# Murlidhar Chiranjilal Vs Harishchandra Dwarkadas and Another

**Court:** Supreme Court of India

**Date of Decision:** March 29, 1961

**Acts Referred:** Contract Act, 1872 â€" Section 73

**Citation:** AIR 1962 SC 366 : (1962) 1 SCR 653

**Hon'ble Judges:** P. B. Gajendragadkar, J; K. N. Wanchoo, J

**Bench:** Division Bench

**Final Decision:** Allowed

## Judgement

Wanchoo, J.
This is an appeal by special leave from the judgment of the High Court of Madhya Bharat. A suit was filed by firm Messrs.

Harishchandra Dwarkadas (hereinafter called the respondent) against the appellant-firm Messrs. Murlidhar Chiranjilal and one Babulal. The case

of the respondent was that a contract had been entered into between the appellant and the respondent through Babulal for sale of certain canvas at

Re. 1 per yard. The delivery was to be made through railway receipt for Calcutta f.o.r. Kanpur. The cost of transport from Kanpur to Calcutta

and the labour charges in that connection were to be borne by the respondent. It was also agreed that the railway receipt would be delivered on

August 5, 1957. The appellant however failed to deliver the railway receipt and informed the respondent on August 8, 1947, that as booking from

Kanpur to Calcutta was closed the contract had become impossible of performance; consequently the appellant cancelled the contract and

returned the advance that had been received. The respondent did not accept that the contract had become impossible of performance and

informed the appellant that it had committed a breach of the contract and was thus liable in damages. After further exchange of notices between the

parties, the present suit was filed in November, 1947.

2. Written Dagduas were filed both by the appellant and Babulal. The contention of Babulal was that the contract had become incapable of

performance and was therefore rightly rescinded. Further Babulal contended that he was not in any case liable to pay any damages. The appellant

on the other hand denied all knowledge of the contract and did not admit that it was liable to pay any damages. Certain other pleas were raised by

the appellant with which we are however not concerned in the present appeal.

3. Three main questions arose for determination on the pleadings of the parties. The first was whether Babulal had acted as agent of the appellant

in the matter of this contract; the second was whether the contract had become impossible of performance because the booking of goods from

Kanpur to Calcutta was stopped; and the last was whether the respondent was entitled to damages at the rate claimed by it.

4. The trial court held that Babulal had acted as the agent of the appellant in the matter of the contract and the appellant was therefore bound by it.

If further held that the contract had become impossible of performance. Lastly it held that it was the respondent"s duty when the appellant had

failed to perform the contract to buy the goods in Kanpur and the respondent had failed to prove the rate prevalent in Kanpur on the date of the

breach (namely, August 5, 1947) and therefore was not entitled to any damages. On this view the suit was dismissed.

5. The respondent went in appeal to the High Court and the two main questions that arose there were about the impossibility of the performance of

the contract and the liability of the appellant for damages. The High Court held that the contract had not become impossible of performance as it

had not been proved that the booking between Kanpur and Calcutta was closed at the relevant time. It further held that the respondent was

entitled to damages on the basis of the rate prevalent in Calcutta on the date of breach and after making certain deductions decreed the suit for Rs.

16,946. Thereupon there was an application by the appellant for a certificate to appeal to this Court, which was rejected. This was followed by an

application to this Court for special leave which was granted; and that is how the matter has come up before us.

6. The same two questions which were in dispute before the High Court have been raised before us on behalf of the appellant. We think it

unnecessary to decide whether the contract had become impossible of performance, as we have come to the conclusion that the appeal must

succeed on the other point raised on behalf of the appellant. The necessary facts in that connection are these : The contract was to be performed

by delivery of railway receipt f.o.r. Kanpur by the appellant to the respondent on August 5, 1947. This was not done and therefore there was

undoubtedly a breach of the contract on that date. The question therefore that arises is whether the respondent has proved the damages which it

claims to be entitled to for the breach. The respondent"s evidence on this point was that it proved the rate of coloured canvas in Calcutta on or

about the date of the breach. This rate was Rs. 1-8-3 per yard and the respondent claimed that it was therefore entitled to damages at the rate of

Re. 0-8-3 per yard, as the contract rate settled between the parties was Re. 1 per yard.

7. The quantum of damages in a case of this kind has to be determined under s. 73 of the Contract Act, No. IX of 1872. The relevant part of it is

as follows :-

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract,

compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the

parties knew, when they made the contract, to be likely to result from the breach of it.....

Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused

by the non-performance of the contract must be taken into account.

8. The contention on behalf of the appellant is that the contract was for delivery f.o.r. Kanpur and the respondent had therefore to prove the rate of

plain (not coloured) canvas at Kanpur on or about the date of breach to be entitled to any damages at all. The respondent admittedly has not

proved the rate of such canvas prevalent in Kanpur on or about the date of breach and therefore it was not entitled to any damages at all, for there

is no measure for arriving at the quantum of damages on the record in this case. Where goods are available in the market, it is the difference

between the market price on the date of the breach and the contract price which is the measure of damages. The appellant therefore contends that

as it is not the case of the respondent that similar canvas was not available in the market at Kanpur on or about the date of breach, it was the duty

of the respondent to buy the canvas in Kanpur and rail it for Calcutta and if it suffered any damages because of the rise in price over the contract

price on that account it would be entitled to such damages. But it has failed to prove the rate of similar canvas in Kanpur on the relevant date.

There is thus no way in which it can be found that the respondent suffered any damages by the breach of this contract.

9. The two principles on which damages in such cases are calculated are well-settled. The first is that, as far as possible, he who has proved a

breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been

performed; but this principles is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss

consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps : (British

Westinghouse Electric and Manufacturing Company Limited v. Underground Electric Railways Company of London [1912] A.C. 673. These two

principles also follow from the law as laid down in s. 73 read with the Explanation thereof. If therefore the contract was to be performed at Kanpur

it was the respondent''s duty to buy the goods in Kanpur and rail them to Calcutta on the date of the breach and if it suffered any damage thereby

because of the rise in price on the date of the breach as compared to the contract price, it would be entitled to be reimbursed for the loss. Even if

the respondent did not actually buy them in the market at Kanpur on the date of breach it would be entitled to damages on proof of the rate for

similar canvas prevalent in Kanpur on the date of breach, if that rate was above the contracted rate resulting in loss to it. But the respondent did

not make any attempt to prove the rate for similar canvas prevalent in Kanpur on the date of breach. Therefore it would obviously be not entitled

to any damages at all, for on this state of the evidence it could not be said that any damage naturally arose in the usual course of things.

10. But the learned counsel for the respondent relies on that part of s. 73 which says that damages may be measured by what the parties knew

when they made the contract to be likely to result from the breach of it. It is contended that the contract clearly showed that the goods were to be

transported to and sold in Calcutta and therefore it was the price in Calcutta which would have to be taken into account in arriving at the measure

of damages for the parties knew when they made the contract that the goods were to be sold in Calcutta. Reliance in this connection is placed on

two cases, the first of which is Re. R. and H. Hall Ltd. and W.H. Pim (Junior) & Co.''s Arbitration [1928] All E.R. 763. In that case it was held

that damages recoverable by the buyers should not be limited merely to the difference between the contract price and the market price on the date

of breach but should include both the buyers'' own loss of profit on the re-sale and the damages for which they would be liable for their breach of

the contract of re-sale, because such damages must reasonably be supposed to have been in the contemplation of the parties at the time the

contract was made since there contract itself expressly provided for re-sale before delivery, and because the parties knew that it was not unlikely

that such re-sale would occur. That was a case where the seller sold unspecified cargo of Australian wheat at a fixed price. The contract provided

that notice of appropriation to the contract of a specific cargo in the specific ship should be given within a specified time and also contained express

provisions as to what should be done in various circumstances if the cargo should be re-sold one or more times before delivery. That was thus a

case of a special type in which both buyers and seller knew at the time the contract was made that there was an even chance that the buyers could

re-sell the cargo before delivery and not retain it themselves.

11. The second case on which reliance was placed is Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd. [1949] 1 All E.R. 997. That

was a case of a boiler being sold to a laundry and it was held that damages for loss of profit were recoverable if it was apparent to the defendant

as reasonable persons that the delay in delivery was liable to lead to such loss to the plaintiffs. These two cases exemplify that provision of s. 73 of

the Contract Act, which provides that the measure of damages in certain circumstances may be what the parties knew when they made the

contract to be likely to result from the breach of it. But they are cases of a special type; in one case the parties knew that goods purchased were

likely to be re-sold before delivery and therefore any loss by the breach of contract eventually may include loss that may have been suffered by the

buyers because of the failure to honour the intermediate contract of re-sale made by them; in the other the goods were purchased by the party for

his own business for a particular purpose which the sellers were expected to know and if any loss resulted from the delay in the supply the sellers

would be liable for that loss also, if they had knowledge that such loss was likely to result.

12. The question is whether the present is a case like these two cases at all. It is urged on behalf of the respondent that the seller knew that the

goods were to be sent to Calcutta; therefore it should be presumed to know that the goods would be sold in Calcutta and any loss of profit to the

buyer resulting from the difference between the rate in Calcutta on the date of the breach and the contract rate would be the measure of damages.

Now there is not dispute that the buyer had purchased canvas in this case for re-sale; but we cannot infer from the mere fact that the goods were

to be booked for Calcutta that the seller knew that the goods were for re-sale in Calcutta only. As a matter of fact it cannot be denied that it was

open to the buyer in this case to sell the railway receipt as soon at it was received in Kanpur and there can be no inference from the mere fact that

the goods were to be sent to Calcutta that they were meant only for sale in Calcutta. It was open to the buyer to sell them anywhere it liked.

Therefore this is not a case where it can be said that the parties knew when they made the contract that the goods were meant for sale in Calcutta

alone and thus the difference between the price in Calcutta at the date of the breach and the contract price would be the measure of damages as

the likely result from the breach. The contract was for delivery f.o.r. Kanpur and was an ordinary contract in which it was open to the buyer to sell

the goods where it liked.

13. We may in this connection refer to the following observations in Chao and others v. British Traders and Shippers Ltd. [1954] 1 All E.R. 779,

which are apposite to the facts of the parties case :

It is true that the defendants knew that the plaintiffs were merchants and, therefore, had bought for re-sale, but every one who sells to a merchant

knows that he has bought for re-sale, and it does not, as I understand it, make any difference to the ordinary measure of damages where there is a

market. What is contemplated is that the merchant buys for re-sale, but, if the goods are not delivered to him, he will go out into the market and

buy similar goods and honour his contract in that way. If the market has fallen he has not suffered any damage, if the market has risen the measure

of damages is the difference in the market price.

14. In these circumstances this is not a case where it can be said that the parties when they made the contract knew that the likely result of breach

would be that the buyer would not be able to make profit in Calcutta. This is a simple case of purchase of goods for re-sale anywhere and

therefore the measure of damages has to be calculated as they would naturally arise in the usual course of things from such breach. That means that

the respondent had to prove the market rate at Kanpur on the date of breach for similar goods and that would fix the amount of damages, in case

that rate had gone above the contract rate on the date of breach. We are therefore of opinion that this is not a case of the special type to which the

words ""which the parties knew, when they made the contract, to be likely to result from the breach of it"" appearing in s. 73 of the Contract Act

apply. This is an ordinary case of contract between traders which is covered by the words ""which naturally arose in the usual course of things from

such breach"" appearing in s. 73. As the respondent had failed to prove the rate for similar canvas in Kanpur on the date of breach it is not entitled

to any damages in the circumstances. The appeal is therefore allowed, the decree of the High Court set aside and of the trial court restored with

costs to the appellant throughout.

15. Appeal allowed.