
(2009) 07 AP CK 0001

Andhra Pradesh High Court

Case No: Appeal Suit No. 2674 of 2001

Coastal Oil Mills

APPELLANT

Vs

The Andhra Pradesh
Industrial Development
Corporation, The
Andhra Bank and Sri
Ramalingeswara Agro
Processors (P) Ltd.

RESPONDENT

Date of Decision: July 20, 2009

Acts Referred:

- Contract Act, 1872 - Section 160, 161, 167, 171

Citation: (2009) 6 ALD 41 : (2009) 5 ALT 551

Hon'ble Judges: B. Chandra Kumar, J; A. Gopal Reddy, J

Bench: Division Bench

Advocate: S.V. Bhatt, for E. Kalyan Ram, for the Appellant; N. Subba Reddy and K. Lakshmi Narasimha, for the Respondent

Final Decision: Allowed

Judgement

A. Gopal Reddy, J.

This regular appeal by the plaintiff is directed against the decree and judgment of the Principal Senior Civil Judge, Ongole, Prakasam District made in O.S. No. 259 of 1997 dated 25-07-2001, whereby the lower court while declaring the title of the plaintiff to the goods, restricted the suit claim and decreed for the amounts of sale proceeds only.

2. During the course of our judgment, we refer the parties as arrayed in the lower court for the sake of convenience.

3. The plaintiff, who is a registered partnership firm carrying on business in tobacco seed oil, neem oil, sent 79.020 metric tonnes of tobacco seed oil to the 3rd

defendant-Company, which is having refinery machinery, for refining the oil between 17-07-1996 and 10-09-1996 and after processing an extent of 31.740 metric tonnes of refined oil was received, but the remaining tobacco oil i.e. 49.280 metric tonnes was with the 3rd defendant. The 3rd defendant was provided with financial assistance to establish the business by the 1st defendant- Andhra Pradesh Industrial Development Corporation. Apart from the same, the 3rd defendant also availed financial assistance from the 2nd defendant-Andhra Bank. As the 3rd defendant failed to keep up the payment schedule, the 1st defendant-Corporation seized the mill premises of the 3rd defendant on 10-10-1996 including the stocks available in the mill i.e. tobacco seed oil belongs to the plaintiff. Due to the said seizure, the 3rd defendant expressed its inability to get the stock released, but informed the 1st defendant-Corporation that the stock belongs to the plaintiff and requested to release in their favour, but the 1st defendant-Corporation did not act upon. In view of the same, the plaintiff approached the High Court by filing W.P. No. 25868 of 1996, wherein the High Court by order dated 05-12-1996 directed the 1st defendant-Corporation to consider the representation of the plaintiff and if satisfied, release the stock. Pursuant to the order of the High Court, the plaintiff placed all the material before the 1st defendant-Corporation to establish its title to the stock, but the 1st defendant-Corporation started correspondence with the 2nd defendant-Bank to establish the title and protracted delivery. Under those circumstances, the plaintiff once again filed W.P. No. 4158 of 1997, which was disposed of along with other writ petitions filed by the 2nd defendant-Bank directing the 1st defendant-Corporation to sell the goods seized in public auction and keep the sale proceeds in the fixed deposit in a nationalized bank. On such orders being passed the 1st defendant-Corporation approached the Andhra Pradesh Industrial and Technical Consultancy Organization (APITCO) to assess the value of the goods seized, but A.P.I.T.C.O. could not assess the value of the goods until they are fully processes/refined. Since the 1st defendant-Corporation delayed in complying the directions of the High Court in conducting the auction, the oil, which is perishable in nature, has been damaged to a large extent and impaired its utility value as well as the cost and became unfit for the actual purpose to which it was intended. Therefore, no lucrative purchaser comes forward to purchase the stock, The 1st defendant-Corporation failed to conduct auction to get standard companies like TATA, BIRLA etc. Averring so, the plaintiff filed the above suit for declaration of title and interest in the goods entrusted to the 3rd defendant and for consequential recovery of an amount of Rs. 12,30,510/- towards cost of the goods with subsequent interest at 18% per annum. The stock seized is valued at Rs. 22/- per kg. for 47.280 metric tonnes which comes to Rs. 10,40,160/- and interest from 10-10-1996 i.e. the date of seizure till 16-11-1997 i.e. date of filing suit comes to Rs. 1,80,350/-, total value at Rs. 12,30,510/-.

4. The 1st defendant-Corporation filed a written statement denying the plaint allegations admitting about the seizure of 3rd defendant's premises including the stock. It was contended that 2nd defendant-bank advanced loans on current assets therefore, the 1st defendant-Corporation followed the procedure and also the directions issued by this Court in W.P. Nos. 4089 of 1997 and batch dated 18-03-1997 under Ex.A40. Against the

said common judgment the plaintiff preferred W.A. No. 467 of 1997 and obtained stay which caused the delay in conducting auction of the stock and after assessing the value of the stock it was auctioned. Initially only one bidder came forward to purchase the stock at Rs. 1,80,000/-; therefore, the same was ordered to be re-auctioned, as the value was too low; second auction was held on 24-01-1997, which fetched Rs. 3,00,000/-; after due consultation with the higher authorities the sale was confirmed and after deducting the sale expenses of Rs. 79,761/- the balance amount was kept in FDR with Syndicate Bank, Basheerbagh, Hyderabad. In view of the same, there is no cause of action and no relief can be claimed against it and prayed for dismissal of the suit.

5. The 2nd defendant-Andhra Bank filed a separate written statement denying the plaint allegations admitting that they got lien on the goods. The 3rd defendant took working capital loan and also term loan from the bank and the 1st defendant-Corporation has paripassu charge over the unit along with the 2nd defendant-bank. At the time of advancing loan and its renewal, the 3rd defendant had executed loan agreement and agreement of hypothecation of stocks in the premises, created first charge on all the stocks and materials coming to the possession of the 3rd defendant and also gave an undertaking that it will inform to the bank if any charge will be going in the course of business and also undertakes to intimate if they enter any agreements with any person and they would get prior permission from the bank. The stocks in the premises are charged to the bank as per hypothecation agreement. When the stocks were seized by the 1st defendant-Corporation, neither the 3rd defendant nor the plaintiff raised any objection nor made any claim over the goods. The 3rd defendant, who was physically present when the stocks were seized, did not challenge the action of the 1st defendant-Corporation nor stated that the stocks, which were included in the seizure, belong to the plaintiff and were under process. But all the documents were collusively brought to defeat the charge created in favour of the bank and there are no laches or negligence on the part of the bank. At the time of seizure the 3rd defendant has not shown his registers to establish that the stocks belonging to the plaintiff. The suit claim of the plaintiff is untenable and the bank is no way concerned with the seizure caused by the 1st defendant-Corporation.

6. The 3rd defendant also filed a written statement admitting the transaction between themselves and the plaintiff, stating that the stocks belonging to the plaintiff were delivered to them for converting into refined oil on hire basis under proper way bills. They answered the letters addressed by the plaintiff expressing their inability to get the stocks released in spite of its best efforts made in that regard. Due to the unreasonable stand taken by the defendants 1 and 2 they could not process the oil to the required standards and re-deliver to the plaintiff. Therefore, the suit against them is liable to be dismissed.

7. On the above pleadings the lower court settled the following issues for trial.

1. Whether the plaintiff is entitled for declaration of his right, title and interest in the goods entrusted to third defendant for the purpose of refining as prayed for?

2. Whether the plaintiff is entitled for recovery of amount of Rs. 12,30,510/- towards the cost of goods and subsequent interest as prayed for?

3. Whether the defendants 1 and 2 are not necessary parties to the suit?

4. To what relief?

8. To prove the case of the plaintiff, the Managing Partner of the plaintiff-Firm was examined as P.W.1 and Exs.A1 to A47 documents were marked. The Manager, Legal department of the 1st defendant-Corporation was examined as D.W.1, Manager of the 2nd defendant-Bank during the relevant period was examined as D.W.2 and 3rd defendant was examined as D.W.3 and Exs.B1 to B11 were got marked.

9. The learned trial Judge after analyzing the oral and documentary evidence adduced by the parties answered issue No. 1 in favour of the plaintiff holding that the plaintiff is the owner of the goods seized, which are entrusted to the 3rd defendant. On issue No. 2 it was held that the plaintiff is entitled to claim the amounts of sale proceeds in view of answering Issue No. 1, and on issue No. 3 it was held that there was no collusion or fraud between the plaintiff and defendant No. 3 and accordingly partly decreed the suit holding that the plaintiff is having title to the property in question. However, the suit claim should be only Rs. 9,45,600/- and the rest of the claim is unsustainable, as the plaintiff failed to establish that the damage was on account of the exclusive fault of defendants 1 and 2, and that the plaintiff is entitled to the amount of sale proceeds with accrued interest thereon and proportionate costs.

10. Aggrieved by the same the present appeal is filed by the plaintiff. But the defendants have not chosen to file any appeal questioning the findings recorded against them by the lower court.

11. Sri S.V. Bhatt representing Mr. E. Kalyan Ram, learned Counsel for the appellant/plaintiff contended that as on the date of seizure 47.280 metric tonnes of tobacco seed oil was lying with the 3rd defendant at various stages; plaintiff being the owner of the goods under bailment filed W.P. No. 25868 of 1996 which was disposed of on 05-12-1996 under Ex.A29 directing the 1st defendant-Corporation to consider the representation made by the plaintiff on 07-11-1996, and if satisfied that the stock in question belongs to the plaintiff, take necessary steps and release the same in favour of the plaintiff within two weeks from the date of receipt of a copy of the order. Instead of taking decision on the representation, the 1st defendant-Corporation unnecessarily invited comments of the 2nd defendant-bank, which resulted in Bank filing W.P. Nos. 28527 and 28528 of 1996 and plaintiff filing W.P. No. 4158 of 1997 which were disposed of by a common order dated 18-03-1997 covered under Ex.A40. The contention of the 2nd defendant-Bank that the 3rd defendant purchased the goods out of the financial assistance rendered by bank was negatived by the lower court. The lower court having assessed the value of the goods at Rs. 9,45,600/- but decreed only to the extent of

amount of sale proceeds, which is not correct. Once the plaintiff is declared as owner, the lower court is not justified in ordering that the plaintiff is entitled to the amount of sale proceeds only. In view of the same, atleast the plaintiff is entitled to decree against the value of the goods i.e. Rs. 9,45,600/- with interest against 2nd defendant-Bank. For the said proposition he relied upon the judgment of the Supreme Court in [Dhian Singh Sobha Singh and Another Vs. The Union of India \(UOI\)](#), .

12. Sri N. Subba Reddy, learned Counsel for the 1st defendant-Corporation contended that the suit of the plaintiff is based on title and once the lower court found that the plaintiff is the owner of the goods, it (plaintiff) is entitled to value of the goods as assessed by the lower court at Rs. 9,45,600/- and out of the same the auction amount fetched should be deducted. Since the goods cannot be released in favour of the plaintiff, as per the claim made by 2nd defendant-Bank, the 1st defendant-Corporation is under obligation to obey the orders issued by the Court in the writ petitions filed by the 2nd defendant-Bank and plaintiff, which were disposed of under Ex.A40, and the 1st defendant-Corporation cannot be held liable for non-delivery of goods.

13. Sri Meherchand Nori, appearing for Dr. K. Laxminarasimha, learned Counsel for 2nd defendant-Bank conceded that the bank has not preferred any appeal, but merely because the claim of the bank has been rejected by the lower court, the bank cannot be held liable for the value of the goods undelivered. When the plaintiff was aware of the consequences of the directions issued by the Court in W.P. Nos. 4089 of 1997 and batch, being the party, cannot claim more amount than fetched in the open auction, though it (plaintiff) is declared as owner of the goods and prayed for dismissal of the appeal.

14. In view of the above rival submissions, the point that arises for consideration in this appeal is:

Whether the plaintiff is entitled to whole claim of value of the goods seized by the 1st defendant-Corporation , if so from whom.

15. The facts about plaintiff carrying on business in tobacco seed oil and sending 79.020 metric tonnes of tobacco seed oil to the 3rd defendant-Company for refining between 17-07-1996 and 19-10-1996 are not in dispute from way bills covered under Exs.A1 to A23. After processing the oil, an extent of 31.740 metric tonnes of refined oil was received by the plaintiff and the remaining seed oil of 47.280 metric tonnes is yet to be delivered. The plaintiff valued the suit in the suit claim at the market value of Rs. 22/- per kg. As the 3rd defendant failed to keep the payment schedule for the amounts borrowed, the 1st defendant-Corporation seized the tobacco seed oil belongs to the plaintiff, which was under various stages of refining process. The plaintiff made a representation dated 07-11-1996 under Ex.A25 seeking release of the goods from the 1st defendant-Corporation and also filed W.P. No. 25868 of 1996, under Ex.A29, wherein this Court by order dated 05-12-1996 directed the 1st defendant-Corporation to consider the representation made by the plaintiff on 07-11-1996 covered under Ex.A25 and the letter

addressed by the 3rd defendant to the 1st defendant-Corporation on 09-11-1996 covered under Ex.A26 and upon being satisfied that the stocks in question belongs to the plaintiff, take necessary steps and release the same in favour of the plaintiff. Meanwhile, the plaintiff filed W.P. No. 4158 of 1997 and the 2nd defendant-Bank filed W.P. Nos. 28527 and 28528 of 1996 and another person filed W.P. No. 4089 of 1997, which were disposed of by this Court by a common order dated 18-03-1997, covered under Ex.A40, directing the 1st defendant-Corporation to sell the goods in public auction and the sale proceeds should be kept in the fixed deposit in a nationalized bank by the 1st defendant-Corporation, until a competent court gives appropriate directions with regard to the adjustment of the said amount and the plaintiff also, if so advised, seek their redress in a civil court for the release of the goods. Dissatisfied with the directions issued by the learned single Judge the plaintiff filed W.A. No. 467 of 1997 seeking release of the goods and also filed WAMP No. 805 of 1997 seeking stay of sale of seized stock which was lying with the 3rd defendant and this Court stayed the sale of seized stock on the statement made by the learned Counsel for the appellant/plaintiff i.e. tobacco oil is perishable in nature and in the event of allowing the writ appeal by this Court the appellant/plaintiff will not claim any damages under Ex.B11. The Writ Appeal was disposed of finally on 26-06-1997 covered under Ex.A41 confirming the view taken by the learned single Judge for keeping the stock in a status quo of perishable goods would be unfair to the successful party in a suit, granting liberty to the plaintiff to move the civil court to establish its own right to property in the goods allegedly seized from the custody of the 3rd defendant by the 1st defendant-Corporation. On dismissal of writ appeal the above suit came to be filed for the reliefs as aforementioned.

16. The letter dated 07-11-1996 covered under Ex.A25 addressed by the plaintiff to the 3rd defendant goes to show about supply of raw tobacco seed oil of 79.020 metric tonnes to the 3rd defendant for refining and taking delivery of 31.740 metric tonnes of refined tobacco seed oil and the remaining quantity of about 47.280 metric tonnes was lying with the 3rd defendant-Company and due to unforeseen developments the stock was seized by the 1st defendant-Corporation and requested the 3rd defendant for furnishing necessary papers for obtaining permission from the 1st defendant-Corporation to take delivery of the goods. In the process, the 3rd defendant in its letter dated 09-11-1996-Ex.A26 requested the 1st defendant-Corporation for release of the material to the plaintiff. The correspondence made by the plaintiff with the 1st defendant-Corporation on 11-11-1996, 17-12-1996, 28-12-1996 and 06-01-1997 covered by Exs.A28, A30, A31 and A32 goes to show that the plaintiff constantly requesting the 1st defendant-Corporation for release of the goods. Under Ex.A33 letter the 1st defendant-Corporation called upon the 2nd defendant-Bank to establish the bank's charge on the alleged stocks belonging to the companies with necessary documentary evidence. On the claim made by the 2nd defendant-Bank, the 1st defendant-Corporation by its letter dated 25-01-1997 covered by Ex.A35 informed the plaintiff that goods cannot be released as per the directions issued by the High Court in W.P. No. 25868 of 1996 covered under Ex.A29; followed by another letter dated 15-02-1997 under Ex.A38 the 1st defendant-Corporation informed the plaintiff

that it would not be possible for the Corporation to release the stocks, since the goods are at a perishable in nature, called upon the plaintiff to take a suitable direction from the High Court. Later the goods were sold as per the directions of the High Court in W.P. Nos. 4089 of 1997 and batch covered under Ex.A.40. While disposing of W.A. No. 467 of 1997 no orders have been passed on the undertaking given by the counsel for the appellant/plaintiff while seeking release of the goods covered under Ex.B11. Therefore, the undertaking given by the learned Counsel for the appellant/plaintiff is only for release of the goods; in the event of allowing the writ appeal the appellant/plaintiff will not claim any equities. But the goods were not released in favour of the plaintiff and they were sold in public auction.

17. Section 160 of the Indian Contract Act, 1872 (for short "the Act") mandates return of the goods by the bailee to the bailor or deliver according to the bailor's directions, the goods bailed, without demand, as soon as for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. Section 161 of the Act says if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. Section 167 of the Act deals with right of a third person claiming goods bailed. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods. Section 171 of the Act deals with general lien of bankers in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods failed to them, unless there is an express contract to that effect.

18. The Supreme Court in Dhian Singh's case (supra) in para-15 of its judgment held as under:

It would be relevant to consider what is the exact scope of the two forms of action viz. action for wrongful conversion and action for wrongful detention, otherwise known as action in trover and action in detinue. A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. If a carrier or other bailee wrongfully and mistakenly delivers the chattel to the wrong person or refuses to deliver it to the right person, he can be sued as for a conversion. Every person is guilty of a conversion, who without lawful justification deprives a person of his goods by delivering them to some one else so as to change the possession, (Salmond on Torts, 11th Edn., pp. 323, 324, 330).

19. The lower court rejected the plea of the 2nd defendant-Bank that stocks of third party brought to the premises of the third defendant creates a lien in favour of bank and held that the plaintiff is the owner of the stocks which goes unchallenged, as no appeal has been preferred by the bank questioning the said finding recorded by the court below. The learned trial court also determined the value of the goods, which were attached and not

released at the instance of the 2nd defendant-Bank, at Rs. 9,45,600/- and the suit claim to which the plaintiff will be entitled to Rs. 9,45,600/-. Once the lower court decreed the suit of the plaintiff and held that it is owner of the goods, as the 2nd defendant-Bank unlawfully kept the goods with the 1st defendant-Corporation by lodging a claim and failed to establish its right of lien over the goods, it (Bank) has to compensate the loss sustained by the plaintiff to the extent of value of the goods - amount fetched in auction.

20. Indisputably the bank addressed a letter to the 1st defendant-Corporation claiming lien over the goods seized by the 1st defendant-Corporation contending that the 3rd defendant availed working capital loan and term loan from the bank and at the time of availing the loan the 3rd defendant executed loan agreement and agreement of hypothecation of stocks in the premises and also gave an undertaking that it will inform to the bank if any charge will be going in the course of business and also undertakes to intimate if they enter any agreements with any person and they would get prior permission from the bank. The stocks in the premises are charged to the bank as per hypothecation agreement; so it (bank) claims right over the goods; filed writ petitions under Ex.A40 not to release the goods in favour of the plaintiff and failed to establish its lien over the goods, which are in the premises of the 3rd defendant, for the purpose of refining. As per the directions of the High Court under Ex.A40 the goods were sold in public auction and sale proceeds were deposited till the parties establish their rights before the appropriate civil court. Once the plaintiff established its right and title to the goods, it is entitled to return back the goods. In the event of non-delivery of the goods by the bailee, the bailor is entitled, at his election, to sue the bailee for wrongful conversion or wrongful detention of the goods. The cause of action is wrongful detention, is based on wrongful withholding of the plaintiff's goods at the instance of 2nd defendant-Bank and the goods were converted into cash as per the directions obtained by the bank. If it is found that bank claim is wrongful and unjust, it has to compensate the loss as on the date goods were seized or its value, as the case may be. Since the goods seized fetched only Rs. 3,00,000/- in the open auction, after deducting Rs. 79,761/- towards expenses incurred for conducting auction, the balance amount of Rs. 2,20,239/- was deposited in the fixed deposit, which the plaintiff is entitled to receive back with accrued interest. Further, the value of the goods as assessed by the lower court is Rs. 9,45,600/-, after deducting the amount fetched in the open auction i.e. 2,20,239/- the plaintiff is entitled to the balance amount of Rs. 7,25,361/- (9,45,600 - 2,20,239), which the 2nd defendant-Bank is liable to pay.

21. For the foregoing reasons and conclusions reached by us we allow the appeal decreeing the suit of the plaintiff against the 2nd defendant-bank for a sum of Rs. 9,45,600/- minus the amount deposited in the fixed deposit i.e. 2,20,239/- with interest at 6% per annum from the date of suit till the date of realization. In the circumstances of the case, the parties are directed to bear their own costs.