

Bishwanath And Ors. vs Jagannath Prasad And Ors. on 18 April, 1955

Equivalent citations: AIR1956ALL11, AIR 1956 ALLAHABAD 11

JUDGMENT

Agarwala, J.

1. This is a defendants' appeal arising out of a suit for recovery of money. The plaintiffs-respondents deal in grain and cloth. They used to purchase rice from the defendants-appellants firm. They alleged that there were transactions between the plaintiffs and the defendants firm, as a result of which the plaintiffs said that Rs. 880/ 18/6 was the balance due to them and filed a suit for the recovery of the same,

2. The defendants contested the suit and according to them nothing was due to the plaintiff. On one occasion certain quantity of rice was sent by the defendants to the plaintiffs and a bill was made out. When the plaintiffs received the rice, they found that it was of an inferior quality than was ordered for. They brought this to the notice of the defendants firm. One Sarju Prasad, a partner of the defendants firm, was the person dealing with these matters.

He was satisfied that the rice was of inferior quality and therefore he reduced the amount of the bill by a sum of Rs. 628/8/-. The defendants challenged this reduction by Sarju Prasad and said that they were not bound by the act of Sarju Prasad. The defendants' reliance was upon Section 19(2)(c), Partnership Act. Sub-section (1) of Section 19 of the Act lays down:

"Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority".

Then Sub-section (2) lays down:

"In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-- (a)

(b)

(c) Compromise or relinquish any claim on portion of a claim by a firm".

According to the defendants-appellants this reduction by Sarju Prasad, one of their partners, in the amount of the bill was a compromise or a relinquishment of a claim or a portion of a claim by the firm, which Sarju Prasad had no authority to do.

3. The court below held that this was not a case of compromise or relinquishment of a claim or a portion of a claim, but that it was a case of correction of a bona fide mistake in the bill or Bijak submitted to the plaintiffs on behalf of the defendants.

4. I am in entire agreement with the view taken by the learned Judge of the Court below. The Court below has found that the rice supplied was of an inferior quality and that the amount of Rs. 628/8/- was properly reduced by Sri Sarju Prasad from the bill. In the ordinary course of business where a firm deals in purchase or sale of goods according to orders of its customers and the goods supplied happen to be of an inferior quality or short in weight and the mistake is pointed out by the customer, the partner who is dealing with the matter must of necessity have the power of correcting the mistake, otherwise the day to day business of the firm cannot be carried on.

The case contemplated in Clause (c) of Section 19 (2) is a case of a claim made by the firm which was due and realizable by the firm from the debtor. Where a certain amount is validly due to the firm, one partner has no implied authority, unless there be a custom or usage to the contrary, to relinquish a portion of that claim by compromise or otherwise. The claim here referred to is a claim which is lawfully due and not an obvious error in a bill or other document made out on behalf of the firm by its servants or partners.

Learned counsel has relied upon a ruling in -- 'Krishnaji Bharnalji and Co. v. Abduirazak Ahmadbhoy', AIR 1942 Bom 22 (A). That was a case of an assignment of a decree in favour of a firm by one of its partners for an amount less than the decretal amount. It was held that the partner had no authority to do this in the absence of any express authority or trade usage. That case in fact lends support to what I have stated above. It is a claim of the nature referred to in that case that cannot be relinquished or compromised and not the kind of correction or adjustment that was made by Sarju Prasad in the present case. Further more upon the finding of the court below that the rice supplied was indeed of bad quality, the amount was bound to be reduced.

5. There is no force in this appeal. It is dismissed under Order 41, Rule 11, Civil P. C.