

Calcutta High Court

Maharaj Kumar Dharendra Krishna ... vs Altafur Rahaman on 23 May, 1921

Equivalent citations: 62 Ind Cas 759

Author: L Sanderson

Bench: L Sanderson, Richardson

JUDGMENT Lancelot Sanderson, C.J.

1. This is an appeal from the judgment of the learned District Judge of Tipperah.
2. The decision of the appeal rests upon one Clause in the kubuliyot, the terms of which are set cut in sub-paragraph (b) of paragraphs of the plaint, and also upon the construction of Section 74 of the Indian Contract Act. That sub-paragraph is as follows: "that within 15 days of the following year, the defendant should, on the expiry of each year, submit the original and correct amadani, talabbaki and jama-wasil-baki accounts, the kabuliyats submitted by the tenants, chittas, khatians and ramabandi papers relating to the collections of his dar-ijara mahal, and should he fail to submit the same, he would pay damages at Rs. 3 for each set of papers of each year."
3. The plaintiff claimed a sum of Rs. 837 as damages for the classes of papers not supplied in three years.
4. The learned Subordinate Judge who tried the case found that the defendant had not complied with contract in respect of certain of the papers only, and assessed the compensation at Rs. 60.
5. The learned Judge in the lower Appellate Court upheld the decision of the learned Subordinate Judge and expressed the opinion that no actual damage had been made out, and that the learned Subordinate Judge had correctly made an award of a nominal amount to cover any actual petty loss or any supposititious loss that might have occurred owing to the breach of contract. 6. The only point which the learned Vakil has made in this Court is to this effect: The section which we have to construe is contained in the Indian Contract Act of 1899 and was substituted for the first paragraph of Section 74 of the Contract Act of 1872, and the words "or if the contract contains any other stipulation by way of penalty," and the words "or, as the case may be, the penalty stipulated for," and the explanation were added to the original section. It was held in this Court by a Division Bench in the case of Dilbar Sarkar v. Jysri Surmi 3 C.W.N. 43 that the effect of Section 74 of the Indian Contract Act of 1872, that is to say, before the section was amended, was to do away with the distinction between penalty and liquidated damages and had left it to the Court, in cases where a sum was named to be paid in case of breach of a contract, to award reasonable compensation not exceeding the sum named. It is not disputed that that was a correct decision upon the terms of the section as they then stood. It is now urged by the learned Vakil that by reason of the addition of the words, "or if the contract contains any other stipulation by way of penalty," it is necessary for the Court to see whether a sum named in the contract as the amount to be paid in case of breach (as in this case) amounts to a penalty: and, he farther argued that if it does not amount to a penalty, the party complaining of the breach will be entitled to recover the full sum named in the contract. In urging that argument he laid stress upon the word "other" in the sentence "or if the contract contains any other stipulation by way of penalty." In my judgment that is not the correct

construction to be placed upon this section. The section, as it stood before amendment, as pointed out by the learned Judge in the case, to which I have referred, did away with the distinction between liquidated damages and penalty--as to which question there has been so much discussion in England and in respect of which so many cases have been decided, and it appears to me that the intention of the Legislature was to provide that in all cases where a contract has been broken and in which a sum is named in the contract as the amount to be paid in case of breach, the party complaining of the breach can recover nothing in respect of the breach except reasonable compensation, which is to be assessed by the Court. That being so, in 1899 all that the Legislature intended was to extend that section to other stipulations by way of penalty: that is to say, that the Legislature recognised that it was already provided in the original section that if the contract contained a provision that a sum named in the contract should be paid in respect of a breach thereof, the sum was to be regarded as a penalty which could not be recovered, and that reasonable compensation only could be recovered.

6. The result is that in my judgment, the learned Subordinate Judge was right in holding that inasmuch as in this contract there was a sum named in the contract to be paid in case of breach, the plaintiff who was complaining of the breach was entitled to receive from the defendant reasonable compensation, which the learned Subordinate Judge has assessed at Rs. 60, and it is not suggested in this Court that that was not sufficient compensation for the breach which was proved against the defendant.

7. For these reasons in my judgment the appeal should be dismissed with costs.

Richardson, J.

8. I entirely agree.