

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 18/10/2025

The Indian Oil Corporation Ltd. Vs Muvattupuzha Municipality

A.S. No. 340 of 1984

Court: High Court Of Kerala

Date of Decision: Aug. 28, 1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€" Section 34#Contract Act, 1872 â€" Section 73#Specific

Relief Act, 1963 â€" Section 21

Citation: (1990) 2 KLJ 488

Hon'ble Judges: S. Padmanabhan, J

Bench: Single Bench

Advocate: C.M. Devan and Chitambaresh, for the Appellant; Kurian and A.V. Thomas, for the

Respondent

Judgement

S. Padmanabhan, J.

Defendant-Indian Oil Corporation has filed this appeal against the Plaintiff-Municipality challenging the decree for

specific performance of a contract and realisation of damages.

2. Plaintiff wanted bitumen (Asphalt) for undertaking road works. On enquiry the Defendant stated the price and offered to effect delivery on

receipt of demand draft for the full amount within two months. Demand draft for the full amount along with Ext. A-3 order was placed before the

Cochin office of the Defendant on 17th February 1979. When reminded, the excuse given by the Defendant for the delay in making supply was

non-availability of Railway wagons.

As suggested by the Defendant lorries were engaged by the Plaintiff- Even then supply was not made. Finally when Ext. A-10 suit notice was

issued on 3rd July 1980 the stand taken by the Defendant in Ext. A-11 reply was that the demand draft was not received and that there was no

concluded contract and hence supply could be made only against payment at the current rate. That is how the suit was filed for specific

performance and realisation of 12 percent interest as damages for the amount covered by the demand draft.

3. Trial Court allowed both the reliefs with costs. Subsequent to the decree, supply was made by the Appellant-Defendant. The appeal is therefore

limited to the interest allowed as damages.

4. There cannot be any dispute regarding the fact that there was a concluded contract. Defendant stated its terms on enquiry by the Plaintiff. Terms

included price and full payment of the price by demand draft. The offer was to effect supply within two months of receipt of demand draft. Draft

was entrusted to the Cochin office on 17th February 1979 along with Ext. A-3 order. The present stand is that there was no concluded contract as

the draft was not received at Madras and encashed. Even if that is so on account of the fact that the Cochin Office of the Defendant did not

forward the draft to the Madras Office, the Plaintiff cannot be blamed. Payment to the Cochin Office along with the order was as good as making

the payment and placing the order before the Defendant. Further, the Defendant is concluded by Ext. A-5 reply admitting everything and explaining

that delay in supply was due to non-availability of Railway waggons. The further request of the Defendant to arrange transport was also conceded

by the Plaintiff with intimation under Ext. A-6 dated 17th January 1980. It was really uncharitable for an institution like the Defendant thereafter to

contend that there was no concluded contract and supply could be made only against payment at the current rate when the Plaintiff was not at all

responsible for the delay.

5. In a suit for specific performance of a contract the Plaintiff is also entitled to claim compensation for breach of contract addition to specific

performance or in substitution of it. If the Court feels that in order to satisfy the justice of the case specific performance by itself is not sufficient and

some compensation for breach of the contract is also necessary it shall be lawful to award compensation also. There is no merit in the contention

that the award of compensation is without any prayer or plea and evidence. As Section 21 of the Specific Relief Act indicates, in determining the

compensation the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act. Compensation cannot be allowed

unless there is a plea at least by amendment. Guiding factor in determining the amount of"" compensation is the actual loss or damage caused which

naturally arose in the usual course of things from the breach of which the parties knew, when they made the contract, to be likely to result from the

breach of it. Remote or indirect loss is not covered by the provision. In cases where actual loss or damage is incapable of proof in terms of money

the Court can award reasonable compensation if it is satisfied that breach resulted in loss or damage even if loss is not proved.

6. In a contract which was concluded early in 1979 supply was made by the Appellant only after the decree in 1984 and that too after making all

mala fide attempts to shirk responsibility. The allegation which is probabilised by the evidence is that the Plaintiff suffered heavily due to inability of

going ahead with road works on account of non-availability of the material. Though 18 percent interest was mentioned in the plaint as damages

what is claimed is only 12 per cent. There is no force in the argument based on Section 34 of the Code of Civil Procedure. That section only deals

with award of interest in a decree for payment of money. We are only concerned with compensation for loss or damage sustained by breach of

contract which is only measured in terms of interest on the amount given. That is only a method of assessing compensation for which the limitation

in Section 34 CPC are not applicable. Damages awarded is undoubtedly reasonable and there was no fairness at all in filing the appeal.

The appeal is dismissed with costs.