issues and after taking evidence both oral and documentary of both the parties accepted the plaintiff's case in toto and passed a decree for Rs. 28,671. The defendants then went up in appeal to the High Court which reversed the judgment of the trial Court and dismissed the plaintiff's suit accepting the case made out by the defendants. Thereafter the plaintiff filed an application before High Court for grant of certificate of fitness for filing an appeal to this Court and the certificate having been granted, Appeal 707 of 1968 is now before us.

7. We have heard the Counsel for the parties at great length and have also gone through the judgment of the High Court and that of the trial Court. We have also been taken through the entire evidence. We are constrained to observe that the High Court has not made a correct approach to the facts of the present case and has proceeded mostly on conjectures and speculations and has also committed errors of record, in arriving at some of the imprisonment findings. In view of the case made out by the plaintiff the area of the controversy has been very much narrowed down and centres round the question of the cost of 21 bales of cloth. Both the courts below seem to have concentrated most of their attention to the question as to whether the purchase of 400 bales of cloth was a joint venture or not and as to the mode and manner in which the sale of those bales of cloth was conducted. In our opinion, in order to decide the short point whether the defendants are liable to pay the cost of 21 bales of cloth to the plaintiff it is not at all necessary to go into the complicated question as to whether the purchase of 400 bales of cloth was a joint venture or not, nor is the question of the manner in which the sale was made at all material or germane for the purpose of deciding the main issue in the case. The pivotal points arising for consideration in this case are two (1) whether the goods were admittedly brought from Phaphund to Kanpur and were unloaded in the shop and godown of the defendants as alleged by the plaintiff or they were kept in the godown of the commission agent Harish Chandra Bagla; and (2) whether the defendants had sold the 21 bales of cloth and did not pay the price thereof to the plaintiff. We might mention that if the first point is answered against the dependents, then it follows automatically that the defendants must account for the sale proceeds of those 21 bales of cloth. As the plaintiff expressly admits that he had received the money for 179 bales and confines his claim only to 21 bales of cloth, therefore, it is for the defendants to explain what they did with this quantity of cloth which was in their custody.

8. As regards the claim of the plaintiff regarding the retail sale of cloth worth Rs. 8824-8-3 and the sum Rs. 3819-14-6 on account of cash borrowings by the defendants, on a consideration of the evidence we are clearly of the opinion that the plaintiff has not been able to prove any of these two items.

9. Thus the central point for determination in this case is regarding the sale of 21 bales of cloth which is alleged to have been sold by the defendants and whose price was not paid to the plaintiff.

* * *##

(The Court considered the oral evidence.)

10. On a consideration of the evidence of the plaintiff and the defendants we clearly of the opinion that while the evidence of the plaintiff has a ring of truth and consists of persons who have deposed correctly, the evidence of the defendants is not worthy of credence. In other words, the evidence of the plaintiff on this question far outweighs the evidence of the defendants both in quality and

credibility, and in our opinion, the High Court was wrong in accepting the evidence of the defendants on this point. The finding of the fact by the High Court on this question is vitiated by non-consideration of material facts and admissions misreading of evidence, errors of record and manifestly wrong unreasonable approach.

(The Court then considered the circumstantial evidence.)

11. For these reasons, therefore, the finding of the High Court that the plaintiff has not been able to prove that the goods were unloaded in the godown of the defendants is against the weight of the evidence and is based purely on speculation and on misreading of the evidence. On the other hand, on a careful examination of the evidence we are satisfied that the plaintiff has been able to prove by reliable evidence that entire 400 bales of cloth after being unloaded were actually deposited in the godown of the defendants which is situated adjacent to their shop and also near Ram Janki temple. The goods so deposited included the 200 bales of cloth which belonged to the plaintiff.

12. Before proceeding to the effect of our finding, it is necessary to pause for a while in order to examine the finding of the High Court on two points, namely, the alleged inconsistency which, according to the High Court, appears in the plaint and the evidence led by the plaintiff and on the question of the genuineness of Exhibits 20 to 22 the Nakal Bahis. The High Court observed that there was a wide a gap between the case as originally set up in the plaint and the case sought to be proved at the trial. On a careful perusal of the plaint and the evidence we are unable to agree with the finding of the High Court. A perusal of the plaint would clearly reveal that substantially all the allegations of the plaintiff are clearly mentioned therein, and if there was any vagueness the same was cleared up in the written statement filed by the plaintiff as directed by the court which was moved by the defendants themselves. The facts pleaded in the plaint are as follows :

(1) that as there was no space in the plaintiff's godown, the defendants on his request agreed to keep the 200 bales of cloth in the defendants' godown situated in Kahu Kothi, Kanpur;

(2) that the defendants had sold all the cloth on behalf of the plaintiff except 21 bales of which 19 bales were of Markin and 2 bales consisted of Dhoti Joras;

(3) that when the plaintiff's employee went to take delivery of 21 bales, the defendants did not hand over the goods and later expressed regret for their action and promised to pay the sale proceeds with interest on demand; and

(4) that accordingly the plaintiff made appropriate entries in his account books at the instance and assurance of the defendants.

13. In the written statement filed by the plaintiff under Order 6, Rule 4 Code of Civil Procedure, the particulars and essential details of the 21 bales of cloth were clearly mentioned in paragraph 1(b). Further more, counsel for the plaintiff gave a statement before the trial Court on September 5, 1952 where also all the essential details regarding the 200 bales of cloth were given. In the statement the counsel for the plaintiff admitted that the plaintiff had received the sale proceeds of 179 bales of cloth and that 21 bales of cloth remained unaccounted for. In the evidence also the plaintiff has sought to prove the very case set up in the plaint as also in the written statement filed later under orders of the Court. We are unable to see any substantial variation between the pleadings of the plaintiff and the evidence led by him at the trial. It is well-settled that the pleadings are loosely drafted in the courts, and the courts should not scrutinise the pleadings with such meticulous care so

as to result in genuine claims being defeated on trivial grounds. In our opinion, the finding of the High Court that there was wide gap between the pleadings and the proof is not at all borne out from the record of the present case.

14. The High Court then seems to have vehemently criticised the manner in which Nakal Bahis Exts. 20 to 22 were brought on the record at a late stage in breach of the provisions of Order 13, Rule 2 of the Code Civil Procedure. Here also the High Court appears to have misdirected itself, by completely overlooking the date and the manner in which the Nakal Bahis were produced by the plaintiff. As mentioned earlier, 13 documents were produced by the plaintiff alongwith his written statement giving better particulars on August 16, 1952. The Court applied its mind to the written statement and the documents and condoned the delay by an express order. The court further directed the defendants to record their admission or denial of those documents which was also done by the defendants on August 20, 1962. All this was done even before the evidence had started and in these circumstances it cannot be said that the defendants were taken by surprise or that they suffered any prejudice by the production of those documents or by the order of the court allowing these documents to be produced. Order 13, Rule 2 of the Code of Civil Procedure does not provide for any particular ritualistic formula in which the order of the Court has to be passed. The object of Order 13, Rule 2 is merely to prevent belated production of documents, so that it may not work injustice to the defendant. Order 13, Rule 2 of the Code of Civil Procedures runs thus :

No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent state of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

This provision clearly clothes the Court with discretion to allow production of documents, if it is satisfied that the good cause is shown to its satisfaction. In the instant case it would appear from p. 78 of the statement of the case filed by the appellant/plaintiff and which has not been controverted by the defendants/respondent that the Nakal Bahi, invoices and other documents were filed on July 28, 1952, along with the written statement containing better particulars. These documents were filed under List 35/1 and List 35/IJ. These documents were filed in pursuance of the order of the court which was moved by the defendants themselves. The court had passed an express order condoning the delay and directing the defendants to record their admission or denial of the documents. The defendants never took any objection or exception to the filing of those documents, but complied with the order of the court in regard to their admission or denial of the documents. The defendants had further ample opportunity to rebut these documents and to show that they were not genuine as the evidence had not begun. These documents were proved by PW 11 Mishri Lal and no suggestion was put to him that the Nakal Bahis were either forged or fabricated. The High Court itself observed in its judgment that the original khata and the original rokar Exhibits 30 and 31 respectively relating to Samavat Years 2004 to 2007 had been filed by the plaintiff along with the plaint. The entries contained in the Nakal Bahis were merely reproduction of the entries mentioned in Ext. 30. Therefore, the question of the entries in Nakal Bahis being fabricated or spurious could not arise. The Nakal Bahis merely give further particulars or details of the entries already mentioned in the ledger or the khata. If in these circumstances, therefore, the court exercised its direction under Order 13, Rule 2, C.P.C. to condone the delay and allowed the plaintiff to produce the documents we do not see any error at all which could have been committed by the trial Court. In fact the High Court has completely overlooked the facts mentioned by us and which are contained in the order-sheet of the trial Court. Thus to begin with, the entire approach of the High Court to the case of the plaintiff and the evidence led by him was absolutely wrong.

15. This brings us now to the question as to whether or not the plaintiff has proved that the 21 bales of cloth which were undoubtedly entrusted to the defendants for being deposited in their godown were sold by the defendants and the sale proceeds paid to the plaintiff. Once it is proved that the defendants were in possession of the 21 bales of the cloth which formed part of the 200 bales of cloth, it was the duty of the defendants to account for the same, and excepting a bare denial the defendants have given no other explanation. On the other hand, the plaintiff has produced both oral and documentary evidence to prove that these goods were sold by the defendants and that the sale proceeds were not given to the plaintiff as a result of which he had to make debit entries even at the instance of the defendants. The trial Court considered this matter at great length but the High Court appears to have overlooked this aspect of the case.

(The Court considered the plaintiffs evidence.)

16. On a careful consideration of the oral and documentary evidence produced by the plaintiff on this point we are satisfied that the plaintiffs claim with this regard to item (a) of the plaint, namely, the price of 21 bales of cloth which had been sold by the defendants' firm and whose sale proceeds were not paid to the plaintiff has been proved to our satisfaction. The High Court was, therefore, wrong in disallowing this claim. The total claim of the plaintiff as regards this item comes to Rs. 21,686/11/3 which may be rounded off to Rs. 21,686.

17. We now come to item (b) of the plaint which is the claim of the plaintiff for an amount of Rs. 8824-8-3 which may be rounded off to Rs. 8824. This claim is on account of the price of the goods sent by the plaintiff to the defendants for retail sale and which having been sold the price thereof was not paid to the plaintiff. The trial Court accepted the claim of the plaintiff, but the High Court disallowed this claim after finding that the plaintiff had not been able to prove this part of the claim. After having gone through the evidence we find ourselves in agreement with the finding of the High Court on this point.

* * *##

18. The last item consists of a sum of Rs. 3819/14/6 which may be rounded off to Rs. 3820 on account of the cash borrowings by the defendants. This item was not seriously pressed by the learned Counsel for the plaintiff/appellant before us, nor has any evidence been produced by the plaintiff in support of his claim. In these circumstances, therefore, the High Court was fully justified in disallowing this claim also.

19. Thus on the evidence led by the plaintiff he has been able to prove only item (a) of the plaint amounting to Rs. 21,686 being the price of 21 bales of cloth which was sold by the defendants. The defendants have pointed out in their written statement that they had paid a sum of Rs. 10,000 by cheque to the plaintiff which has not been accounted for and the plaintiff at once agreed to give a credit of this amount by subtracting it from the claim put forward by him in the present suit. This shows that bona fides of the plaintiff. But the manner in which the credit of Rs. 10,000 has been given by the plaintiff is not legally correct. If the plaintiff has proved his claim to the extent of Rs. 21,686/11/3, he must first subtract Rs. 10,000 from this amount before adding interest on his claim. Thus after giving credit of Rs. 10,000 the claim of the plaintiff would be Rs. 11,686/11/3 which may be rounded off at Rs. 11,686. The plaintiff has claimed interest at the rate of 10 annas per cent, per month which appears to us to be too high. We would, therefore, allow the claim for interest to the extent of 6 per cent, per annum for three years. This will come to about Rs. 700 per year. The interest for three years would be Rs. 2100. Thus in view of our finding, the plaintiff is entitled to the

item relating to the cost of 21 bales of cloth sold by the defendants to a decree for Rs. 13,786 which includes interest upto the date of the suit, after giving, credit for the amount of Rs. 10,000 which he admittedly received from the defendants. Since the amount of Rs. 10,000 claimed by the defendants has been duly credited by the plaintiff and his claim has been reduced by Rs. 10,000 the appeal of the defendants is disposed of on full satisfaction.

20. For these reasons, therefore, the plaintiffs appeal is allowed in part and the decree of the High Court is modified to the extent that the plaintiff's suit is decreed for a sum of Rs. 13,786 against the defendants upto the date of the suit. The plaintiff would be entitled to proportionate costs throughout. The plaintiff would also be entitled to interest pendente lite and future interest at the rate of 6 per cent annum which will be calculated by this Court only on the amount decreed by us.

</html