Union Of India (Uoi) vs Watkins Mayor And Co. on 10 March, 1965

Equivalent citations: AIR1966SC275, AIR 1966 SUPREME COURT 275

Bench: P.B. Gajendragadkar, M. Hidayatullah, V. Ramaswami

JUDGMENT

Ramaswami, J.

1. Both these appeals are brought from the judgment and decree of the High Court of Judicature of the State of Punjab, dated March 31, 1960 in Regular First Appeal No. 121 of 1953 by certificates granted by the High Court under Article 133(1)(a) of the Constitution.

2. The plaintiff brought the suit claim-tag a sum of Rs. 1,07,700 and odd from the Union of India as compensation for storage of over 600 tons of iron sheets for the period from July, 1944 to May, 1949. The plaintiff alleged that on February 11, 1944 the Union of India placed an indent for the supply of 1,20,000 drums. The raw materials comprising of 600 tons of P.C.R.C.A. iron sheets were to be supplied by the defendant to the plaintiff and the agreement was that the plaintiff was to be paid fifteen annas as the cost of fabrication for each drum. In pursuance of the contract the defendant supplied 600 tons of iron sheets to the plaintiff in July, 1944. The sheets were unloaded and stocked on the premises of the plaintiff's factory at Jullundur. But, on August 21, 1944, the defendant cancelled the contract by its letter--Ex. P-18, dated August 21, 1944 and the plaintiff was informed that further communication would follow in regard to the disposal of the materials supplied to the plaintiff under the contract. The plaintiff served notices, dated July 27, 1945--Ex. D-1 and April 28, 1947--Ex. D-2, asking the defendant to remove the goods. The goods were removed in small quantities in accordance with the release orders issued and the last lot weighing 282 tons was removed on May 30, 1949. After some correspondence between the plaintiff and the Union of India, the plaintiff filed the present suit on July 29, 1952 on the allegation that the plaintiff acted as bailees of the goods of the defendant from July, 1944 to May, 1949 and was entitled to the sum of Rupees 1,07,700-5-0 as follows:

Rs.

as.p.

(a) Godown rent from July, 1944 to end of May, 1949 @ Rs. 4 per ton per month 93,231

(h) Chowkidar's salary, Watch and Ward 7,004

(c) Terminal Tax Paid

(d) Cartage from Railway Station to Godown of the Factory 2,105

(e) Unloading charges

(f) Cooliage to store 600 tons in godown

(g) Interest on the sums mentioned in Clauses (c) to (f) at 6% 2,974 The suit was resisted by the defendant on the ground that there was no completed contract of bailment between the parties and that, in any event, the claim of the plaintiff regarding the charge for storage was excessive. It was also pleaded that the suit was barred by limitation. By its judgment, dated May 4, 1953 the trial Court granted the plaintiff a decree for a sum of Rs. 9,440 against the Union of India. The plaintiff took the matter in appeal before the Punjab High Court in Regular First Appeal No. 121 of 1953. By its judgment, dated March 31, 1960, the High Court partly allowed the appeal of the plaintiff and granted him a decree for Rs. 27,525-5-0 against the defendant as detailed below :

Rs.

as.p.

(a) Godown rent @ Rs. 300 per month for a period of 59 months from July, 1944 to the end of May, 1949 17,700

(b) Chowkidar's salary 2,360

(c) Terminal Tax

(d) Cartage 2,105

(e) Unloading charges

(f) Cooliage

(g) Interest @ 6% per annum on items (e) to (f) as Rupees 2,974-2-0 claimed in the plaint 2,974 27,525 Aggrieved by the Judgment and decree of the High Court, dated March 31, 1960, both the plaintiff and the defendant have presented appeals to this Court.

3. In Civil Appeal No. 43 of 1963 it is contended on behalf of the appellant that the storage charges granted at Rs. 300 p.m. by the High Court were not justified upon the evidence in the case. It was submitted that the report of Mr. J.S. Mongia, dated August 5, 1947 was taken by the High Court as

the basis of its calculation and the fair rent payable to the plaintiff ought not to have exceeded the rate of Rs. 200 p.m. mentioned in Mr. Mongia's report. We do not consider there is any substance in this submission. Mr. J.S. Mongia was deputed by the defendant to conduct an enquiry and make a report with regard to storage charges claimed by the plaintiff. It appears from his report--Ex. D-19, dated August 5, 1947 that Mr. Mongia calculated that the storage of iron sheets took about 1.485 cubic feet of space. It is true that Mr. Mongia considered that the fair rent payable was Rs. 200 p.m. but the High Court increased the rate in view of the fact that at the time of this inspection some of the iron sheets had been already removed. There is evidence that at the time of Mr. Mongia's inspection the weight of iron sheets stored was 498 tons, though the quantity of iron sheets originally stored was 600 tons. The High Court has also taken into consideration the additional services rendered by the plaintiff in looking after the iron sheets during the period of storage. We do not, therefore, find it possible to accept the contention of the appellant that the High Court was not justified in fixing the rent at Rs. 300 p.m. as godown charges. As regards the floor space, the High Court has remarked that the calculation of the trial Judge for the surface area was not correct. It appears that the trial Court accepted the evidence of Man Mohan Lal--D. W. 7--that the floor space occupied by 600 tons of iron sheets could not be more than 2,600 sq. ft., but the High Court pointed out that this calculation was fallacious, because a space of 1 foot was allowed between the bundles of iron sheets and this was hardly sufficient for the operation of "overturning" the bundles of sheets in order to prevent rust. Taking all the factors into consideration including the report of Mr. Mongia, the High Court reached the conclusion that the rent of Rs. 300 p.m. was a reasonable charge. We see no reason for taking a different view from the High Court on this aspect of the case.

4. It was next argued on behalf of the appellant that the suit was governed by Article 61 of the Limitation Act and the claim of the plaintiff in regard to items (c) to (f) was barred by time. We do not accept this argument as correct. The transaction of bailment between the parties was a single and indivisible transaction and the claim of compensation made by the plaintiff cannot be split up into different items for applying the bar of limitation. We are also of the opinion that the provisions of Article 61 of the Limitation Act do not apply to the present case. The High Court was right in taking the view that the suit was governed by Article 120 of the Limitation Act and that the plaintiff was not barred under that Article.

5. It was finally contended on behalf of the appellant that, in any event, the plaintiff was not entitled to a decree for interest to the extent of Rs. 2,974-2-0, as claimed in the plaint. In our opinion, the argument of learned Counsel for the appellant on this point is well founded and must be accepted as correct. It is well established that interest may be awarded for the period prior to the date of the institution of the suit if there is an agreement for the payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law entitling the plaintiff to recover interest, as for instance, under Section 80 of the Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent. per annum, when no rate of interest is specified in the promissory note or bill of exchange. There is in the present case neither usage nor any contract, express or implied, to justify the award of interest. Nor is interest payable by virtue of any provision of the law governing the case. Under the Interest Act, 1839, the Court may allow interest to the plaintiff if the amount claimed is a sum certain which is payable at a certain time by virtue of a written instrument. But it is conceded that the amount claimed in this

case is not a sum certain but compensation for unliquidated amount. On behalf of the respondent it was submitted by Mr. Aggarwala that interest may be awarded under the Interest Act which contains a provision that "interest shall be payable in all cases in which it is now payable by law". But this provision only applies to cases in which the Court of Equity exercises jurisdiction to allow interest. The legal position has been explained by the Judicial Committee in Bengal Nagpur Rly. Co. Ltd. v. Ruttanji Ramji, as follows:

> "As observed by Lord Tomlin in Maine and New Brunswick Electrical Power Co. v. Hart, 'In order to invoke a rule of equity it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the non-performance of a contract of which equity can give specific performance.'"

The decision of the Judicial Committee in (sic), was relied upon by this Court in Thawardas Pherumal v. Union of India , in rejecting a claim for interest, In that case, a contractor entered into a contract with the Dominion of India for the supply of bricks. A clause in the contract required all disputes arising out of or relating to the contract to be referred to arbitration. The dispute having arisen, the matter was referred to arbitration and the arbitrator gave an award in the contractor's favour, he Union of India which has succeeded to the rights and obligations of the Dominion, contested the award on various grounds one of which was the liability to pay interest on the amount awarded. Bose, J., in delivering the judgment of the Court, observed that the interest awarded to the contractor could not, in law, be awarded. He pointed out that the arbitrator is not a Court within the meaning of the Interest Act, 1839 and, in any event, interest could only be awarded if there was a debt or a sum certain payable at a certain time or otherwise by virtue of some written contract and there must have been a demand in writing stating that interest will be demanded from the date of the demand.

6. The same view has been expressed by this Court in a later case--Union of India v. Rallia Ram, --in which the respondent had claimed from the Dominion of India, compensation in respect of the goods delivered to him under the contract, interest on the amounts raised by him for carrying out the contract and for incidental expenses incurred by him after delivery of the goods. The disputes was referred to arbitration and the award granted to the respondent three sums of money on the following heads: (1) loss suffered by the respondent in respect of goods not returned by him computed on the basis of difference between the price paid and price received by him on sale, (2) incidental charges on account of expenses incurred on advertisement, storage, agency commission, etc., (3) interest on sum refunded to respondent in respect of returned packets. It was held by this Court that the award of interest under the third head could not be sustained as the contract did not provide for payment of interest in respect of amounts paid by the respondent if the contract fell through, Nor could interest be awarded under Section 61 of the Sale of Goods Act or under the Interest Act on grounds of equity. In the absence of any usage or contract express or implied, or of any provision of law to justify the award of interest, the arbitrator cannot award interest by way of damages caused to the respondent for wrongful detention of money. Applying the principle to the present case, it is clear that the plaintiff is not entitled to a decree for interest to the extent of Rs. 2,974-2-0 claimed by him in the plaint and, therefore, the decree granted by the High Court in

favour of the plaintiff should be reduced to this extent.

7. In Civil Appeal No. 44 of 1963 preferred on behalf of the plaintiff the main argument put forward by Mr. C. B. Aggarwala was in regard to the calculation of the storage charges for the iron sheets. It was pointed out that the plaintiff had given notice to the defendant claiming rent at the rate of Rs. 4 per ton per month and there was no protest on behalf of the defendant and, therefore, it must be taken that there was an implied agreement between the parties that rent would be paid at that rate, i.e., at the rate of Rs. 2,400 per month. We do not think there is any warrant for this submission. Merely because the plaintiff had claimed storage charges at the rate of Rs. 4 per ton per month and there was silence on the part of the defendant, it cannot be deemed that there was acquiescence on the part of the defendant and that there was an implied undertaking on its part to pay godown rent at that rate. We have already discussed the question of reasonable compensation to the plaintiff for storage of the iron sheets and for reasons already given, we hold that the finding of the High Court on this issue is correct.

In the result, we hold that the plaintiff is entitled to the decree with regard to items (a) to (f) as mentioned in the judgment of the High Court, i.e.,:

Rs.

as.p.

(a) Godown rent @ Rs. 300 per month for a period of 59 months from July, 1944 to the end of May, 1949 . .

17,700

(b) Chowkidar's salary . .

2,360

(c) Terminal Tax . .

(d) Cartage . .

2,105

(e) Unloading charges . .

(f) Cooliage . .

24,551 and not to interest, i.e., item (g). We accordingly allow Civil Appeal No. 43 of 1963 and modify the judgment and decree of the High Court to the extent indicated above. Civil Appeal 44 of 1963 is dismissed. There will be no order as to costs of both these appeals.