
(1919) 06 BOM CK 0017

Bombay High Court

Case No: O.C.J. Suit No. 101 of 1919

Rustamji A. Dubash

APPELLANT

Vs

Haji Hussein Lari

RESPONDENT

Date of Decision: June 14, 1919

Citation: (1920) 22 BOMLR 1165

Hon'ble Judges: Norman Macleod, J

Bench: Single Bench

Judgement

Norman Macleod, Kt., C.J.

On the 6th of September 1918, a contract was entered into between the plaintiff and the defendants for the purchase by the defendants of ten bales of Liepmanns' White Shirtings No. 1500, each bale containing 50 pieces at Rs. 35 per piece c. i. f. Bombay, shipment September 1918. Terms and conditions as per plaintiff's purchase from Messrs. Girdharidas Radhakisandas on further terms and conditions of Messrs. Volkart Bros", contract, freight in excess of 78 Sh. per ton and war risk insurance over 5 1/2 per cent, to be borne by the purchaser.

2. It appears that, on the 21st of August, the plaintiffs had bought 30 bales of these Shirtings from Girdharidas and on the 22nd of August they bought 25 bales of similar Shirtings from Messrs. E. D. Sassoon & Co.

3. On the 13th of November, plaintiff received from E. D Sassoon & Co. an invoice for ten bales of the contract goods. Notice was given to the plaintiff that the steamer had already arrived and that the goods were lying at the docks at the plaintiff's risk.

4. The goods were shipped on or about the 17th of September, as is shown by the bill of lading, in favour of Messrs. Volkart Bros, and the steamer arrived about the 18th of October. But as was often the case during the war, the shipping documents did not arrive till a later date, sometime in the beginning of November.

5. On the 25th of November, the plaintiff sent an invoice for ten bales to the defendant and immediately after that, they received a notice from the defendant which is dated 23rd of November : "We purchased from you Liepmanns" White Shirtings No. 1500, we hereby cancel the same as they were for September shipment and even now November is ending".

6. The defendants contend that they were entitled to cancel the contract but there was no justification for their doing so. The obvious reason which made them cancel was the fall in the market. It was their duty to demand delivery and it was only on a refusal by the plaintiffs to fulfil their part of the contract, that the defendants would be entitled to cancel it. But it has been suggested, and has now been ascertained as a fact, that the plaintiff was not in a position to deliver, in performance of his contract, goods which he had purchased from Girdharidas. He, in his turn, had a dispute with Girdharidas in October, which no doubt was due to the fact that he had only succeeded in selling ten bales out of the 55 which he had purchased in August.

7. That, however, would not help the defendant, as *Braithwaite v. Foreign Hardwood Co.* [1905] 2 K.B. 543 is an authority for the proposition, that if a buyer without any justification cancels the contract, he disables himself from setting up any defence which he might otherwise have done to an action for damages. In that case, the contract was for the sale of rosewood, for shipment in 1903, to be delivered at Hull in instalments during that year, cash payable against bills of lading. When the first consignment of rosewood was on the sea, the buyers repudiated the contract and refused to accept any rosewood. Afterwards it came to their knowledge that a portion of the rosewood in the first consignment did not answer to the description of the quality of the rosewood in the contract. It was held that as the original repudiation by the buyers was wrongful, the buyers had waived the performance of conditions precedent on the part of the sellers who were entitled to damages based upon the difference between the contract price of the rosewood and the price at which it had been sold against the contract.

8. I do not think, therefore, it is open to the defendants to take the point that the plaintiffs were not in a position to tender documents for ten bales of goods which they had bought from Girdharidas. I do not think, in any event, the point would be a good one as I do not think the plaintiff guaranteed or warranted in his contract that he would deliver bales which he had purchased from Girdharidas and none other, so that the defendants would be entitled to refuse taking delivery of exactly similar bales which, as a matter of fact, had been purchased by the plaintiff from another party. All that the contract of 6th September said was that the contract bales were sold to the defendants on the same terms as he had bought bales from Girdharidas, taken in conjunction with the conditions of the contract between Girdharidas and Messrs. Volkart Bros.

9. The plaintiffs have sued for the price of the goods or in the alternative for damages. If the property in the goods had passed to the defendants then the plaintiffs could sue for the price. But although as regards the c. i. F contract between the buyer and the person

importing the goods the property would pass when the goods were shipped, I do not think the property would again pass when the first purchaser sold to another party and again whenever a subsequent sale took place, unless the bills of lading were endorsed to each successive purchaser.

10. I think, therefore, the plaintiffs are entitled to damages and it is admitted that the market rate for these goods c. l. f. at the date of the breach was Rs. 22. The plaintiffs are, therefore, entitled to a decree for Rs. 6,683 with costs and interest on judgment at 6 per cent.