
(1956) 05 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: Sm. Revision No. 71 of 1955

Kanhaiyalal

APPELLANT

Vs

Kasturchand

RESPONDENT

Date of Decision: May 1, 1956

Acts Referred:

- Sales of Goods Act, 1930 - Section 54, 54(2)

Citation: AIR 1957 MP 168

Hon'ble Judges: S.M. Samvatsar, J

Bench: Single Bench

Advocate: C.L. Oza, for the Appellant; C.S. Chhajed, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samvatsar, J.

This revision application is filed by the Defendant against a decree passed by the Small Cause Judge Ujjain.

2. The Plaintiff's case briefly stated is that on 1-3-1954 the Defendant (Petitioner) entered into an agreement to purchase from him ten bags of tobacco from Gujrat at the rate of Rs. 100 per maund. It was provided in the agreement that the tobacco would be imported from Gujrat and delivered to the buyer at Ujjain.

3. It is alleged in the plaint diat pursuant to this agreement the Plaintiff arranged to purchase and import tobacco to Ujjain, According to die plaint the bags of tobacco were despatched from Virsaad Railway Station and the consignment was actually received at Ujjain on 3-5-1951.

It is further alleged that on the same day the Plaintiff sent a telegraphic notice to the Defendant asking him to take delivery within 2-1 hours and intimating to him that in case

he failed to take delivery, the goods would be sold at his risk; that the Defendant did not take delivery and the Plaintiff resold the goods on 8-5-1954 at the rate of Rs. 120 per mound. The Plaintiff has contended that in the resale he suffered a loss of Rs. 470-0-6 and has filed this, suit for recovering this sum with incidental charges.

4. The Defendants denied the claim. They denied the alleged contract and the receipt of goods at Ujjain on 3-5-1954. They admitted having received intimation from the Plaintiff to take delivery but averred that as there was no subsisting contract to be performed, there was no question of taking delivery. The Defendants denied the re-sale and all knowledge about it.

5. In their special pleadings, the Defendants further alleged that the Plaintiff had failed to supply goods within 15 days, which was a reasonable time for doing so, and therefore the Defendants cancelled the contract by their letter dated 30th March 1954 and by subsequent telegraphic notice on 31-3-1954. The Defendants alleged that by reason of the Plaintiff's default in supplying the goods within time, they themselves were put to a loss amounting to Rs. 300.

6. The trial Court recorded evidence which the parties tendered and ultimately decreed that Plaintiff's claim. It held that the contract as alleged by the Plaintiff was proved; that the Defendants had no right to cancel it and it was therefore binding on them. The trial Court also held that the Plaintiff had proved re-sale and the damages sustained by him. Aggrieved by this decree, the Defendants have preferred this revision application.

7. Two contentions were raised by Mr. Oza, learned Counsel for the Petitioner. He firstly submitted that the agreement dated 1-3-1954 was silent as regards the number of bales to be purchased by the Defendants and the trial Court had gone wrong in awarding damages to the Plaintiff believing that the Defendants had agreed to buy ten bales. Mr. Oza secondly contended that Section 54 of the Sale of Goods Act did not apply to this case and there was no basis for awarding damages claimed by the Plaintiff.

8. It is true that the original contract dated 1-3-1954, copy of which is produced at Ex. P/1 is silent as regards the number of bales to be sold by the Plaintiff and purchased by the Defendants. But the Plaintiff had stated in his evidence that four or five days after the written agreement was made, the Defendant agreed to buy ten bales. This oral statement of the Plaintiff is supported by the notice Ex. P/6 sent by him. The finding that the contract was for ten bales of tobacco is a finding of fact and I do not think there are any sufficient grounds to interfere with it in revision.

9. The second question is however important. The Plaintiff has claimed damages on the basis of resale effected under the provisions of Section 54(2) of the Sale of Goods Act. In order to apply these provisions it is necessary (1) that the property in goods sold should have passed on to the buyer; (2) that the goods sold should be in actual possession of the unpaid seller; (3) that the buyer should have failed to pay or tender the price within

reasonable time from being called upon to do so; and (4) that the goods should be resold within reasonable time from the date of the notice.

10. These conditions are not at all satisfied in the present case. In the first place die contract is not proved to be for specific ascertained goods. The agreement Ex. P/1 itself shows that on 1-3-1954 the Plaintiff was not in possession of the goods and he had to import diem in order to supply them to the Defendants.

The Plaintiff's witness Himmatlal has stated in his examination-in-chief that the Plaintiff had received 23 bags of tobacco from Gujrat, out of which ten were intended to be given to the Defendants. From this statement it is clear that not only there was no contract for specific ascertained goods, but the ten bags to be supplied to the Defendants were also not ascertained and there was no appropriation of goods towards die contract in suit.

11. There is again no clear notice of resale as contemplated by Section 54 of the Sale of Goods Act. The notice on which reliance is placed on behalf of the Plaintiff is Ex. P/3 which is a telegraphic notice sent by the Plaintiff to the Defendants on 4-5-1954. By this notice the Defendants are informed that the goods have arrived and they have been asked to take delivery within 24 hours. It is no doubt stated, in the notice that in case the Defendants failed to taken delivery, the goods will be sold and the Defendants will be held liable for damages and costs.

12. u/s 54 of the Sale of Goods Act the unpaid seller must give a notice intimating to the buyer that if he does not within a reasonable time pay or tender the price, the goods will be re-sold and the loss arising from the re-sale would be re-covered from him. The notice in the present case, by which the Defendants are called upon to lake deli-very of the goods is therefore not a notice as required by Section 54(2).

13. As neither the ownership in the goods was transferred to the buyer on the dale on which Ex. P/6 was served, nor did the notice call upon the buyer to pay or tender the price within reasonable time Section 54 cannot be applied to this case. The resale is therefore not binding on the Defendants, nor can they be held liable for the loss suffered by the Plaintiff on account of it.

14. It was then urged on behalf of the Plaintiff-opponent that normal damages may be awarded to the Plaintiff. The basis on which normal damages can be awarded is the difference between the contract rate and the rate prevailing on the date of the breach which in the present case was 5th May 1954, are not proved Under the circumstances, I am of the opinion that the decree for damages as awarded by the trial Court cannot be supported.

15. I set aside the decree passed by the lower Court and dismiss the Plaintiffs suit as against both the Defendants. In the circumstances of the case I leave the parties to bear their own costs throughout.