

## **Sunder Lal And Anr. vs Jai Narain And Ors. on 4 August, 1955**

**Equivalent citations: AIR1955ALL669, AIR 1955 ALLAHABAD 669**

### **JUDGMENT**

Randhir Singh, J.

1. This is an appeal from a judgment of the Civil Judge of Malihabad at Lucknow ordering the return of a plaint for presentation to the proper Court.

2. A suit was instituted by the plaintiffs-appellants against the respondents on the allegations that the defendants were asked by the plaintiffs to purchase some cloves for the plaintiffs and in this connection a sum of Rs. 3,000/- was sent to them from Lucknow but the cloves were not delivered to the plaintiffs. The plaintiffs, therefore, claimed Rs. 3,000/- which had been paid to the defendants as also a sum of Rs. 2675/- on account of damages.

3. The defendants contested the suit and the first contention raised by them was that no part of the cause of the action arose within the limits of the jurisdiction of the lower Court and as such the suit was not within the cognizance of the Civil Judge at Lucknow.

4. A preliminary issue on the plea of jurisdiction was then framed by the learned Civil Judge and the parties were allowed to adduce evidence. After retarding the evidence the Court came to the conclusion that it had no jurisdiction to try the Suit. It, therefore, ordered the return of the plaint for presentation to the proper Court. The plaintiffs have now come up in appeal.

5. It was not disputed that the plaintiffs resided at Lucknow and the defendants were carrying on business of commission agents at Basti. The plaintiffs directed the defendants by means of a telegram sent on 9-2-1945, to purchase 35 maunds of cloves at a certain rate. The cloves were presumably purchased by the defendants and they asked the plaintiffs to pay the price. The plaintiffs remitted a sum of Rs. 3,000/- to the defendants.

According to the defendants' allegations the plaintiffs originally wanted the cloves to be sent to Gorakhpur for sale on behalf of the plaintiffs but subsequently altered their directions and asked the defendants to sell them at Basti which the defendants did. There was a loss in this transaction and the defendants contended that some money was due from the plaintiffs on this account.

6. Sunder Lal plaintiff and Jai Narain defendant entered into the witness-box. The lower Court on hearing their evidence came to the conclusion that the goods were purchased at Basti at the plaintiffs' direction sent by the telegram and that the goods were to be sold at any other place where the plaintiffs wanted them to be sold.

In view of these circumstances evidently no part of the cause of action arose within the limits of the Lucknow Court and the plaintiffs were not entitled to maintain the suit in the Lucknow Court on this basis. It was, however, further contended on behalf of the plaintiffs that the defendants, even though they had purchased the goods at Basti, were bound to account for them to the plaintiffs at Lucknow and that the general 'maxim' that the debtor must find his creditor applied to the present case also.

It appears that on the date of issues the parties were examined under Order 10, Civil P. C. The learned Counsel for the plaintiffs there relied upon two 'facts only in order to bring the suit within the jurisdiction, of the Lucknow Court. Firstly, it was stated that the goods were to be supplied by the defendants at Lucknow and as they were not so supplied, the 'plaintiffs could, maintain a suit for damages in the Court at Lucknow.

Secondly it was stated that 'the sum of Rs. 3,000/- was paid as earnest money and a claim for the return of this earnest money could be maintained at Lucknow. None of these grounds was held to be tenable in the Court below, as it was found that there was no contract between the parties for the supply of goods at Lucknow, nor was there any payment of any earnest money.

It has, however, been argued in this court that even though the plaintiffs failed to establish the contract for the supply of goods at Lucknow, they could rely on the general 'maxim' mentioned above, namely that a "debtor must find his creditor". Reliance has been placed on some reported cases: -- 'Sri Narain v. Jagannath', ATR 1917 All 128 (A); --'Gokul Das v. Nathu', AIR 1926 All 477 (B); and --'Soniram Jeetmull v. R.D. Tata and Co.', AIR 1927 PC 156 (C).

In almost all these reported cases there was a relationship of debtor and creditor and if there was no express contract to show that the payment was to be made to the creditor at a particular place, it was held that the maxim which is applicable to the Courts in India applied.

7. In -- Tika Ram v. Daulat Ram', AIR 1924 All 530 (D), a similar question arose for decision. In that case also there was a case of 'pucca arhatia' against whom a suit was instituted by the principal for rendition of accounts. In this case it was held by a Division Bench of this Court that a suit for accounting against a pucca arhatia' or 'del credere' agent could be maintained only at the place of 'pucca arhatia' and not at the place where the principal resided.

The learned Counsel for the appellants has" tried to draw a distinction between the facts of this reported case and, the facts of the present case and it has been argued that in the present case the plaintiffs had a right to claim a repayment of the price paid by them as also damages incurred by the plaintiffs in this transaction. on account of default of the defendants.

To our mind, it appears that the principle that a debtor should seek his creditor would apply only where the place of payment cannot be inferred or is not to be found in the contract but payment under the contract is contemplated. In the present case no payment to the plaintiffs was contemplated under the contract. The plaintiffs were in fact to pay the price and the defendants were to purchase goods for them.

The goods, had been purchased and the only complaint of the plaintiffs was that they had not been delivered to them and they had, therefore, suffered damages on that account. The relationship between the plaintiffs and the defendants could not, therefore, be said to be that of a creditor and a debtor and the maxim relied upon by the learned Counsel for the appellants would clearly not be applicable.

The suit was in substance a suit for accounting inasmuch as the plaintiffs wanted the defendants to account for the goods which they had purchased for the plaintiffs and which had not been disposed of according to the plaintiffs' direction. The suit could not, therefore, be maintained in the Court at Lucknow and the view takem, by the lower Court appears to us to be correct.

8. No other point arose for determination. As a result the appeal fails and is dismissed with costs.