
(1870) 03 CAL CK 0014

Calcutta High Court

Case No: None

Amrit Sing and Narayan
Sing

APPELLANT

Vs

Madhab Chandra
Rudar and Others

 Madhab Chandra
Rudar and Others Vs
Amrit Sing and Narayan
Sing

RESPONDENT

Date of Decision: March 9, 1870

Judgement

Norman, Offg. C.J.

1. Madhab Chandra Rudar and others carrying on business as merchants in partnership, under the name of Ramgopal Ghose and Company, brought a suit against Narayan Sing and Amrit Sing for damages for not taking delivery of five cases of grenadines sold by Ramgopal Ghose and Company to them on the 8th of December 1868, of which delivery was to be taken on the 21st of that month. The defendants, Narayan Sing, Amrit Sing, not having taken delivery within the time limited, were called upon to do so, upon which they went to Ramgopal Ghose and Company, asking for time, and paid a sum of rupees 1,000 as earnest-money; and the following entry was made on the margin of the written contract:--

Calcutta, the 9th February 1869.

Paid earnest-money on deposit rupees one thousand. Goods to be cleared 15 days from this date.

Delivery not having been taken, the goods were ultimately sold by Messrs. Colin, Feilmann, and Company, and realized rupees 1,705 less than the contract. Ramgopal Ghose and Company brought this action to recover that sum, less the rupees 1,000 which

they had received on the 9th February 1869. Narayan Sing, Amrit Sing, brought a cross-action against Ramgopal Ghose and Company to recover the sum of rupees 1,000 which had been paid by them as earnest-money on the 9th of February apparently as money received to their use, on the ground that it had been paid without any consideration.

2. Now the main point which arises upon the several questions which have been submitted to us by the Judges of the Small Cause Court is whether, in the case before us, there was any valid binding contract between the parties. The contract is in the following terms:--

The undersigned do hereby acknowledge to have purchased "of Messrs. Ramgopal Ghose and Company, the under-mentioned, per Wayfarer, five cases grenadines" (then come the marks and numbers of the several cases and particulars of their contents), "at 2 annas 3 pie per yard;" and after the printed conditions, there is at the foot the signature of Amrit Sing, written in Nagri. The signature is as follows:--

Narayan Sing, Amrit Sing.

Goods, fresh grenadines, five cases, at 2 annas 3 pie per yard.

3. It was in evidence that Amrit Sing, the person who signed the English contracts, did not understand and could not read English; but it is not found, and we see no reason to suppose, that he did not understand the contract that he was entering into in signing the English printed form of contract, specifying the cases by their marks and numbers. In our opinion, it is clear that the contract between the parties, evidenced by the signing of the English paper, consisted not only of the English writing, but of the terms "goods, fresh grenadines," written in Nagri by Amrit Sing. If that contract was accepted after the writing of these words, and we think it clear that it was accepted by Ramgopal Ghose and Company, that written document, including the Nagri words, was the contract by which Amrit Sing, who signed it, and Messrs. Ramgopal Ghose and Company, who accepted it, were bound.

4. We think that there is no inconsistency whatever in adding to a contract for specific cases of goods a stipulation or warranty that the goods are to be fresh goods. We think, therefore, in answer to the first question put to us by the Judges of the Court of Small Causes, that the words "fresh goods" after the signature constituted part of the contract.

5. To the 2nd question which had been put to us, whether what took place on the 9th of February, viz., the payment of the rupees 1,000 by Narayan Sing, Amrit Sing, affected any of the terms of the contract, and operated as a waiver by Narayan Sing, Amrit Sing, of any prior breaches. We think there is nothing to show that, in paying the rupees 1,000 on account of the contract, and thereby obtaining further time to take delivery, Narayan Sing, Amrit Sing, intended in any way to preclude themselves from taking any objection that the goods did not answer the warranty. The result would be that, as regards the suit

for damages of Ramgopal Ghose and Company against Narayan Sing, Amrit Sing, we think that, on the findings of the Judges of the Small Cause Court, we must take it as proved that there was a contract by Narayan Sing, Amrit Sing, to accept the five cases mentioned in the contract of the 18th of December 1868, Ramgopal Ghose and Company warranting them to be fresh goods. In order to determine whether Ramgopal Ghose and Company are entitled to any and what damages for the non-acceptance of these goods by Narayan Sing, Amrit Sing, within 15 days after the 9th of February, the issue should have been tried, whether the goods were fresh goods; and but for the consent of Mr. Woodroffe, the counsel for Ramgopal Ghose and Company, we must have remanded the case for trial of that issue.

6. In answer to the 3rd question, we do not think that anything contained in the written statement put in by Mr. Carapiet precluded Narayan Sing, Amrit Sing, from insisting on their right to have that issue tried.

7. I have now to come to the cross cause of Narayan Sing against Ramgopal Ghose and Company.

8. The 4th question put to us by the Judges of the Small Cause Court is whether, on the facts of the case, they were right in law in determining both or either of the cases against the partners of Messrs. Ramgopal Ghose and Company.

9. Now it will be seen, from what I have already said, that we think that the rupees 1,000 were paid by Narayan Sing, Amrit Sing, as a deposit upon an existing contract; and in consideration of the agreement of Ramgopal Ghose, to give them further time to accept and pay for the goods under that contract. In the events that have happened, there is nothing to show that Narayan Sing, Amrit Sing, are entitled to a refund of any portion of that sum of rupees 1,000. There is nothing to show, for it has not been found or even tried, whether Ramgopal Ghose and Company, on the 21st December 1868, were able and ready and willing to deliver the five cases of grenadines from the Wayfarer in the condition in which they warranted to deliver them, viz., as fresh goods. Narayan Sing, Amrit Sing, have not therefore shown that they were not liable to pay the contract price for these goods; or if they are entitled to any allowance, what is the amount of such allowance; they have not shown that the moneys realized by Ramgopal Ghose and Company, by the sale of the goods, was more than sufficient to indemnify that firm from any loss by reason of the non-fulfillment of their contract to accept and pay for the goods. Therefore, on the finding of fact of the Judges of the Small Cause Court, it seems to me that the suit of Narayan Sing ought to have been dismissed. Messrs. Ramgopal Ghose and Company, through their counsel, Mr. Woodroffe, are satisfied with the dismissal of that suit, and do not ask for a remand in the case of Madhab Chandra Rudar against Narayan Sing, Amrit Sing.

10. The result will be that the decision of the Court of Small Causes dismissing this suit of Madhab Chandra Rudar against Narayan Sing, Amrit Sing, will stand. The decision of the

Court of Small Causes in the cross cause of Narayan Sing, Amrit Sing, and Madhab Chandra Rudar and others, will be reversed, and that suit also will stand dismissed, Ramgopal Ghose and Company, we think, are entitled to the costs of reserving the question in this case, and stating the same and of the argument in this case. We order that it be referred to the Taxing Officer to tax these costs on scale No. 2. Each party will bear their own costs in the Court of Small Causes.

11. I will now advert to a preliminary question which was raised by the Judges of the Court of Small Causes. They say that in their opinion "it was not the intention of the Legislature that, when a case has been heard by a single Judge, and a new trial has been applied for, and the case has been re-heard by two Judges, it should then be open to the parties to require that a reference should be made to the High Court on points on which the two Judges do not differ, and on which a reference might have been asked for at the time when the case was originally heard, or at the time when the new trial was applied for."

12. The Judges say:--"We do not think that it was meant that a party should have two remedies; the remedy by an application for a new trial, and also the remedy by a reference to the High Court. But as there may be doubt on this point, we refer it for the opinion of the High Court, and have delivered a judgment contingently on such opinion."

13. The cause being of an amount exceeding rupees 500, the question turns upon the construction of the 7th section of Act XXVI of 1864.

14. That section provides for three cases: firstly, as to any "question of law or equity, or any question as to the admission or rejection of any evidence as to which the Judges of the Court of Small Causes shall entertain any doubts;" secondly, "any question which they shall be requested by either party to the suit to reserve for the opinion of the High Court;" thirdly, "where two Judges sit together and differ in opinion." Now in each of such cases, the reference is imperative. The language is that "the Judges of the said Court of Small Causes shall reserve" such question. There is nothing whatever which confines the obligation of the Judges of the Court of Small Causes to refer cases to those cases in which the questions have been argued before a single Judge. It is quite plain that a question which has been determined by more than two Judges may be referred and must be referred, either if they be requested by the parties to the suit to refer it, or if they entertain any doubts as to their decision. Whether they are requested or not to make any reference, they are bound to state a question where only two Judges sit together if they differ in opinion. It would be exceedingly inconvenient if the rule were as suggested by the Judges of the Small Cause Court. It often happens that, on the first hearing before a single Judge, questions of fact are chiefly debated, and the question of law on which probably the liability of the unsuccessful party is to turn, is scarcely raised until the argument on a motion for a new trial after the facts have been ascertained.

(1) It afterwards appeared that there had been some error in the service of the notice of hearing on Amrit Sing, Narayan Sing; and, on the application of Mr. Branson, a rule nisi was granted calling on R.G. Ghose and Co. to show cause why the case should not be re-heard. The rule was made absolute on the 24th March; and on the 31st March, the case was accordingly re-heard, Mr. Evans appearing for R.G. Ghose and Co., and Mr. Branson appearing for Amrit Sing, Narayan Sing; but the Court (NORMAN and MARKBY, JJ.,) saw no reason to change their opinions.