

(1990) 08 KL CK 0063

High Court Of Kerala

Case No: A.S. No. 340 of 1984

The Indian Oil Corporation Ltd.

APPELLANT

Vs

Muvattupuzha Municipality

RESPONDENT

Date of Decision: Aug. 28, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 34
- Contract Act, 1872 - Section 73
- Specific Relief Act, 1963 - 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 probalised 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.