

Cheema Goods Transport Company

Vs

Marudamalai Sri Murugan Textiles and Others

Civil Appeal No. 1759 of 1989

(K. Venkataswami, A. P. Mishra JJ)

09.12.1998

JUDGMENT

K. VENKATASWAMI, J. -

1. The second defendant in OS No. 561 of 1978 on the file of the Subordinate Judge's Court, Coimbatore, is the appellant in the above appeal. The suit was filed by the first respondent herein for recovery of a sum of Rs. 1,37,328 with interest against the appellant and Respondents 2 and 3 herein. It was the case of the first respondent that the third respondent placed an order for despatch of 50 cases of 80s carded cotton yarn in cones on 26-6-1975 through the appellant. The Bank of Baroda, Bhiwandi, Bombay was named as consignee. According to the first respondent, the Clerk attached to the appellant-Transport Company's Booking Office at Coimbatore issued five lorry receipts bearing Nos. 1451 to 1455, each for ten cases. The first respondent drew five hundis bearing Nos. 406 to 410 on the third respondent payable to the Bank of Baroda, Coimbatore against the respective lorry receipts specified in the hundis and sent the said hundis together with the relative invoices to the Bank of Baroda, Bhiwandi with instructions to deliver the lorry receipts duly endorsed to the third respondent against the payment. The goods that were sent as above were insured with the second respondent. It is the further case of the first respondent that the third respondent-dealer, on payment of the necessary amount against Hundi No. 406 relating to Lorry Receipt No. 1451, got the lorry receipt from the Bank and took delivery of ten cases from the appellant at Bhiwandi. However, the third respondent without payment of the amount in respect of four lorry receipts for 40 cases, got the goods delivered by the appellant. It is under these circumstances that aggrieved by the action of the third respondent in getting 40 cases of cotton yarn delivered without payment, the suit was filed for recovery of the amount as stated above.

2. The appellant and Respondents 2 and 3 contested the suit denying their respective liability. In particular, the appellant denied that there was any privity of contract between itself and the first respondent. According to the appellant, it has no branch at Coimbatore and the lorry receipts which were said to have been issued by its Clerk, were forged ones and it never undertook to carry the goods in question to Bhiwandi at Bombay. Likewise, the Insurance Company and the third respondent also denied their liabilities.

3. The trial court, on the basis of the pleadings and the evidence, found that the appellant and Respondents 2 and 3 were liable. However, the Court passed a decree only against the second respondent-Insurance Company.

4. Aggrieved by the decree of the trial court, the Insurance Company preferred Appeal Suit No. 1285 of 1980 to the High Court of Judicature at Madras. The appellant-Transport Company also

filed cross-objections challenging the trial court's findings that it was also liable for the suit amount. It may be noted that the third respondent-dealer, who placed the order with the first respondent, did not file any appeal or cross-appeal in the High Court.

5. The Division Bench of the High Court, while upsetting the judgment of the trial court, relieved the Insurance Company from the liability to pay the decretal amount and held that the appellant-Transport Company and the third respondent-dealer alone are liable to pay the decretal amount. Aggrieved by the judgment dated 20-7-1987 of the Division Bench, this appeal by special leave has been preferred by the appellant-Transport Company.

6. Though notice of lodgement of appeal was served on all the respondents, Respondents 1 and 3 have not entered an appearance and the appeal has been set down for hearing ex parte against them. The second respondent-Insurance Company alone has entered an appearance in this appeal.

7. Learned counsel appearing for the appellant-Transport Company contended that the decree for the suit amount against the appellant was based on assumptions and conjectures and there was nothing on record to show that there was any privity of contract between the appellant and the first respondent. The High Court, in spite of noticing that there was no plea in the plaint that the goods were booked through Deccan Queen Transport Company, an Associate of the appellant-Transport Company, and one Ravindran, representing Deccan Queen Transport Company, who had issued the alleged lorry receipts, erred in holding that that was not a material omission which would go to the root of the matter for negating the claim against the plaintiff-first respondent herein. It is further contended by the learned counsel for the appellant that in view of the positive finding of the trial court and of the High Court that the third respondent got the goods delivered, it should have been made liable for the decretal amount and not the other defendants (the appellant and the second respondent).

8. Learned counsel appearing for the second respondent-Insurance Company submitted that on the findings of the trial court and of the High Court, the liability of the Insurance Company to pay the suit amount will not arise inasmuch as the goods had been delivered to the third respondent-dealer and, if at all, the third respondent alone is liable to pay the decretal amount.

9. After carefully going through the judgment of the High Court under appeal and in view of the fact that the first and third respondents chose to remain absent in this appeal, it can reasonably be inferred that the first respondent (the plaintiff) must have realised the decretal amount from the third respondent (the third defendant in the suit and purchaser of the goods in question). The above inference is strengthened by the fact that the third respondent did not prefer any appeal or cross-objections against the adverse findings of the trial court and of the High Court against it.

10. We are also inclined to agree with the contention of the learned counsel for the appellant that the findings of the High Court that the appellant was entrusted with the goods for transport and the goods were delivered by the appellant to the third respondent contrary to the contract, were not based on any acceptable evidence. As noticed, the case of the appellant was that it was never in the picture in the suit transaction; that it had no branch at Coimbatore and the lorry receipts mentioned in the plaint, were not that of its Company. However, the High Court assumed that the lorry receipts must have been issued by the associate of the appellant-Company and in the absence of production of receipts by such Associate Company, the plea of forgery cannot be accepted. This assumption, in our view, cannot be sustained on the facts of this case.

11. After going through the judgments of the trial court and the High Court, we are of the view that the third respondent, who placed the orders for the goods in question, alone is liable to pay the decretal amount. Neither the appellant nor the Insurance Company is liable to pay the decretal amount in view of the finding of fact that the third respondent had received the goods.

12. In the result, we allow this appeal and hold that the third respondent alone is liable to pay the decretal amount. The decree passed by the trial court against the Insurance Company and the decree passed by the High Court against the appellant reversing the trial court's decree, are set aside and there will be a decree for the suit amount against the third respondent alone. However, there will be no order as to costs.