(1971) 09 MP CK 0009

Madhya Pradesh High Court

Case No: C.R. No. 849 of 1970

Jagannath and another		APPELLANT
	Vs	
Nanaklal		RESPONDENT

Date of Decision: Sept. 23, 1971

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (1972) MPLJ 981

Hon'ble Judges: S.M.N. Raina, J

Bench: Single Bench

Advocate: K.P. Munshi, for the Appellant; K.S. Dabir and A.P. Tare, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.M.N. Raina, J.

This is a revision petition u/s 115 of the Code of Civil Procedure.

The plaintiff non-applicant carries on business at Raipur in his own name and deals in jaggery and other articles of grocery. The defendants carry on business in the name and style of "Jagannath Sujajkaran Rathi" at Vikara-bad in the State of Andhia Pradesh. On 5-5-1964, there was an agreement between the parties for sale of one wagon (200 quintals) of jaggery No. 1 1/2 and 2 quality at the rate of Rs. 75.50 per quintal, inclusive of taxes. The sale agreed upon was bilticut. The case of the plaintiff is that the defendants unlawfully repudiated the contract, as the price of jaggery had, in the meantime, gone up and communicated the cancellation of the contract to him by a telegram dated 23-5-1964, vide Exh P-2. The plaintiff, therefore, instituted a suit against the petitioners (hereinafter referred to as the applicants) claiming damages for breach of the contract. The suit was resisted by the defendants-applicants, inter alia, on the ground that the Raipur Court has

no jurisdiction to try the suit. The question of jurisdiction was tried as a preliminary issue and the trial Court held that the Raipur Court has jurisdiction to try the suit. Being aggrieved by this finding, the applicants have filed this revision petition.

According to the applicants, the Raipur Court has no jurisdiction for two reasons In the first place, there was an express agreement to the effect that Vikarabad Court alone will have jurisdiction to try the suit. Secondly, no part of the cause of action arose within the jurisdiction of the Raipur Court. On both these points, the trial Court held against the applicant and it has to be seen if there is any scope for interference in revision with the finding of the trial Court.

As regards the ouster of the jurisdiction of the Raipur Court by an express agreement, it is pertinent to mention that such a plea was not raised in the written statement when originally filed on 20-2-1968. A plea to this effect was introduced in paragraph 5 (a) of the written statement by an amendment dated 17-9-1968. It is not disputed that Exh. D-1 is a copy of the agreement relating to the sale of the goods in question. In the body of this agreement there is no stipulation to the effect that Vikarabad Court alone will have jurisdiction to try a suit in respect of the agreement. It would, however, appear that the original agreement was on a printed form with the heading "subject to Vikaraha jurisdiction", which is at the top of the letter-head as shown in Exh. D-2 The point for consideration is whether, in view of the aforesaid words which are printed at the top of the letter-head, on which the terms of the agreement were reduced to writing, the agreement as pleaded by the defendant could be inferred.

Learned counsel for the applicants relied on a decision of the Gujarat High Court in S. Manuel Raj and Co. Vs. J. Manilal and Co., It was held in that case that when one of the parties to a contract signs a printed form, printed by the other party, containing the words "subject to the jurisdiction of a plate Q" and sends the order form to the other party, it must be assumed that that party agreed that Q is the place for settlement of disputes. It was further held that it was not open to a person who signs the order form of the opposite party, containing the printed words, to say that the printed wolf"s are rot part of the contract In the first place, that case is distinguishable on the ground that it was a case of a contract by correspondence In such a case, due importance has got to be attached to everything written or printed on the document containing the proposal.

Apart from this, with great respect, I must confess my inability to accept the broad proposition as laid down in that decision without any qualification. People often sign order forms containing a good deal of printed matter even without raring to read what is primed. I" would be difficult to say that in all such cases, everything which is printed should be deemed to form part of the contract. An agreement is the result of mutual assent of two parties to certain terms In other words, it is a product of a meeting of two minds usually in the form of a proposal and its acceptance. It implies conscious acceptance and, therefore, the mere fact that there is something printed in some corner of a document, containing the proposal, is of no consequence, unless it can reasonably be inferred that it

was as integral part of the agreement.

In Patel Bros. Vs. Vadilal Kashidas Ltd., it was held that mere printing of the words "subject to Bombay jurisdiction" could not amount to a contract that both the parties agreed to have Bombay as the venue for the settlement of disputes. I am inclined to agree with this view for the simple reason that if the broad proposition laid down by the Gujarat High Court, in the aforesaid case, is accepted, there would be ample scope for unwary and semi-literate persons being trapped into such agreements by signing printed forms without paying adequate attention to or realising the implications of all that has been printed. Usually a person is not expected to pay much attention to something printed at the top of a letter-head and it would not be proper to fasten an agreement of this nature on him merely on the ground that the agreement was on a form which contained printed words of this nature.

A question of this nature was recently considered by our High Court in Ratanchand v. Rohtas Industries Ltd., Calcutta 1970 MPLJ 663. In that case, it was held by Naik J., that ouster of jurisdiction of a civil Court is not to be readily inferred and that it is a question of fact in each case whether the parties to the contract had so stipulated. The divergent views expressed by the Gujarat High Court and the Madras High Court were considered in that case and it was ultimately held that it was not established that the parties to the contract had agreed to settle their dispute in the Court at Calcutta alone, as contended in that case. Shri Munshi, learned counsel for the applicants, urged that that case is distinguishable on facts because the words "subject to Calcutta jurisdiction" occurred not in the document of the plaintiff but in the confirmatory letters of the defendant after the contract had been entered into This distinction is, no doubt there, but I must say that I am unable to accept the contention that an inference of an agreement to oust the jurisdiction can be drawn from the printed words of this nature in the absence of any other evidence to show that it was actually a term of the agreement.

It is significant that Satyanarayan (defendant No. 1), who was the solitary witness of the defendants, made no reference to such an agreement in his examination-in-chief, although it is clear that the terms were orally settled before the document embodying the agreement was written. I, therefore, agree with the finding of the lower Court that the alleged agreement has not been proved.

The next point for consideration is whether any part of the cause of action arose within the jurisdiction of the Raipur Court. Exh. P-2 is a telegram addressed to the plaintiff at Raipur intimating him that the contract was cancelled. It has been urged by Shri Munshi that this document has not been properly proved and that in any case it does not amount to cancellation of the contract but only to an intimation that the plaintiff himself had cancelled the contract and, therefore, the contract was put to an end. So far as the proof of this document is concerned, it is significant that the plaintiff had pleaded in paragraph 3-B of the plaint that the cancellation of the contract was intimated by the defendant to the plaintiff by a telegram dated 23-5-1964. In the written statement, there is no specific

denial of the fact that such a telegram was sent by the defendants. Even in the witness box, Satyanarayan (D. W. 1) did not say in his examination-in-chief that no such telegram was sent to the plaintiff. When questioned about it in cross-examination, he merely stated that he was unable to make a definite statement on the point. In these circumstances, the finding of the lower Court that this telegram was sent to the plaintiff must be upheld.

The contention of the applicants that this telegram did not amount to cancellation of the agreement cannot be accepted in view of the very contents of this document, particularly in the absence of any evidence to the contrary. It must, therefore, be held that the defendants had cancelled the contract by this telegram. As this telegram was received by the plaintiff at Raipur, it is obvious that a part of the cause of action for the suit arose within the jurisdiction of the Raipur Court. In Hazarimal v. Gulabchand, 1955 NLJ 645 it was held that a renunciation of disclaimer of a contract takes place when and where it is communicated to the other party to the contract. I agree with this view. As the cancellation of the contract, in the instant: case, was communicated to the plaintiff at Raipur, it is obvious that a part of the cause of action arose at Raipur. The trial Court, therefore, rightly held that the Raipur Court has jurisdiction to try the suit.

The petition, therefore, fails and is hereby dismissed with costs. Counsel''s fee Rs. 25, if certified.