(1961) KLJ 356

High Court Of Kerala

Case No: A.S. No"s. 171 and 176 of 1956 (E)

Damodar Kilikar and Others		APPELLANT
	Vs	
Oosman Abdul Gani and Others		RESPONDENT

Date of Decision: Jan. 9, 1961

Acts Referred:

- Imports and Exports (Control) Act, 1947 - Section 4

Citation: (1961) KLJ 356

Hon'ble Judges: T.K. Joseph, J; M.S. Menon, J

Bench: Division Bench

Advocate: V. Rama Shenoi in A.S. 171 and T.P. Poulose in A.S. 176/56-E, for the Appellant; R. Raya Shenoi for Respondents 1 to 3 in A. S. 176/56-E, T.P. Poulose and C.M. Kuruvilla in A.S. 171 of 1956-E, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Menon, J.

The plaintiffs in O. S. No. 38 of 1125 of the District Court of Anjikaimal, Ernakulam, are the appellants in A.S. No. 171 of 1956. The suit was for the recovery of the remuneration promised to their father, G.L. Kilikar, by Ext. B, a karar dated 17-11-1947. G.L. Kilikar died on 17-12-1948. The karar was executed by Messrs. Oosman Abdul Gani, a partnership firm which was doing business at Mattancherry and is now represented by the Custodian of Evacuee Property. That firm had imported a consignment of 1,312 bags of chora valued at over Rs. 1,20,000/- in October 1947. The Customs Authorities took the view that the said import required a license which had not been obtained and imposed a penalty of Rs. 60,000/-. The firm"s attempts first to avoid the imposition of the penalty and then to obtain a refund, did not meet with success, and apparently as a last resort they approached G.L. Kilikar and sought his assistance. It is not disputed that if G.L. Kilikar could have recovered the amount promised under Ext. B, that right will survive his death

and enure to the benefit of the appellants.

2. The earliest document to which any reference need be made is Ext. J. dated 14-10-1947. That is a communication from the Assistant Collector of Central Excise, Cochin Division, Willingdon Island, to the effect that the request of Messrs. Oosman Abdul Gani for the clearance of 1,312 bags of chora will be permitted only on their depositing a penalty of Rs. 60,000/-. The amount was deposited and the consignment cleared.

3. Then comes Ext. O, a letter of Messrs. Oosman Abdul Gani to G. L. Kilikar, requesting his assistance for the recovery of the sum of Rs. 60,000/- and authorizing him to act on their behalf. Ext. O is dated 3-11-1947.

4. Ext. O is followed by Ext. B, the karar between the firm and G. L. Kilikar dated 17-11-1947. The karar reads as follows:

We hereby confirm that the following are the terms and conditions mutually agreed to between us in pursuance of which we have entrusted to you the matter of penalty or Rs. 60000/- (Rupees Sixty thousand) imposed by the Assistant Collector of Customs, Willingdon island, Cochin on the above consignment.

(1) that you will make an earnest attempt to secure refund of the above sum of Rs. 60000/- either in part or in full by filing the necessary appeals etc. or otherwise.

(2) that we would pay you as your remuneration 20 (twenty) per cent of the actual amount of refund of penalty granted by the authorities concerned on any ground or for any reason whatever.

(3) that we have paid you a sum of Rs. 1500/- (Rupees One thousand and Five hundred) for the expenses in this connection. This amount of Rs. 1500/- is subject to adjustment in the following:_

(a) In case the amount of refund granted exceeds Rs. 50,000/- whereby your remuneration exceeds Rs. 10,000/- then you shall bear a sum of Rs. 1,000/- (Rupees One thousand) out of your remuneration and we have authority to deduct the same from the amount of remuneration due to you and pay you the balance.

(b) In case the amount of refund granted is from Rs. 35,003/- up to Rs. 50,000/- (both inclusive) then you shall bear only a sum of Rs. 750/- (Rupees seven hundred and fifty) while the balance of Rs. 750/- will be borne by us.

(c) In case the amount, of refund granted is less than Rs. 35,000/- or if no refund is granted at all, then we shall bear the whole sum of Rs. 1,500/-.

(4) You may spend the sum of Rs 1,500/- in any manner you like in your discretion and you will not at any time be called upon to return the amount or to render accounts as to how it has been spent and so on.

(5) This arrangement is operative as from 3-11-1947 on which day it was arrived at, although reduced to writing only today.

5. The formal order of the Collector imposing the penalty of Rs. 60,000/- -Ext. XII-was forwarded to the firm only subsequent to 17-7-1948. After Ext. B and prior to 17-7-1948 we get Exts. K and L. Ext. K dated 5-1-1948 is a letter of the firm to the Assistant Collector of Central Excise, Cochin Division, Willingdon Island, disputing the liability to pay the penalty and praying for a refund of the Rs. 60,000/-. Ext. L dated 2-2-1948 is a reminder calling the attention of the officer to Ext. K. It is clear from the evidence that both Exts. K and L owe their inspiration to G. L. Kilikar.

6. Ext. XII, the order of the Collector imposing the penalty, summarised the facts of the case as follows:

On 6-10-1947, Mr. Oosman Abdul Gani, imported at the Cochin Port a consignment of 1312 bags chora valued at Rs. 1,20,125/- without an Import License. The importers in their explanation have stated that the import of pulses shipped prior to 15th October 1947 did not require a license, according to the Government press note and that they were under the impression that the Government of India would help them in all possible ways in view of the acute food shortage. Their explanation is not satisfactory. The only pulses covered by the Press Note referred to are Moong, Urid, Tur, Masoor and Gram. The import of chora therefore required a special license from the Chief Controller of Imports under notification No. 23/ITC/43 dated 6-7-1943 issued under the Defense of India Rules, as continued in force by section 4 of the Imports and Exports (Control) Act, 1947, any contravention of which is punishable Under the Sea Customs Act.

and ordered:

A penalty of Rs. 60,000 (Rupees sixty thousand only) is imposed on Mr. Oosman Abdul Gani, Cochin, under, section 167(8) Sea Customs Act.

7. After the receipt of Ext. XII G. L. Kilikar drafted Ext. I, the memorandum of appeal, to the Central Board of Revenue. It is dated 2-8-1948. He also took the precaution of sending a representative to explain the contentions of the appellants.

8. The memorandum discloses a knowledge of the facts and an ability to marshall them. There can be no doubt that a considerable amount of investigation and ingenuity went into the drafting of that memorandum.

9. The appeal met with success. Ext. N1 dated 25-7-1949 is the order allowing the appeal. The Central Board of Revenue said:

Having regard to all the circumstances of the case the Board is pleased to direct that the Collector''s order be set aside and the fine refunded.

and it is common ground that the whole of the penalty imposed- Rs. 60,000/- has been refunded.

10. On the evidence on record we cannot but conclude that it was the assistance rendered by G. L. Kilikar that really produced the favorable order of refund. Normally one would have expected a prompt and grateful payment of the amount promised to him. A suit, however, was necessitated, and the contention, first by the firm and then by the Custodian, has been that Ext. B should be considered as extortionate and unconscionable, as champertous in character, as opposed to public policy, and as void and unenforceable. The lower court by a process of reasoning which we find it difficult to appreciate or approve came to the conclusion that the plaintiffs were entitled to recover only a sum of Rs. 1,500/- and gave a decree for the said sum with interest thereon at 6 per cent, per annum from the date of suit till its recovery and directed the parties to bear their respective costs. A. S. No. 176 of 1956(E) is the appeal of the Custodian against that award.

11. Champerty is defined by Jowitt in his Dictionary of English law as "a bargain between a plaintiff or defendant in a suit and a third person, campum partire, to divide between them the land or other matter sued for in the event of the litigant being successful in. the suit, whereupon the champertor is to carry on the party''s suit or action at his own expense; the purchasing of an interest in the thing in dispute, with the object of maintaining and taking part in the litigation." Confronted by this definition, counsel for the Custodian submitted that his contention was not that Ext. B was champertous in character in the strict sense of the term but that it savored of champerty.

12. The specific rules of English law against maintenance and champerty have not been adopted in this country. It is settled law, however, that so far as they rest on general grounds of policy they should be regarded as part of the Indian Law as well and taken into account on grounds of equity, justice and good conscience. (See Indian Contract Act by Pollock and Mulla, 8th Edition, page 186).

13. The real difficulty in the way of the Custodian is the absence of a factual foundation for the allegation that Ext. B savored champerty or that it was brought about by fraud or the exercise of undue influence. The evidence on record is consistent only with the inference that Ext. B represented a genuine and bona fide arrangement between the parties.

14. The documents exhibited in the case do not support the contention. The oral evidence consists of the testimony of P.Ws. 1 and 2 and D.Ws. 1 and 2. We have been taken through the evidence of these witnesses and must say, quite categorically, that there is nothing in their evidence also which establishes or probabilities any vitiating circumstance

in relation to Ext. B.

15. There is no doubt that the right to remuneration and the quantum payable under Ext. B are both geared to the success of the attempt to obtain a refund of the penalty imposed. This by itself will not affect the enforceability of the contract.

16. In AIR 1954 S.C. 557 the question as to whether an advocate can stipulate or receive a remuneration dependent on the result of a litigation arose for consideration. The agreement executed by the client was in the following terms:

I hereby engage you with regard to my claim against the Baroda Theatres Ltd., for a sum of Rs. 9,400/- (balance due to me).

Out of the recoveries you may take 50 per cent of the amount recovered. I will by Wednesday deposit Rs. 200 in your account or give personally towards expenses.

17. The Supreme Court held that an advocate cannot enter into such an agreement and in giving that decision said:

Now it can be accepted at once that a contract of this kind would be legally unobjectionable it no lawyer was involved. The rigid English rules of champerty and maintenance do not apply in India; so if this agreement had been between what we might term third parties, it would have been legally enforceable and good.

and:

There is nothing morally wrong, nothing to shock: the conscience, nothing against public policy and public morals in such a transaction ''per se'' that is to say, when a legal practitioner is not concerned.

G.L. Kilikar was not a member of the legal profession.

In the light of what is stated above we must hold that Ext. B embodies a valid agreement, and that no vitiating circumstance precludes its enforcement. It follows that A.S. No. 171 of 1956 (E) has to be allowed with costs throughout and A.S. No. 176 of 1956 (E) has to be dismissed with costs. We decide accordingly. The sum of Rs. 11,000/-claimed in the plaint and hereby decreed as payable by the respondents in A.S. No. 171 of 1956(E) to the appellants in that appeal will carry interest at 6 per cent per annum from the date of the institution of the suit till the date of recovery.