

# PATNA HIGH COURT

Official Receiver

Vs

Baneshwar Prasad Singh

A.F.O.D. Nos.263 and 264 of 1957

(Kanhaiya Singh and Ramratna Singh, JJ.)

29.09.1961

## JUDGMENT

### **Ramratna Singh, J.**

1. Appellant, the Official Receiver of the Calcutta High Court in charge of the estate of one Durgacharan Mitter, was impleaded as a defendant in the two suits out of which these appeals arise. There are two appellants in the memorandum of appeal, as there were two defendants in the suits, defendant No.1 being the Official Receiver by designation and defendant No.2 being the gentleman who holds that office at present. The estate of Durgacharan Mitter was comprised, inter alia, of the proprietary interest in tauzi No.4505 of village Majhauri in the district of Patna. This estate vested in the State of Bihar under the Bihar Land Reforms Act 1950 some time in 1955 or 1956. In October 1951, tenders were invited on behalf of the receiver for permanent settlement of certain areas of land and sale of trees standing thereon. The tender of Narmadeshwar Prasad Singh, plaintiff of money suit No.1 of 1955, was accepted in respect of one piece of land and that of Baneshwar Prasad Singh, plaintiff of money suit No.2 of 1955, was accepted in respect of another piece of land; and accordingly these two plaintiffs deposited certain amounts in the then Imperial Bank of India, Patna to the credit of the Official Receiver. But, as documents of settlement were not executed by the Official Receiver for about three years, the plaintiffs treated the contracts as having been revoked and cancelled and demanded the refund of the amounts deposited from the receiver. After some correspondence, the receiver sent drafts of leases to the plaintiffs on the 6th July 1954 for their approval. But the plaintiffs considered the terms of the drafts to be inconsistent with the terms of the notice in response to which they had submitted their tenders and instituted these two suits for recovery of the amounts deposited with damages in the shape of interest at six per cent per annum from the date of the deposit.

2. The case of the plaintiffs was that at the time these tenders were accepted, Sri P.C. Banerji, a representative of the Official Receiver, and Sri A.C. Guha, the local naib of the Official Receiver at Majhauri, promised to complete the deeds of settlement of the lands and sale of trees after obtaining sanction of the Calcutta High Court and to deliver possession of the same to the respective plaintiffs within a period of six months from the date of the deposits of the money; and

this the Official Receiver failed to do. It was further alleged that the servants of the appellant cut and removed some of the trees standing on the land of khata No.3 and that one Ramcharitra Misra was in possession of plot No.283 of khata No.54 since before the tender notice. Another ground for treating the contracts as having been revoked was that the terms of settlement contained in the drafts were against the terms agreed upon. The plaintiffs, therefore, submitted that

- (a) the agreement for settlement and sale were void for uncertainty in regard to their essential terms since no terms except the amount of nazrana, were settled;
- (b) alternatively, the draft agreements sent to the plaintiffs were so completely different and hedged with such restrictive and penal terms as would amount to a complete refusal by the defendant to perform his part of the contracts.
- (c) alternatively, the agreements were void for mutual mistake about the essential terms and conditions of the proposed settlements inasmuch as the plaintiffs always understood that the proposed settlement was to be made comprehensively for any purpose that the plaintiffs might choose to utilise the land for and without any clause for reentry or forfeiture; and
- (d) alternatively, the defendant failed to perform his part of the contracts within the time agreed or within a reasonable time and the plaintiffs were entitled to a refund of the advance made and damages.

3. The appellant filed a written statement and asserted that no time limit had been fixed for execution of the documents and there was no unusual delay on his part in performing the contracts. The cutting or removal of the trees standing on the land of khata No.3 and possession by Ramcharitra Misra over any portion of the land of khata No.54 were denied. It was then alleged that the drafts of the settlement sent to the plaintiffs were in accordance with the terms agreed upon; and the plaintiffs had no right to treat the contracts as having been revoked or cancelled.

4. The learned Subordinate Judge found that there was no time limit fixed for the performance of the contract; but the appellant failed to perform the same within a reasonable time, as required by Section 46 of the Indian Contract Act. He accepted the case of the plaintiff of money suit No.1 that the appellant's servants had cut and removed three mango trees and some branches of some trees from the land of khata No.3 and the case of the plaintiff of money suit No.2 that Ramcharitra Misra was in possession of a portion of the land of khata No.54, which fact had been kept concealed from the plaintiff. He also found that the terms of the contracts were materially changed in the drafts sent by the appellants to the plaintiffs. Consequently, the learned Subordinate Judge found that the contracts entered into between the parties stood cancelled and rescinded by these acts of the appellant as also by the unreasonable delay made by the appellant in performing the contracts; and, therefore, the plaintiffs were entitled to the refund of the amounts deposited by them which had been established. Regarding damages, he found that interest could be allowed as damages, inasmuch as the deposits were not debts owed by the appellant to the plaintiffs. Hence, the appeal.

5. The first question to be considered is whether there was any unreasonable delay on the part of

the appellant in performing the contracts. The finding of the learned Subordinate Judge that no time limit was fixed for performance or the contracts has not been challenged by the respondents. Hence, it was the duty of the appellant to perform the contracts within a reasonable time as laid down in Section 46 of the Indian Contract Act. What was then the reasonable time in the present case?

According to the terms of the tender notice and the advertisement made in a Hindi Newspaper of Patna, the written offers in sealed covers were to reach the local Naib of the Official Receiver at Majhauri on or before the 25th October 1951 and the same were to be opened on the 26th October 1951 at 4 P.M. Exhibits A(1) and A are the offers submitted respectively, by the two plaintiffs of the two suits; and exhibit A(2) is the offer submitted by one Salik Mahto on behalf of himself and others of village Majhauri, where the lands to be settled and the trees to be sold were situated. The plaintiffs are residents of an adjoining village called Akthiarpur. All the officers were noted in the bid sheet prepared at Majhauri Kutchery by Sri P.C. Banerji, a representative of the Official Receiver, after they were opened at 4 P.M. on the 26th October 1951. The offers of the plaintiffs were accepted, as the other persons who had made offers were not in a position to deposit the necessary amounts on the 26th October 1951 as required by the notice and the advertisement. Narmadeshwar Prasad Singh and Baneshwar Prasad Singh, the plaintiffs of the two suits deposited, respectively, Rs.19,885 and Rs.12,500, for which they were granted stamped receipts (Exts.4 and 4a) by the Naib, A.C Guha. In both the receipts, it is stated that the amounts were received towards the salami and price of trees; and the number and kind of trees as well as the description of the land were given therein. In the opening line it is said that the amounts were received "subject to the approval of the Calcutta High Court" and at the end of the receipts it is stated that "no possession will be given without sanction of the court" and "if it is not sanctioned the amount will be refunded without interest". It is admitted by the parties that settlement of the land or sale of the trees could not be finalized without the sanction of the Calcutta High Court It is further admitted that subsequent to the grant of these receipts these amounts were deposited by the plaintiffs under the direction of A.C. Guha and P.C Banerji, in the then Imperial Bank at Patna to the credit of the Official Receiver on the 29th October 1951. It is also admitted that the Official Receiver made an application to the Calcutta High Court, for the first time, on the 12th April 1954 for the required sanction and sanction was accorded on the same date, though the formal order of sanction was drawn up on the 2nd December 1954. It is obvious, therefore, that unless the appellant can justify the delay of about 2½ years in making the application for sanction, it cannot be said that there was no unreasonable delay on the part of the appellant to perform the contracts. The appellant has, however, offered some explanation as to the delay and filed certain documents in support of the explanation. (After discussing the evidence (paras 6 and 7) His Lordship concluded:) In the circumstances, I am of the opinion that the Official Receiver failed to perform the contracts within a reasonable time and the plaintiffs were justified in treating the contracts as having been revoked and rescinded.

8. The learned advocate for the appellant, however, contended that, before treating the contracts as revoked and rescinded, the plaintiffs were bound to give notice to the appellant to perform the contracts within a definite time. This contention is not warranted by the language of Section 46 of the Contract Act or any other connected provision thereof. Section 46 reads thus :

"Where, by the contract, a promisor is to perform his promise without application by the Promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation - The question 'What is a reasonable time' is, in

each particular case, a question of fact".

In the present case, the official receiver was to perform his promise, that is, to execute the deeds without any application or notice from the plaintiffs and there was no time fixed for execution of the deeds; and therefore, the contracts had to be performed within a reasonable time, which is a question of fact. Section 55 of the Act speaks of a contract in which a time is specified. It is also remarkable that Section 73, which provides for compensation for breach of contract, does not lay down that a party must, in all cases, fix a time for performance of the contract before he can claim compensation.

9. In support of his contention the learned advocate relied on a decision of the Privy Council in *Jamshed Khodaram v. Burjorji Dhunjibhai*<sup>1</sup>, But the facts of that case did not attract Section 46 of the Contract Act, as the Privy Council definitely said that the law applicable to the question involved was contained in Section 55 of the Act. The other case of *Dau Alakhram v. Mt. Kulwatin Bai*<sup>2</sup>, cited by the learned advocate, also does not help him. That case arose out of a suit for specific performance of a contract for sale of a piece of land. The expenses for the deed of sale were to be incurred by the purchaser, but he never expressed his readiness and willingness to pay the money for the stamp papers which would be required to execute the sale deed, nor did he call upon the other party, that is, the defendant, to execute the document. On the other hand, the defendant sent several notices to the plaintiff asking him to pay the money for stamp papers, so that she might execute the sale deed. It was thus established that the plaintiff sat quiet for about three years before instituting the suit. Consequently, the suit was dismissed. After referring to the provision of Section 46 of the contract Act, according to which a contract is to be performed within a reasonable time, the Nagpur High Court observed :

"So if there is unnecessary delay on the part of one party it should be open to the other party to put an end to the contract, and that is the law which, however, requires the other party to give him notice before he terminates it". In making this observation, their Lordships of the Nagpur High Court seem to have relied on an observation of the Privy Council in the case of *Jamshed Khodaram Irani*, ILR 40 Bom 289 which reads thus.:

"But equity will not assist where there has been undue delay on the part of one party to the contract, and the other has given him reasonable notice that he must complete within a definite time".

But this observation was made in Irani's case ILR 40 Bom 289 with reference to Section 55 of the Indian Contract Act, which applies to a contract in which a time is specified for the performance of the contract and yet it is not of the essence.

10. On the other hand, a decision of the Punjab High Court in *Sat Prakash v. Dr. Bodh Raj*<sup>3</sup>, deals directly with Section 46 of the Contract Act

and supports the contention of the plaintiffs-respondents that it was not necessary for them to give any notice to the Official Receiver asking him to perform the contract within a specified time. It was held in this case that, if none of the parties to the contract has fixed any time, the reasonable time for performance will be the time which will be of the essence of the contract.

Their Lordships of the Punjab High Court refused to accept the contention that the only mode in which the time can be made of the essence of the contract is by express provision in the contract or by notice by one of the parties. In *Dinkerrai Lalit Kumar v. Sukhdayal Rambilas*<sup>4</sup>, Chagla J. observed:

"If the time for the performance of a contract, or the time for delivery is fixed, it cannot be extended by the unilateral act of a party. Equally so time cannot be extended in the case of a contract where the law implies a reasonable time for the performance of the contract. In the first case, when the fixed time has expired, there would be a breach; in the latter case, when the reasonable time implied by the law has expired, equally so there would be a breach, unless either in the one or in the other case there is an agreement between the parties to extend the time for the performance of the contract".

It was contended in this case by Sri Jamshedji Kanga that there was a distinction in law between a contract where the time for delivery is fixed and a contract where such time is not fixed; and that the latter contract does not come to an end by efflux of reasonable time implied by the law, but there must be a definite refusal on the part of one of the parties to perform the contract, and it is only then that there is a breach of the contract. Chagla, J. repelled this contention in these words: "But in our opinion there is no difference in law between a contract where the time is fixed by the act of the parties and a contract where no time is fixed and by implication of the law the contract is to be performed within a reasonable time". With these observations, I respectfully agree. In *Binda Prasad v. Kishori Saran*<sup>5</sup>, the time for performance of the contract was not specifically fixed; and the Privy Council said that, in the absence of any specified time, it would be the duty, of the parties to complete, the contract within a reasonable time.

11. In view of the foregoing discussions, the contention of the appellant falls and the plaintiff's respondents were justified in treating the contracts as having been revoked and rescinded, without giving prior notice to the Official Receiver.

12. The learned advocate for the appellant also challenged the findings of the learned Subordinate Judge that the terms in the draft leases submitted to the plaintiffs were different from the terms agreed upon earlier. (After discussing the evidence, His Lordship concluded:) The conclusion, therefore, is that the contract became void and unenforceable because of the variation in the terms, uncertainty and want of mutuality and that the appellant was solely responsible for the same.

13. It appears that the learned Subordinate Judge has found that the contract of Baneshwar Prasad Singh was bad also on account of the concealment about the possession of Ramcharitra Misra over a portion of the land of khata No.54; but I am unable to agree with him, because admittedly Baneshwar Prasad Singh knew that Ramcharitra Misra was in possession of the same since before the contract. In fact, he submitted in cross-examination that he had seen Ramcharitra Misra in possession of this land since long; and it is not possible to believe his subsequent statement that he did not know that the said land formed part of khata No.54.

14. The only question now to be determined is the amount of damages which the plaintiffs respondents would be entitled to get. The learned Subordinate Judge has allowed interest at six

per cent per annum on the amounts deposited by the Plaintiffs from the 26th October 1951 as damages. The learned advocate for the appellant has cited two decisions *B.N. Ry. Co. Ltd. v. Ruttanji Ramji*<sup>6</sup>, and *Mohammad Bux v. Zahrul Haque*<sup>7</sup>, in support of his contention that no interest can be allowed as damages; but none of these two decisions deal with the question of damages in the shape of interest. These authorities merely state the well known principle that interest cannot be allowed by way of damages for wrongful detention of debt in the absence of a contract to that effect. On the other hand, there are authorities to support the view that interest can be allowed by way of damages on amounts refundable after breach of contract. In *Rameshwarda Poddar v. Paper Sales Ltd*<sup>8</sup>, it was held that, where goods are paid for at the time of purchase and the seller fails to deliver them, the purchaser is entitled to recover the purchase money with interest from the date when it was paid in addition to further damages on account of the difference between the contract rate and the market rate prevailing on the date of the breach of the contract. In *Digbijai Nath v. Tribeni Nath*<sup>9</sup>, it was held that interest by way of damages can be allowed for breach of contract on the amount paid by the contractor as advance for a forest contract which is broken by the other side. In this case, the decision of the Privy Council in the case of *Bengal Nagpur Railway Co. Ltd.*, AIR 1938 PC 67 was referred to and distinguished. In *Sheonarain Prasad Singh v. Ganga Prasad Sahu*<sup>10</sup>, one Prasad Sahu assigned a mortgage decree to the defendants of the suit for Rs.5,000 out of which he left Rs.1,700 with them to be paid to the plaintiffs, who were creditors of Prasad Sahu. The defendants did not however pay this amount and thereupon the plaintiffs sued for recovery of Rs.1,700 besides interest by way of damages from the defendants. It was contended on behalf of the defendants that in the absence of an agreement, express or implied, interest on money wrongfully detained was not recoverable. Harries, C.J. repelled this argument with this observation:

"If this was a claim for money, wrongfully detained, there can be no doubt that interest could not be recovered, but if the suit is to be regarded as a suit for compensation, then the plaintiffs are entitled to such an amount as would compensate them for the loss which they have suffered by reason of the defendants' breach of contract".

And it was held that the plaintiffs were entitled to get a decree for interest by way of damages.

15. The facts of the present case clearly show that the appellant was responsible for breach of contract in as much as he did not perform the contract within a reasonable time and, therefore, the plaintiffs respondents are entitled to compensation for the breach. The compensation in such a case would apparently be interest on the amounts deposited by them from the date of the deposit up to the date of the institution of the suits; and the rate of interest allowed by the learned Subordinate Judge, that is, six percent, per annum, is quite reasonable.

16. To sum up, my findings are:

- (1) The appellant failed to perform the contracts within a reasonable time and, therefore, the plaintiffs were justified in drawing the inference that the contracts had been revoked and rescinded by the appellant.
- (2) The contracts also became unenforceable on account of the uncertainty, want of

mutuality, and the material differences between the terms contained in the tender notices read with the receipts granted to the plaintiffs and the terms embodied in the draft leases  
(3) The plaintiffs are entitled to refund of the amounts deposited by them along with interest, by way of damages, at the rate allowed by the court below.

17. In view of the aforesaid findings, the appeals are dismissed with costs and the judgment and the decree of the court below are affirmed.

**Kanhaiya Singh, J.**

18. I agree.

Appeals dismissed.

Cases Referred.

<sup>1</sup> ILR 40 Bom 289

<sup>2</sup> AIR 1950 Nag 238

<sup>3</sup> AIR 1958 Pun 111

<sup>4</sup> AIR 1947 Bom 293 at p.29

<sup>5</sup> AIR 1929 PC 195

<sup>6</sup> AIR 1938 PC 67

<sup>7</sup> AIR 1945 Pat 196

<sup>8</sup> AIR 1944 Bom 21

<sup>9</sup> AIR 1946 All 12

<sup>10</sup> AIR 1940 Pat 155