(1984) 10 CAL CK 0001

Calcutta High Court

Case No: Suit No. 219 of 1978

M/s. Todi Tea Co. Pvt. Ltd. — APPELLANT

Vs

M/S. Manabarrie Tea Co. Ltd. — RESPONDENT

Date of Decision: Oct. 30, 1984

Acts Referred:

- Contract Act, 1872 - Section 2(d), 2(e)
- Payment of Gratuity Act, 1972 - Section 2(f), 4(2), 7
- Transfer of Property Act, 1882 - Section 55(G)

Citation: 89 CWN 47

Hon'ble Judges: Ashamukul Pal, J

Bench: Single Bench

Advocate: S.K. Gupta, B.L. Jain and Swapan Mallick, for the Appellant; Subrata Roy Chowdhury, Gautam Chakraborty and Ajoy Ray, for the Respondent

Judgement

Ashamukul Pal, J.

This suit is instituted by M/s. Todi Tea Co. Pvt. Ltd. against M/s. Manabarrie Tea Co. Ltd. for a decree for Rs. 82,432.72p, interim interests, further costs and costs on a cause of action that has arisen out of an agreement pleaded in paragraph 1 of the plaint and particulars of the claim have been set, out in paragraph 10 of the said plaint. It appears out of the said sum of Rs. 82,432.72p the plaintiff claims Rs. 64,454.82 as principal and Rs. 17,997.90p as interest. The plaintiff''s case is that M/s. Manabarrie Tea Estate entered into an agreement with the plaintiff for which a duly registered indenture was executed on 23rd of March, 1968 and by which agreement the plaintiff purchased the said estate interalia on the conditions that vendor that means, Manabarrie Tea Estate would duly pay off and discharge all the debts and/or liabilities to the different board and its bankers as also all liabilities for all taxes including income tax, agricultural income tax in respect of and in connection with the said estate and the said tea estate for all purpose prior to the 1st of January, 1967 and will remain liable for all such liabilities including sales tax liabilities, income

tax liabilities, agricultural income tax liabilities etc. to the plaintiff as mentioned fully in the said clause.

2. The plaintiff''s case is that in terms of the said agreement executed on 23rd of March, 1968 the defendant was liable to pay all claims, demands, compensation and/or all forms of benefits payable to the. workmen and/or laborers and/or other staff of the said tea, estate known as Manabarrie Tea Estate for the work fox all periods upto the 31st of December, 1966 Plaintiff''s further case is "furthermore the defendant by the said agreement. agreed to indemnify the plaintiff against the claim and demands in respect of the said period, prior to 31st December, 1966".

3. So far as this present claim is concerned it arises out of the claims that the plaintiff, had to meet for the introduction of the payment of Gratuity Act, 1971 by virtue of which the plaintiff-purchaser had to pay the gratuity to those workmen who had been working from the date prior to the date of handing over the said tea estate to the plaintiff. The plaintiff claims that as the vendor Manabarrie Tea Estate was liable to pay all the liabilities of the vendor which were payable, due or outstanding; upto 31st December, 1966 the vendor must be liable for the gratuity that was paid by the workmen working from before that date to the extent that was apportion able by and between the plaintiff and the defendant.

4. In paragraph 4 of the plaint the plaintiff pleads that between 1st January, 1974 to 16th August, 1977 the defendant became liable to pay and discharge diverse claim amounting to Rs. 64,454,62p as and by way of gratuity for the work of to said workmen and of employee upto the, period ending 31st December 1966 to the different workers and/or employees and/or staff of the said Manabarrie Tea Estate" as per agreement Defendant is bound to indemnify the plaintiff for the said sum due for the period ending 31st December, 1966 which were actually been paid by the plaintiff to the said workmen. The plaintiff'' has made out a case for indemnification and re-imbursement from the defendant tentatively, the, plaintiff states -"in any event the defendant is liable to pay said sum of Rs. 64,454.82p. as money paid by the plaintiff for and on account of the defendant and/or to the use of defendant.

5. The plaintiff''s case is that it made its, first demand in or about may 1975 orally on phone and written demand was made on 21st of Decembers 1977, In the said written, demand the plaintiff also charged 15% interest for the said, sun of 64,454.82p. The particulars of the claim, have, also, been stated in the. annexure. to the said demand. Immediately came the denial, by the defendant by a letter dated, 30th of December 1977, It has been stated, in the said letter by the defendant "we have, no concern whatsoever with, the Annexure A. It is deplorable that your clients have caused this letter to be written by you making a, false, baseless and frivolous demand on account of gratuity which your clients are bound to pay under law and in terms of the said conveyance dated 23rd March, 1968. Your clients have no previous occasions also made said false, baseless and frivolous demand on account of

gratuity and after we have denied and refuted your client''s demand for gratuity they kept quiet It is indeed interesting that your clients have again come with their false, frivolous and baseless claim for gratuity payable by them to their workmen of the above tea estate." The suit was filed on 10.4.78 and the written statement was filed on 30th of August, 1978.

6. Main defence is this that the said agreement indenture never visualised, never purported to include therein any payment of gratuity which was never in the contemplation of the parties nor had they any occasion or reason or basis whatsoever to forestall the same as the payment of Gratuity Act came into existence long after the agreement was entered into. The gratuity, according to the defendant, payable to labourers was neither an accused liability nor even a contingent liability at the time of entering into the agreement and as such the defendant had or has no obligation under the said agreement to arrange for the payment of the same and/or to indemnify the plaintiff therefore. The defendant further states the parties of the agreement never contemplated that the gratuity payable, if any, in future would be covered by the agreement and the parties could not fore see the same at the time of executing the indenture and/or making over the said tea estate and as such the gratuity, if any, payable for any period whatsoever must be paid by the plaintiff. On the said pleadings and documents the following issues were raised :

1. Was the defendant obliged or liable to pay of the gratuity amounts pursuant to or in accordance with the agreement dated 23rd March, 1968 as alleged in paragraphs 3 & 4 of the plaint?

2. Did the plaintiff pay to the workers the amount of Rs. 64,454.82 as alleged in paragraphs 6, 7 and Annexure B to the plaint?

3. Is the defendant bound to pay to the plaintiff any interest as claimed interalia in paragraphs 9 and 10 of the plaint?

4. To what relief''s, if any, are the plaintiffs entitled?

7. On behalf of the plaintiff only one witness gave evidence and he is Premchand Todi, P. W. 1. On behalf of the defendant no witness came to the box. As a matter of fact, Mr. Roychoudhury submitted before me that on the agreement and the evidence that has been adduced by the plaintiff, the defendant has got no case to answer : As a matter of fact Mr. Roychoudhury''s simple case is that the indenture does not create any liability whatsoever for the payment of gratuity for which an act came into force in 1971 - long after the agreement.

It may be noted here that although the indenture was executed on 23rd of March 1968 possession of the estate was given on 1st of January, 1967 that is to say, 15 months earlier - on oral understanding before the actual written indenture was executed.

8. Mr. Gupta, Counsel for the plaintiff referred to me several sections of the payment of Gratuity Act but I shall only deal with those which are relevant for the purpose of answering the issues and adjudication of the case regarding the respective liabilities with reference to gratuity in between the parties. First relevant portion the payment of Gratuity Act which has been referred to me by Mr. Gupta is the provision of Section 2(f) of the said Act which reads "Employer means, in relation to any establishment, factory, mine, oilfield plantation, port, railway company or shop".

Mr. Gupta refers to the said sub-section to convince me that a tea estate can some under the provisions of the Gratuity Act because it includes plantation to tea estate. But he gives more stress on Section 4(2) of the said Act which provides for the quantum of gratuity that has to be paid and how the computation for payment of such gratuity is to be made. He refers to me page 10 of the conveyance from the Judges'' brief of documents and correspondence, Part I argues that the provision that the vendor will also pay and discharge all other liabilities payable either presently or in future in respect of and/or in connection with and/or in relation to the said tea estate and also in respect of and/or in connection with and/or in relation to the employees, contractors and labourers employed in and/or in relation to the said tea estate for and in respect of all the period prior to the said first day of January, 1967 provided that the purchaser shall bear and pay and discharge all such liabilities, taxes, cesses and duty for all period after 31st of December, 1966. Mr. Gupta contends that the clause is wide enough to cover the demand of gratuity because the purchaser is to pay all such liabilities in relation to employees and labourers employed in the said tea estate and gratuity being the liability to pay, the vendor cannot escape his liability to pay which the purchaser had to pay to the workmen as it had been specifically provided that such liabilities in relation to the employees and labourers employed in the said tea estate would have to be paid by the vendors which would arise before 1st of January, 1967. Mr. Gupta contends that all liabilities including unforeseen liabilities have been provided for under the said covenant and the covenant is couched in such a language as to include all the liabilities that may arise regarding the tea estate existing or future. Mr. Gupta has referred to me several questions nos. 262, 266, 485, 486, 517 to 540, 546, 589, 597, 598, 605 and 608. He referred to those questions to show that the moneys were actually paid and the quantum of amount that was paid was proved and apportionment was also done in a proper manner to apportion the liability between the vendor and the purchaser taking 1st of January, 1967 as the date material for the purpose and invites the court to pass a decree as prayed for. The quantum of payment duly apportioned have not been proved. He refers to me Dhanrajamal Gobindram Vs. Shamji Kalidas and Co., at page 1294. Supreme Court opined in the said judgment (paragraph 27) "in our opinion, the words of the Bye-Law "arising out of or in relation to contracts" are sufficiently wide to comprehend matters, which can legitimately arise under S. 20". Mr. Gupta''s argument relying on the said

judgment and observation of the Supreme Court that in this indenture too the words are wide enough to include all liabilities and the words "in relation to" attract any payment under the Gratuity Act even if the payment was made in future under an act which came into existence in future. But I should say here that in the agreement there was no arbitration clause which is the usual case in all such indentures of like nature. The type of arbitration clause is conspicuous by its absence. Mr. Gupta from the documents and the calculations which would appears from the Exts. wants to satisfy the Court that so far as the quantum also is concerned the claim is precise and correct. According to him total payment made for gratuity represented by the vouchers is Rs. 88,338.38p. and after apportionment the defendant''s share of liability would be Rs. 64,454.82p. He refutes the charge that absence of disclosure of cash book makes the claim of the plaintiff unreliable by referring to reveral questions namely 518, 528, 529 and 530 and also contends that cash book is not the major record of proving such claims and he also pointedly draws my attention to the fact that in umpteen questions in cross-examination p.w. 1 has said that cash books have been brought. I also think that absence of cash books does not disprove the fact that payment was actually made to the workers when other papers clearly show that really payments were made. As a matter of fact I do not think that plaintiff is making a false statement when it says that it paid the gratuity as deposed by p. w. 1. But I must say here real dispute is whether for such payment the defendant would be liable. Mr. Gupta also contends before me that his client has charged interest @15% which is quite legitimate and due and he referred to Interest Act to substantiate his contention. But here also I should say that it is the discretion of the court inspite of the Interest Act (discretion however must be judicially exercised) at what rate the interest is to be paid if at all the defendant is held liable for any sum.

9. Mr. Subrata Roychoudhury Counsel for the defendant argues that a liability under an agreement can be enforced only when the parties have the matter desired to be enforced had it in their contemplation at the time of contract. If something is not in the contemplation of the parties it cannot be a matter of liability to be enforced in a court of law. By way of illustration he contends if Pension Act is introduced in 1984 that any person who has been working for 30 years would be entitled to pension. Then in such case under the said clause at page 10 of the agreement on which Mr. Gupta relied so much could the vendor be made liable for the apportioned pension. He further contends that a reasonable construction must be made of the agreement as a whole taking into consideration the attending circumstances. He contends that it is quite significant that the agreement was executed in writing 15 months after the agreement was made. It only goes to show he argues that the parties are by this time trying to liquidate the liabilities as far as possible leaving the liability of the vendor Only to the existing liabilities that might be payable in future; as an example he submits that supposing an appeal had been preferred against any liability of the vendor and if the said appeal is disposed of against the vendor two/three years after

then in that case although the purchaser has taken possession, much earlier the vendor will be liable for the said amount. In short his contention is that the purchasers'' liability would be from the date of purchase. It does not cover the liability of the previous years. He analyses the agreement clause by clause and refers to me clauses 1, 2 & 3 of the said agreement and contends that the price of Rs. 9,30,000/- was arrived at on consideration of all the rights and liabilities-rights accrued and liabilities due by considering all the factors until 31st of December 1966 and as it was a matter of contract the parties cannot go beyond that or urge a claim which is not in their contemplation in fixing the price of purchase. His main contention as I could understand that so far as gratuity was concerned the parties were not ad idem. He draws my attention regarding the provision of payment of provident fund occurring at page 4 of the said agreement and the states that every possible features and factors that might Crop up in the matter of liability were provided for in the said agreement. So far as provident fund was concerned it was stated in-detail how it is to be paid and for which period it has to be paid and by whom? His main contention is gratuity was never in contemplation and therefore the plaintiff has got no cause of action against the defendant. His contention is that it is a speculative suit No written demand was made although gratuity was started to be paid from 1974. He argued that plaintiff has said that they demanded it on phone. He argued it was expected that they should come forward to make the demand in writing immediately but they waited for three years to make such demand in Writing. He argued as I said before that liability must be present liability but it may be payable in future and the liability must be existing one not such a liability with would to come up in future by some legislation which was not in the contemption of the parties, He draws my attention that all the matters'' on which the vendors could be made liable were exhaustively enumerated at page 10 and he refers to me the last lines of page 10 where it has been stated that purchasers shall bear and pay and discharge all such debts and liabilities, taxes, cases and duties and other matters aforesaid for all period after 21st December, 1965.
Therefore his contention is that excepting named or specified matter In the agreement the defendant could not be made liable for any other contingencies.

10. As a matter of fact the first issue is the most ''important issue if the money was paid by way of gratuity for the period prior to March 1968 the defendant Will be liable to pay any, amount that was paid by the plaintiff under the said agreement Mr. Gupta contends all liabilities have been provided in the agreement itself. Therefore, only unforeseen liabilities alone to be paid under the covenant. He further contends that the parties entered into an agreement there by to pay all sorts including all liabilities under the contract The purchaser cannot veer round and say that, that was not in contemplation of the parties. He Contends, that the amount was paid to the workers for working from before the date of the agreement has been proved and that having been proved defendant must be liable to pay the amount under the clause of the agreement and he discussed threat bare the

relevant clauses of the agreement to convince the court that he must be given apportioned payments that were paid to the Workers who had been there before the date of the agreement Mr. Gupta very elaborately proves the payments from the other records disclosed in the suit to show that the payments were actually made. He also claims interest @l5% from each date of payment.

11. Mr. Roychoudhary Counsel for the petitioner contends before me that payment of gratuity to the true-construction of the agreement which came to be a liability under an Act that came into force in 1971 cannot be sustained.

12. The definition of contract will be found from three clauses of Sections 2(d), 2(e) & 2(f) of the Contract Act and the payment of gratuity in my view in the context of the said agreement cannot be subject matter of the said agreement the reasons of which I give hereinafter.

13. It is common knowledge that in order to be a valid contract parties mind must be ad idem. Here the question is Would the parties be liable to make any payment under the relevant clauses of the said agreement which they did not foresee contemplate. If they really wanted to make the vendor liable under the provisions of any Act that would come into force in future they would make it amply clear to provide it in the agreement.

14. In this case Bengal Act came into force in 1971 (5.6.71). Provident fund was in contemplation of the parties but not gratuity and the plaintiff''s evidence is that although the plaintiff was entitled to the payment of gratuity yet no written demand was made until 21st December, 1977.

15. This throws doubt upon the bonafide of the plaintiff''s claims if he really started making payment for which he claimed to be indemnified as of right- would it be a plausible theory that he will wait for such a long time to place, his claim in writing after such a long time to place his claim in writing after such a long period.

16. Mr. Roychoudhury criticises as the claim as a speculative one, hence this delay of writing letter of demand placing his claim of indemnification of the payment of gratuity.

17. Mr. Gupta on the other hand contends there was evidence that his client demanded the money on telephone. Mr. Gupta further contends that such an agreement has the far reaching consequences and the judgment of this one will guide and regulate other purchasers of similar nature. Mr. Gupta claims that his client is an established businessmen their business is done on faith and oral demands are not unusual. Yet I am to believe that a business man if he was really sure about his right or about the bonafide of the claim would not have delayed so much in giving letter of demand. It could be fairly expected he would have made the demand in writing immediately after the first payment was made towards gratuity under the Act was passed in that regard.

18. Mr. Gupta contended that his clients are all honest businessmen. They did not think it necessary to record it in writing. His client thought that a telephonic demand would do. But I am unable to accept that contention. They are businessmen and as businessmen it was very natural for them to record it in writing immediately after the first payment is made claiming that under the agreement, the plaintiff was to be indemnified.

19. Mr. Roychoudhury contends that under the Gratuity Act an employer is to pay the gratuity. Employer is denned u/s 2(f) of the Payment of Gratuity Act, 1972. Mr. Roychoudhury has contended before me that elaborate provisions have been made u/s 7 of the Payment of Gratuity Act and such a liability to be fastened upon and the erstwhile employer is not provided for. Mr. Roychoudhury has rightly contends that liabilities that were contemplated under the agreement was a present liability to be paid in future. He contends by citing many illustrations what he meant by that. A litigation that was pending against the vendor at the time of contract for any liability of the past was ultimately decreed against him in that case that amount must be paid under the said agreement by the vendor. He refers to me Section 55(G) of the Transfer of Property Act and contends that under the said section rights and liabilities of the buyer and the seller have been provided for in Section 55(g) of the Transfer of Property Act The said, section runs as follows :

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

It contemplates payment of encumbrances which are due on the date of the sale. Mr. Gupta, contends that liability was as on demand liability. Therefore, when the demand would be made liability would be accrued due. Mr. Gupta referring to Dictionary on English law edited by Jowitt, 1959 Ed. page 1085 argues that a potential liability or obligation would come within the purview of the agreement between the seller and purchaser. He argues that inchoate future unascertained obligation would came under the definition of liability. He also refers to me ad judgment reported in AER 1943 (1) 54 (Re Watford Corpn. And Ware''s Contract) to base his contention that such a liability is to be paid by the vendor if the words are sufficiently clear. Mr. Gupta cites the said judgment to convince me if the language is clear, the court would not hesitate to pass a decree for the payments that have been made for the gratuity. But as I said before, the language in the instant case is not at all clear, nor was it a condition of the contract. The gratuity was not in contemplation of State Legislature or Union Legislature when the argument was entered into. Therefore, unless the contracting parties'' mind are ad idem so far this aspect is concerned there could not be any liability of Mr. Roychoudhury''s client as contended by Mr. Gupta.

20. In this case I should point out here that such a construction if given it will make the entire thing absurd. Supposing in (the year 1955 an Act is passed by which pension is to be allowed to the workmen which never in the contemplation of the parties; will the vendor be liable for apportionment for payment of such pension. If I hold that I shall hold against the very conception of law of contract and general trend of natural events as well In that case nobody is sure if any contract is entered into today what would be his liability in future under the said contract. That is not the purpose of a contract which must be certain and which only takes into account what is provided for according to the contemplation of the parties. It was not even in the form of a bill in the State or Union Legislature when the agreement was entered into. In this case it is not a simplicitor payment of liability which was agreed to be due and payable at the time of entering into contract but it was of a liability that is attached to the employer by a superimposed sovereign authority. Parties did not contemplate that. Legislature by its sovereign authority made such liability for the payment of gratuity. It cannot be matter of contract as contended by Mr. Gupta.

21. Considering all the aspects of the matter I am unable to answer the issue no. 1 in favour of the plaintiff. So far as Issue no. 1 is concerned I say and hold that the defendant was not obliged or liable to pay the gratuity pursuant to or in accordance with the agreement dated 23rd March, 1968 as alleged in paragraphs 3 & 4 of the plaint.

22. So far as issue no. 2 is concerned I accept that the books of accounts of the plaintiff and payment by the plaintiff to the workers the amount of Rs. 64,454.82. But however, as I answered the issue no. 1 against the plaintiff the payment by the plaintiff to the workers will not attach any liability upon the defendant. In view of what has been stated in answer to issue nos. 1 and 2 I hold that the plaintiff is not entitled to any relief whatsoever in view of what has been stated hereinbefore. So far issue no. 3 is concerned.

The suit is dismissed accordingly. I make no order as to costs.