

# **Mohinder Singh Jaggi vs Data Ram Jagannath on 7 September, 1971**

**Equivalent citations: AIR1972SC1048, (1972)4SCC495, 1972(4)UJ45(SC), AIR 1972 SUPREME COURT 1048, 1972 4 SCC 495 1972 2 SCJ 491, 1972 2 SCJ 491**

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**Bench: S.M. Sikri, A.N. Ray, D.G. Palekar**

## **JUDGMENT**

S.M. Sikri, C.J.

1. This appeal by special leave arises out of a suit filed by the respondent, Data Ram Jagannath, hereinafter referred to as the plaintiff, against the appellant, Mohinder Singh Jaggi, hereinafter referred to as the defendant, for realisation of Rs. 9385.09 towards principal and Rs. 1338, 54 towards interest at 12% per annum, on khata account. Before the Trial court the defendant raised a counter claim in his additional written statement claiming accounts from the plaintiff in respect of the goods which came into their possession in pursuance of an agreement.

2. The Trial Court decreed the plaintiff's suit against the defendant but also accepted the cross-claim of the defendant for accounts and passed a preliminary decree for accounts to be rendered by the plaintiff for the goods lying in his custody. The Trial Court observed that the details of the decree would be worked out in the final decree.

3. The plaintiff appealed against the preliminary decree for accounts passed in favour of the defendant. The High Court allowed the appeal and set aside that part of the judgment and decree of Trial Court which directed the plaintiff to render accounts, and dismissed the cross-claim made by the defendant in his additional written statement. The defendant having obtained special leave, the appeal is now before us for disposal.

4. The suit was filed by the plaintiff; Dataram Jagannath, a registered partnership firm, and Datarm Jagannath, HUF., but they will be referred to compendiously as the plaintiff. The plaint Was filed on July 3, 1961, alleging that the plaintiff agreed to supply funds to the defendant as and when necessary to carry on his business. The plaintiff from time to time advanced loans to the defendant either in cash or by cheque or by retiring hundis from the Bank or by supplying goods to him on credit. After giving up certain amount stated to have become time-barred and also giving up some interest the balance was claimed.

5. In the written statement dated April 16, 1962, the defendant pleaded in para S "that without going to the account of both the parties and without settlement of account the plaintiffs cannot sue for any definite amount, hence, the plaintiffs without bringing a suit for account and without settlement of account cannot bring this suit in the present form for a definite sum of money." The defendant further denied that there was any agreement for advancing loans as such, as alleged by the plaintiff. It was further alleged in para 18 that "the true facts of the case are that the defendant who carries on business of Motor Accessories is to place orders to outside stations and receives them through Railway and through Banks. That at times of necessities in order to realise the said goods from Banks the defendant on various occasions approached Sri Baij Nath who released the R/R of the defendant on payment and against the said payment the plaintiff used to retain the goods. Subsequently the defendant either released the goods or any part thereof on payment within a time required by the plaintiff No. or the plaintiff No, sold the goods so retained by him and realised his dues." It was further alleged that the defendant was not liable to pay the sum of Rs. 26,654.44; rather the plaintiff was liable to pay the said amount with interest to the defendant. It was also alleged that certain payments had not been accounted for.

6. It appears from the judgment of the Trial Court that the defendant asserted about the presence of a written agreement, vide his adjournment petition dated October 27, 1961, and the plaintiff denied about the presence of such a written agreement vide his objection dated November 4, 1961. When the plaintiff prayed for the amendment of the plaint, on April 1, 1963, so as to include the statement of accounts as part of the plaint, the defendant filed the additional written statement. In this statement it was alleged in para 1 that "there was an agreement on stamp worth Rs. 1-2-0 bearing stamp Nos. 1514 and 1515 purchased by defendant on 9-8-57 under which it was arranged as follows:

That the plaintiffs agreed that whenever required by defendant the plaintiffs would release from the Bank the R/R on full payment of the goods, sent from outside stations, under orders placed by the defendant and the plaintiff would retain the goods and the vouchers accounts etc. and would release the goods only on full payment made by the defendant. The said stamped agreement was kept with the plaintiff". He has not produced the same in court.

7. It was further alleged that according to the said contract, the plaintiff, on release of the said R/R, used to retain the goods with him and used to release the goods only on full payments made by the defendant. It was also alleged that the plaintiff had not delivered the goods released through the Bank to the tune of about Rs. 26, 654.44.

8. In para 7 of the additional written statement it was alleged that "the goods were being kept in the godown hired by the defendant from Sri B.B. Neogi under lock and key by the plaintiffs under the full control and charge of the plaintiffs and whenever the actual price of the goods were being paid by the defendant, the plaintiffs used to release that quantity of goods according to arrangement entered into between them; that when the defendant wanted release of the goods on payment, the plaintiffs did not deliver them and there was difference between the parties whereupon the plaintiffs have surreptitiously removed all the goods to some other godown without knowledge and consent of

the defendant and has brought this false suit for illegal gain."

In para 9 it was stated as follows:

That as the plaintiffs are bound to explain and render account to the defendant for all goods released by them and hence for the purpose of the defendant's counter claim the defendant tentatively values his claim at Rs. 100/-and pays court-fee of Rs. 10.50 np. and after the accounts are rendered by the plaintiffs or failing that Commissioner settles account the defendant shall pay balance court-fee on the same.

9. The plaintiff, in his reply, denied that there was any agreement. He further alleged that the claim of the defendant, if any, was barred by limitation. It was denied that the plaintiff, on release of the railway receipt, used to retain the goods with him and released the goods only on full payment made by the defendant. It was stated that the plaintiff advanced loans to the defendant to retire hundis from the Bank and had nothing to do with the goods. It was denied that the goods were being taken and kept in the godown hired by the defendant from Sri B.B. Neogi.

10. The trial court framed first a number of issues, including :

(3) Is there any cause of action to bring the suit against the defendant ? and (4) Is the suit maintainable without filing a suit for account?

11. The Trial Court later framed five additional issues as follows:

(7) Was there an agreement between the parties regarding financing by the plaintiffs as alleged?

(8) Have the plaintiffs released all the goods to the defendant?

(9) Have all the payments made by the defendant credited by the plaintiff?

(10) Are the plaintiffs liable to compensate the defendant for withholding goods, if so, to what extent?

(11) Are the plaintiffs liable to render account to the defendant?

12. It may be noted that no point regarding limitation was included in the additional issues as arising out of the counter-claim.

13. The trial court dealt with issues Nos. 3, 4, 7 and 11 together, and held that the plaintiff's suit was maintainable, it was not barred by limitation, and the plaintiff's claim having been proved he was entitled to the decree. As stated above, the Trial Court also allowed the plaintiff's cross-claim for accounts.

14. In para 10 of its judgment, the Trial Court examined the question whether the plaintiff advanced money as pledge. After noting the pleadings, it found that "as per Ext. G it appears that on 9-8-57 the defendant purchased two stamps worth Rs. 2.4.0 and in token of such purchase from the stamp vendor he has affixed his signature and thumb marks". It held that the allegation in the written statement that only Rs. 1-2-0 stamps were bought was perhaps due to bad memory, as the numbers of the stamps had been given in the additions written statement. The Trial Court was inclined to accept the version of the defendant. It felt that this circumstances had a bearing on the defendant's contention that the plaintiff advanced money against the pledge of goods by having an agreement.

15. The trial court next found that P.W. 1, Baijnath Hala, who is a partner of the plaintiff firm, was acquainted with the defendant and the fact that the defendant had a cash credit account with the Punjab National Bank. It further found that the defendant was a West Punjab refugee who had no properties in the State of Orissa and it was unlikely that the plaintiff would advance money in huge amounts from time to time without any written acknowledgment or document and without securing the pledge of the goods. The Trial Court further found that the defendant was borrowing money previously from the Punjab National Bank by pledge of goods, and the bank served a notice on him on July 11, 1957, to deposit Rs. 14,000/- within 18 days failing which the motor parts pledged with it would be sold. It was then that the defendant approached the plaintiff to finance him in the same manner as he was carrying on with the Bank. The Court further found that the plaintiff loaned to the defendant Rs. 10,000/- and this amount was utilised by the defendant to pay off the dues of the Bank.

16. The defendant led some oral evidence and the trial court relied on that evidence. Kudrat Singh, D.W. 1, who runs business in motor parts at Jaipur Road, stated that he used to purchase goods from the defendant, both before the defendant stopped dealing with the Bank and after, and on both occasions he got the goods from the godown. After the defendant had stopped dealings with the Bank, the witness purchased goods three or four times and he used to go to the office of Dataram Jagannath at Nayasarak and his men were opening the godown. The Trial Court held that there was nothing to disbelieve D.W. 1 as he neither appeared to be interested nor inimical.

17. The evidence of D.W. 3, who is a doctor, is important, and there is no reason, as held by the Trial Court, that his evidence should not be believed. He was posted at Khurda where he was an Assistant Surgeon. He owned a Vauxhall car and one day in 1959 the main plate of the spring of the car broke on the way. He searched for the part and came to know that this part was available with the defendant. It was then about 8 or 9 p.m. The defendant told him that the part was not in his shop but was in the godown whose key was with Dataram Jagannath. On his request both the defendant and the witness went to the plaintiff's firm at Nayasarak but he could not get the part till the next morning and therefore he was forced to halt for the night. In the morning the witness and the defendant went again to the plaintiff's shop and the gumasta of the plaintiff came with the key and opened the godown about 7 or 8 shops off defendant's shop, may be 25 or 30 yards off. The witness was cross-examined in great detail but nothing was brought out to discredit his testimony.

18. Another circumstance which the learned Trial Judge relied on was the curious fact that on several dates the plaintiff received money from the defendant not in a lumpsum but by several

installments. For example, on December 16, 1957, four amounts were paid, i.e. Rs. 141/-, Rs. 149/-, Rs. 108/-, and Rs. 50/-, and on February 17, 1958, three cheques were given, for, i.e. Rs. 163/-, Rs. 196/-, and Rs. 183/-. On February 19, 1958 two cheques were given and there are so many other dates on which more than one cheque was given. Further, the Trial Court was impressed by the fact that the defendant paid even naya paise along with rupees. For example, on December 23, 1957 a cheque for Rs. 183.41 was given, on January 6, 1958, one cheque for Rs. 38.50, on March 3, 1958, one cheque for Rs. 189.75, on March 24, 1958, one cheque for Rs. 156.18, and on March 25, 1958, one cheque for Rs. 276.28 were given and so forth. The Trial Court observed that "the advancement of money on several occasions by the plaintiffs disclose that they were making payments mostly for retiring the hundies of the defendant which also included several naya paisa on several occasions. Ordinarily if the plaintiffs' transactions would have been mere advancement of loans by cash the payments could not have been by fractions of rupee even and Ex. 1 and F series (accounts) mostly disclose Act that the payments were for releasing the goods of the defendant. Like-wise it is not under-stood as to why the defendant would have repaid money with fractions of rupee as well as repayments of several items on even a single date, unless it was for price of goods paid."

19. The defendant's case next was that after he issued that lawyer's notice, Ext. 14, dated April 25, 1961, and the plaintiff's reply dated May 9, 1961, the plaintiff in his absence removed goods worth Rs. 26,654.44. The trial Court, however, discounted this fact because the defendant was bound to maintain a register of goods kept in the godown, vide Clause 3(a) of Ext. A, which was the agreement with the Bank, and he had not maintained any such register nor produced it. Further, the defendant neither approached the police regarding the removal of the goods from the godown nor took any civil or criminal action. The Trial Court, however, felt that the cross-claim of the defendant should not be rejected as it was for accounts only. The trial Court also did not rely on the evidence of D.W. 2, an employee of the defendant, regarding the removal of the goods by the plaintiff in the absence of the defendant, as the evidence could not be corroborated. The Trial Court gave a curious reasoning that because the establishment register was not produced, it could not be held that D.W. 2 was in the employment of the defendant at the relevant time.

20. It is not necessary for us to decide whether the goods were removed from this particular godown by the plaintiff because nothing turns on it as far as the question of passing a preliminary decree for accounts is concerned. In this connection we also need not go into the question that out of the three locks which were originally on the godown two were removed and one broken lock left there for D.W. 2 to pick up and give it to the defendant. But there is some evidence showing that locks of a similar nature were purchased by the plaintiff, though it is not necessary for us to go into this question.

21. It seems to us that on the facts found by the Trial Court and in our opinion correctly so found, the Trial Court was quite right in coming to the conclusion that the relationship between the plaintiff and the defendant was not merely of a lender and a debtor but also there was an arrangement similar to a cash credit agreement with the Bank.

22. With respect, we are unable to agree with the High Court that these circumstances did not lead to the conclusion that there was such an agreement. They have examined each individual item and

not considered the circumstances as a whole. It seems to us that all those facts are consistent only with the defendant's case.

23. The learned Counsel for the plaintiff raised a number of other points before us. He first said that the nature of the claim of the defendant being quite different from the claim of the plaintiff's, courts below erred in accepting the written statement as a plaint in a cross suit. It seems to us that the additional written statement was rightly treated as a cross claim by the courts below. It arose out of the transactions between the plaintiff and the defendant.

24. The counsel next contended that the requisites of the plaint, as provided for in the CPC, not having been complied with in the written statement, the same is fit to be rejected as a plaint. We have set out the main allegations in both the written statement and the additional written statement, and we are unable to see that these allegations do not show any cause of action or do not comply with the provisions of a plaint. It is true that the additional written statement is not artistically drafted, but in India it is difficult to apply strict rules of interpretation to pleadings in the lower courts.

25. The learned Counsel next contended that the claim in the cross suit was barred by limitation. According to him, the applicable article were Articles 48 or 48A of the Indian Limitation Act, 1908. Article 48 and 48A read:

48. For specific Three When the person moveable property years having the right lost or acquired to possession of by theft, or dishonest property honest misappropriation learns in whose possession or for compensation it is. for wrongly taking or detaining the same. 48A. To recover Three When the sale moveable property years becomes known conveyed or bequeathed the plaintiff in trust, deposited or pawned, from the trustee, depositary or pawnee for a valuable consideration.

These articles obviously have no application. It seems to us that Article 120 applies The cross-claim was for accounts, which is not covered by any other article in the Limitation Act.

26. The learned Counsel next contended that the defendant having alleged about the removal of goods on a particular date and the evaluation of the goods having been made by him at Rs. 26654.44, there was no question of rendition of accounts, and as both the courts below had concurrently found that there was no removal of goods the claim of the defendant must fail. We have already mentioned that it is not necessary to decide this point because it is irrelevant whether the goods were in godown A or godown B, it is for the plaintiff to account for the goods.

27. Lastly, the counsel urged that the defendant having based his claim on the written agreement and the agreement not having been proved, his claim ought to have been rejected We are unable to see any force in this contention. We hold that there was agreement arrived at between the parties, the agreement seems to have been suppressed by the plaintiff but the essential terms or the agreement seems to be quite clear from the course of dealings between the parties.

28. In the result we set aside the judgment and decree of the High Court and restore that of the Trial Court. The appellant defendant will have his costs here and in the High Court.

29. We may mention that in pursuance of the preliminary decree passed by the Trial Court, certain proceedings were taken but the Trial Court was directed not to sign the final decree by order of the High Court. That order is now set aside and the Trial Court will now proceed from the stage where it left the proceedings and pass a final decree in accordance with law.