

Jayabharathi Corporation

Vs

SV.P.N.S.N. Rajesekara Nadar

Civil Appeal No.819 of 1981

(M.M. Punchhi, G.N. RAY, JJ)

04.12.1991

### JUDGMENT

1. This appeal by special leave is directed against the judgment and decree of a Division Bench of the High Court of Madras passed in L.P.A. No. 97 of 1980.
2. Shorn of all details, it may be stated that the plaintiff-appellant's suit was dismissed by the High Court, firstly by a single Bench and affirmed by a Division Bench on the ground that on the breach of contract between the parties no actual damage had been suffered by the appellant in terms of Section 211 of the Indian Contract Act. The plea of employment of Section 212 of the Contract Act was negated by the High Court on the ground that neither any factual plea had been taken before the Trial Court to that effect nor had any finding been recorded. The learned counsel for the plaintiff-appellant has successfully brought to our notice the additional plea taken in the replication to that effect and an issue struck accordingly. The trial Court had granted a decree in favour of the appellant for a sum of Rs. 10,000/- as damages on breach of contract though it did not specifically earmark those to be whether under S. 211 or 212 of the Indian Contract Act. Those damages had been computed on the basis that on the day when the contract was entered into the commodity sought had been purchased by the defendant-respondent as agent of the plaintiff-appellant at the rate of Rs. 36/- per pound and on the date of the breach of contract, the wholesale market price of the commodity was Rs. 56/- per pound. The damages when computed at the rate of Rs. 20/- per pound came to Rs. 10,000/-. The claim of the plaintiff appellant for computing damages at the prevailing retail price of Rs. 65/- per pound on the date of the breach of contract was negated.
3. After hearing learned counsel for the parties, we agree with the reasoning of the trial Court that the claim of damages did fall for consideration and in our view under Section 212 of the Contract Act. The defendant-respondent grossly misconducted himself in first communicating to the appellant that goods had been purchased for him at the rate of Rs. 36/- per pound when they had not been and further in another communication to have told him that those goods would be despatched the moment the strike of transporters was over. His turning around at the later stage to say that in fact the goods could not be purchased by him at all as their delivery was dependent on a third party and which third party was dependent on yet another party for delivery of goods appears to us an afterthought. For such neglect and misconduct of the agent misinforming his principal, his conduct squarely comes within the wide terms of Section 212 of the Indian Contract Act, and he therefore must bear the brunt to pay damages.
4. Having regard to all the facts and circumstances of the case, we order that the defendant-respondent shall pay to the plaintiff-appellant a sum of Rs.5,000/- as damages being half the sum computed by the Trial Court, because the plaintiff-appellant could have taken steps to timely

counter the misconduct. It has been stated-at the Bar by learned counsel for the respondent that out of a sum of Rs. 10,000/-deposited in the High Court in terms of an interim order, a sum of Rs. 5,000/ -was taken away by the appellant in the year 1981 under interim orders of this Court and in that sense that would cover the awarded sum. Assuming that statement to be correct, since there is no controversion, we do not feel the need to grant any interest thereon and accordingly close the matter. The appeal is allowed in these terms. In the facts and circumstances of the case, we make no order as to costs.

Appeal allowed.

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