

Supreme Court of India

State Of Orissa vs Raghunath Sahu on 15 January, 1969

Equivalent citations: 1969 I UJ 35 SC

Author: Hegde

Bench: Sikri, Bachawat, Hegde

JUDGMENT Hegde, J.

1. This is an appeal by certificate under Article 133(l)(a) of the Constitution. The only question that arises for decision in this appeal is whether the suit as brought is maintainable.

2. The relevant facts are these. The appellant, the State of Orissa appointed the respondent as its agent on August 28, 1953 under Ex. 'A' for purchasing paddy on its behalf. Under Clause 5 of that agreement the respondent was responsible for financing of the transactions made but the Collector may at his discretion grant him such advance or advances not exceeding 85 per cent of the visible stock in his depots. Advances in excess of 85 per cent may only be granted with the prior sanction of the Government. Clause 7 of the agreement prescribes the commission payable to the respondent. Clause 13(1) is important for our present purpose. That clause reads :

Payment to Agents--(a) At the end of each month the Agent shall submit bill to the Collector in respect of all food-grains issued on the directions of the Collector or officers authorised by him in this behalf for final disposal during the said month in which he may charge :

(i) the price cost of foodgrains

(ii) commission as admissible under Clause 7 and

(iii) other charges as prescribed in the Schedule annexed hereto.

3. No payment shall be claimed or made before final disposal of stocks on the directions of competent authority.

The expression/'final disposal' is defined in the agreement thus. "Final disposal' 'shall mean disposal of stocks made by the agent in accordance with the order of the Collector". The other terms of the agreement are not relevant for deciding this appeal. The agreement entered into in 1953 was continued under Exh. 'B' dated January 6, 1954. The respondent's case is that he supplied to the appellant 4675 mds of paddy in Nov. 1953 and submitted his bill as per Clause 13 of the agreement but the amount due was not paid. In respect of that bill he claimed Rs. 42890/11/6. He further claimed Rs. 28748/11/6 towards the paddy supplied between December 1, 1953 to November 30, 1954. On those amounts he claimed interest. The trial court decreed the principal amount claimed but declined to grant interest as well as costs of the suit. In appeal the High Court not only affirmed the decree of the trial court but in -addition it allowed interest" on the same for the period subsequent to the institution of suit. Further it allowed him the costs of the suit as well as the appeal. The appellant did not dispute that the respondent was entitled to the price of paddy claimed by him but it resisted the suit on the ground that the suit as brought was not maintainable.

According to it, the respondent should have brought a suit for accounts. In that connection it averred that in March, 1953, the respondent had failed to supply 819.7 mds. of paddy valued at Rs. 72,476/4/0 through he had realised that amount and it is entitled to adjust that amount towards the amount payable to the respondent. It was urged on its behalf that if a suit for accounts had been brought, the accounts between the parties could have been worked out. The other pleas taken in the-written statement were given up at one stage or the other.

4. Both the trial court as well as the High Court rejected the plea of the appellant that the suit as brought is not maintainable. In so doing they relied on Clause 13 of the agreement. We are in agreement with the conclusion's reached by these courts. Though Ordinarily opermitted an agent cannot sue his principal in respect of any one or more of the agency transactions, his only remedy being to sue him for accounts but that rule is subject to any contract to the contrary. Herein the agency agreement was of a peculiar type. The agent himself had to finance the purchases of the paddy made on behalf of the principal No doubt the Collector might have given him advances upto the prescribed limit but even that could have been done only on the basis of the stock available. Clause 13 of the agreement specifically provides that at the end, of every month the respondent is entitled to get the price of paddy supplied-during the previous month as per the directions of the Collector plus his commission on the same as well as permitted incidental expenses. Under that clause, the agent was entitled to make separate claims in respect of the paddy supplied by him in any particular month. That being so, the respondent was entitled to Sue for the supplies made by him in the month of November 1953 (In this Court, there is no dispute as regards the claim of Rs. 28748/11/6 in respect of the supplies made between December 1,1953 and November 30, 1954). The appellant had neither claimed any set off nor made any counter claim. It has not even adduced any evidence to show that the respondent had failed to supply 8197 mds. of paddy in March 1953. As mentioned earlier, the sole ground, on which the suit was resisted is that as brought it is riot maintainable. In view of Clause 13 of the agreement there is no oasis for such a plea.

5. There are no grounds to interfere with the order of the High Court, ' both as regards interest as well as the costs of suit.

In the result this appeal fails and the same is dismissed with-costs.