Union of India

Vs

Upper Doab Sugar Mills Ltd

Civil Appeal No. 1086 of 1969

(Syed M. Fazal Ali, P. S. Kailasam, A. D. Koshal JJ)

06.02.1980

JUDGMENT

FAZAL ALI, J. -

1. This appeal by the defendant is directed against a judgment and decree dated December 2, 1965 of the Allahabad High Court affirming the judgment of the trial Court decreeing the plaintiffs' suit. The appellant approached the High Court for a certificate which was granted as late as January 6, 1969 on the ground that the appeal involved substantial questions of law.

2. The material facts of the case have been detailed in the judgment of the High Court and the statement of cases filed by the parties and it is not necessary to repeat the same. Shorn of the necessary details it appears that the plaintiffs-respondents filed a suit against the appellant for recovery of Rs. 68,067 in the court of Additional Civil Judge, Muzaffarnagar being the price of 100 tons of sugar supplied to the appellant under a contract which embodied in the various communications and correspondence between the parties regarding the manner and the terms on which the quantity of sugar was to be supplied to the appellant. It appears that in pursuance of an agreement as culled out from the correspondence the plaintiffs-respondents supplied 100 tons of sugar on August 6, 7 and 8, 1947 to Kanpur, Bahawalnagar and Sammasatta according to the instructions issued by the North-Western Railway which was the purchaser of the goods. The sugar was to be delivered to the Station Mastar, Shamli who was directed to put them into wagons after proper weighment. It is the admitted case of the parties that goods loaded in the wagons were looted in the course of transmission between Buchhoo and Allal. The plaintiffs-respondents' case was that having supplied the goods as desired to the purchasers, the property passed to them on delivery of the goods at Shamli and hence the plaintiffs-respondents were entitled to the recovery of the amount mentioned above.

3. The suit was resisted by the defendant-appellant firstly on the ground that as the goods were consigned by the plaintiffs to 'self' and Railway receipts were to be issued through the Central Bank in the name of some of the railway employees, the title to the goods was retained by the plaintiffs and the goods did not pass to the appellant. It was further averred that in view of the provisions of Article 8(1)(a) of the Indian Independence (Rights, Property and Liabilities) Order, 1947 (hereinafter to be referred to as the 'Order'), the liability to pay the cost of the goods fell on the Government of Pakistan because the places where the goods were to be supplied were part of Pakistan on August 15, 1947.

4. The trial Court held that as the defendant-appellant had undertaken to compensate the plaintiffs for the shortage in the transit of goods, it could not escape its liability to pay the amount sought to

be recovered on the ground that the goods were looted en route. The trial Court further explained that Article 8(1)(a) of the Order had no application to the facts of the present case. The trial Court accordingly decreed the suit of the plaintiffs.

5. The defendant then filed an appeal before the High Court which also affirmed the decree of the trial Court and held that according to the contract spelt out from the correspondence of the parties particularly Exs. 27 and 28, goods passed to the purchaser the moment the plaintiffs made the delivery to the Station Master, Shamli and the goods were put in the transmission. The High Court, however, did not consider the scope and ambit of Article 8(1) (a) of the Order.

6. The appellant has now filed an appeal to this Court after obtaining a certificate from the High Court as indicated above. In support of the appeal, Mr. Abdul Khader submitted firstly that in the circumstances of the case, the goods did not pass from the plaintiffs to the defendant at all and therefore the defendant was not liable. He assailed the finding of the courts below on the ground that the courts below did not apply the law of the Sale of Goods Act correctly. Mr. Mridul, appearing for the respondents, supported the reasoning of the High Court and submitted that the High Court was right in its finding that the goods had passed to the defendant in view of the express terms of the agreement spelt out from Exs. 27 and 28 and the directions issued by the officers of the defendant. We are of the opinion that as this appeal must succeed on a short point, viz., the applicability of Article 8(1)(a) of the Order, it is not necessary to decide the question as to whether or not the goods in question passed to the defendant, in the facts and circumstances of this case, which does not appear to be free from difficulty. We, therefore, propose to decide this appeal on the basis of the application of Article 8(1)(a) of the Order. Article 8(1)(a) and (b) run thus :

> 8(1). Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day, -
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> (a) if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governer-General in the Council; and
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> (b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor-General in Council;

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights of liabilities of the Governor-General in Council, be rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be.

7. From a careful perusal of the two clauses (a) and (b) of Article 8(1) of the Order it appears that the intention of the statute was to apportion all the liability of the Dominions of India and Pakistan after their creation under the Independence Act. Article 8 appears to import a legal fiction by which any contract which is made by any of the two governments will incur the rights and liabilities which may accrue to them as on the date mentioned in the Article, viz., August 15, 1947. In the instant case, it is not disputed that all the three places, namely, Kanpur, Bahawalnagar and Sammasatta, were parts of Pakistan on August 15, 1947 and therefore as the goods in the present case were meant for those places, it would be the liability of Pakistan to pay the price of the goods. This matter was fully considered by this Court in the case of Union of India v. Chaman Lal Loona ((1957) SCR 1039 : AIR 1957 SC 652 : 1957 SCJ 719) where it was pointed out that the first part of Article 8(1) creates a legal fiction under which even if a contract is made before August 15, 1947 it would be

deemed to have been made on behalf of the Dominion of Pakistan if it was for purposes of the Dominion of Pakistan. In other cases it would be deemed to have been made on behalf of the Dominion of India. This Court observed as follows :

> It is further clear that the first part of Article 8(1) creates a legal fiction. The contract is actually made before August 15, 1947, (the appointed day); but as from that date, the contract shall be deemed to have been made on behalf of the Dominion of Pakistan, if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan ....

8. This Court further fully endorsed the observations of Chagla, C.J. in Union of India v. Chinubhai Jeshingbhai (ILR 1953 Bom 117, 130 : AIR 1953 Bom 13 : 54 Bom LR 561) and approved of the following observations made by the Chief Justice in that case :

> It is clear from the language used in Article 8 that the test to be applied with regard to this contract is not whether the contract was for the purposes of the Dominion of Pakistan at the date when it was made. Ex hypothesi that test is clearly inapplicable. All contracts contemplated by Article 8 must be contracts which when made were made by undivided India by the Governor-General in Council. The test that must be applied is an artificial test and the test may be either if the contract had been entered into on August 15, 1947, whether it would have been a contract for the purpose of the Dominion of Pakistan, or if the Dominion of Pakistan had been in existence when the contract was entered into, whether it would have been a contract for the purposes of Pakistan.

9. We might mention here that in the case before the Supreme Court the contract in question was for supply of bhusa to the Military Department at Lahore and was entered in November 1945, that is to say, two years before the appointed date as mentioned in Article 8 of the Order. Since, however, the fodder in question was to be supplied at Lahore, it was held that the liability for payment of the price of the fodder lay with the Dominion of Pakistan and not with India.

10. To the same effect is a later decision of this Court in the case of Scindia Steam Navigation Co. Ltd. v. Union of India ((1962) 3 SCR 412 : AIR 1966 SC 1810) where it was pointed out as follows :

> In other words, according to this decision, in applying the tests prescribed, by Article 8 it would be relevant to enquire to whom the property or goods which is the subject-matter of the contract belonged on the appointed day.

11. Thus, it would appear from the decisions referred to above that the main test to apply as to on which of the two Dominions the liability for payment of the goods under contract would lie was to enquire and determine to whom the property or the goods were to be supplied. In the instant case, it is not disputed that the goods in question, viz., 100 tons of sugar, was to be supplied to all the places which formed part of Pakistan on August 15, 1947. In these circumstances, therefore, we are satisfied that the present case is fully covered by the decision of this Court as referred to above and it is therefore manifest that the appellant, the Union of India, would not be liable for making any payment to the plaintiffs-respondents even if the goods were delivered at Shamli which was in India. The dominant factor to be considered was not the places where the goods were delivered but the destination to which the goods were to be sent. Mr. Mridul tried his best to repel this argument

and to distinguish the cases of the Supreme Court but was unable to satisfy us as to the existence of any ground which could take out the facts of the present case from the ambit of Article 8(1)(a) of the Order. The Trial Court had no doubt referred to Article 8(1)(a) but it misconstrued the decision of the Bombay High Court approved by the Supreme Court as also the provisions of Article 8(1)(a).

12. For there reasons, therefore, we are satisfied that the claim of the plaintiffs-respondents was not maintainable in law. The appeal is accordingly allowed, the judgments and decrees of the High Court and the trial Court are hereby set aside and the plaintiff's suit is dismissed. The parties will bear their own costs throughout.

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