CALCUTTA HIGH COURT

Singer Manufacturing Co

Vs

Raja Prosad

(Sharf-Ud-Din, C.J. Richardson, J.)

09.07.1909

JUDGMENT

Sharf-Ud-Din, C.J.

1. This is a Rule on the opposite party to show cause why the order of the Small Cause Court Judge, dated the 19th January, 1909, should not be modified.

2. The facts are that the plaintiffs, who are agents on behalf of the Singer Manufacturing Company, let out under a written agreement a sewing machine to the defendant. The agreement provided, inter alia, that the defendant should pay for the hire of the machine a sum of Rs. 5 every month in advance. At the time of the delivery of the machine, a sum of Rs. 20 was paid by the defendant to the plaintiffs and the agreement stated in the preamble that no credit was to be given for this sum on account of rent unless and untila purchase was effected in accordance with other provisions. In Clause (e) of the agreement there is the following further condition: "When the hiring is terminated and or the machine and accessories are returned to the owner, the hirer shall not, on any ground whatever, be entitled to any allowance, credit, return or set off for payment previously made." The defendant having failed to pay the monthly rent and being still in the possession of the machine, a suit was brought by the plaintiffs in the Small Cause Court. The claim was for Rs. 40 as rent and Rs. 105 as the price for the machine. It seems that, after the institution of the suit, the defendant express himself as ready to return the machine, and the plaintiffs were willing to take it back, and it was accordingly returned. The claim for the price of the machine was, therefore, not pressed.

3. A decree has been made by the Judge of the Small Cause Court awarding the plaintiffs Rs. 20 on account of rent of the machine, the balance of the claim for rent being rejected on the ground that Rs. 20 had already been deposited.

4. The plaintiffs have obtained the present Rule.

5. The question involved is whether the sum of Rs. 20, which was paid to the plaintiffs at the time of the delivery of the machine, should or should not be taken into account in determining the amount of rent due.

6. The lower Court has held that the provision for the forfeiture of that sum. was in the nature of a penalty.

7. We do not think so. In the case of *Manian Patter v. The Madras Railway Company*[1] it was held that neither Section 27 of the Indian Contract Act, nor the principles of law laid down in decisions dealing with promises to pay specified sums in case of breach of contract, apply to cases of forfeiture of deposits for breach of stipulations even when some of them are but trifling, while others are not such. In such cases the Rule is that where the instrument refers to a sum deposited as security for performance, the forfeiture will not be interfered with if reasonable in amount."

8. We do not consider that as regards amount, Rs. 20 was at all unreasonable under the circumstances, and we think that the sum of Rs. 20 is subject to forfeiture under the agreement.

9. Let the amount decreed to the plaintiffs be increased by Rs. 20.

10. The Rule is made absolute with costs.

Cases Referred.

129 M. 118: 16 M.L.J. 37