Cauvery Sugars And Chemicals Ltd. ... vs K. Sundararajan on 9 September, 1969

Equivalent citations: (1970)2MLJ256

JUDGMENT

P. Ramakrishnan, J.

1. This second appeal is filed by the defendant in O.S. No. 145 of 1959, on the file of the Court of the Subordinate Judge, Tiruchirapalli. The prior facts relating to this second appeal can be briefly set down.

2. The plaintiff, the respondent to this second appeal, K. Sundararajan, filed the suit for payment of compensation, after taking an account of the profits of the defendant firm, Messrs. Cauvery Sugars and Chemicals' Limited, represented by its General Manager, Pettaivaithalai, in the Tiruchirapalli District. The plaintiff alleged thus. The plaintiff is an agricultural graduate. For the establishment of a sugar factory under the name 'Kulittalai Sugar Factory Limited' in Pettaivaithalai Village, he obtained an industrial licence from the Government of India under the Industries Act, 1951. The plaintiff " worked out the area and prepared the ground for the successful working of the said sugar factory." The defendant is a company sponsored in 1948 for the purpose of starting a sugar factory in Oruvandur in the Namakkal Taluk of Salem District. There was not sufficient supply of cane in the Oravandur area and therefore the defendant-company was not able to do any work. It was on the verge of collapse. At that stage, Sir T. S. Venkataraman, the then Imperial Sugarcane Expert of the Government of India, who at the time when the suit was filed was the Chairman of the defendant-board, in a casual discussion with the plaintiff suggested that the plaintiff could to his advantage assist the defendant-company surrendering his own licence. The plaintiff at that time thought bona fide that as soon as the defendant-company was granted the permission by the Government of India to avail of the rights of the plaintiff under his licence and went into production, the defendant would reward him suitably in proportion to the benefits derived by it. The plaintiff therefore accepted Sir T. S. Venkataraman's suggestion and agreed to transfer his licence and work for the defendant-company in all possible ways. The plaintiff in pursuance of the agreement did several items of work to complete the arrangements, like the securing of capital site for the factory, promotion of a cane-growing company, carrying on the negotiations with the Irrigation and Revenue Departments of the Government and the various landholders in the area to ensure continuous supply of sugar-cane. The defendant started production in October, 1955, and commenced to derive good profits by the working of the factory in Pettaivaithalai. In the above circumstances, it was claimed by the plaintiff that the defendant was bound to compensate the plaintiff. It was alleged that Messrs. Parry & Company, who are acting as the Secretaries and Treasurers of the defendant, and are running the factory, are getting a remuneration of 7 per cent on the net profits and on this basis it is claimed that had the plaintiff worked the factory on his licence,

he would make 7 per cent. as his profits annually. The plaintiff prayed that a reasonable compensation may be decreed to him by capitalising the said annual remuneration at 30 times or at such figures as the Court may deem reasonable. The plaintiff, however, construing the suit as one for taking of an account of the profits with a view to fix the compensation gave the suit a notional valuation at Rs. 5,100.

3. The defendant pleaded that the plaintiff himself was unable to make any progress with his industrial licence for want of the means to erect a factory with the necessary machinery and other appliance to commence production of sugar from sugarcane. The defendant-company was founded in 1948 for erecting a sugar factory at Oravandur in Namakkal Taluk and the defendant had obtained a licence in September, 1952. There were difficulties to get adequate sugarcane acreage in Oravandur. The defendant-company thereupon applied to the Government of India for permission to shift the site to Pettavaithalai. In or about March, 1954, there were talks between one Sri N. R. Sundararaja Iyer, a leading landlord of Nangavaram near Pettavaithalai, H. I. Won for of Messrs. Parry & Company and Sri V. Ramakrishna of the K. C. F. Limited for the purpose of forming a new company to erect a new sugar factory in Pettavaithalai. The plaintiff assisted Sri N. R. Sundararaja Iyer in the negotiations. The defendant-company published a prospectus on 9th June, 1956 inviting the public to subscribe share capital. The plaintiff was unable to get the needed finance or an industrialist to establish a factory in terms of his licence. Thereupon he surrendered his licence to the Government of India. The surrender was made therefore by the plaintiff for his own benefit and in his own interest for deriving profits by supplying care to the proposed factory of the defendant. The claim made by the plaintiff about Sir T. S. Venkataraman's promise and his asking the plaintiff to work for the defendant-company were denied. It was denied that the plaintiff surrendered his licence at the suggestion of Sir T. S. Venkataraman. It was denied that the defendant availed itself of the plaintiff's services in the other ways mentioned in the plaint. All the acts done by him were solely for the benefit of Sri N. R. Sundararaja Iyer and for the benefit of the plaintiff also, as he thought that he could further his prospects in the area by the establishment of a sugar factory. The plaintiff himself thereafter became the Executive Director of the Kulithalai Cane Farms Limited. Sri N. R. Sundararaja Iyer and his family held the major shares in that concern. The plaintiff managed that concern till 1956 when he resigned. It was also pleaded that the plaintiff could not sustain his claim under Section 70 of the Indian Contract Act, as none of the ingredients of that section was made out. The defendant also referred to another suit--O.S. No. 603 of 1959 on the file of the District Munsif, Kulithalai, filed by the plaintiff, based on the same facts and allegations as to the rendering of services as detailed in the plaint, and claiming relief against the defendant on the basis of the partnership in the management of the company. It was urged by the defendant that in the circumstances the present suit would be barred in law as well as under Order 2, Rule 2, Civil Procedure Code. The plaintiff should be put to his election to prosecute either the present suit or O.S. No. 603 of 1959. This plea was denied by the plaintiff in a reply statement.

4. As many as 16 issues were framed by the trial Court, as follows:

> 1. Whether the suit plaintiff surrendered his licence in order that the defendant may get licence for shifting the defendant's undertaking from Oruvandur to Pettavaithalai ?

2. Whether Sir T. S. Venkataraman suggested to the plaintiff that the plaintiff could to his advantage assist the defendant-company in any suitable manner which would help the defendant ?

3. Whether the plaintiff bona fide believed that as soon as the defendant-company was granted necessary permission by the Government of India to avail of the rights of the plaintiff under the plaintiff's licence, the defendant would reward the plaintiff suitably in proportion to the benefits derived by the defendant ?

4. Whether the plaintiff did all the work connected with the securing the capital, site for the factory, promotion of a cane-growing company, and carried on negotiations with the Irrigation and Revenue Departments of the Government, as well as with Various landholders in the area for a continuous supply of sugarcane in a manner that could ensure success ?

And whether by reason of the said services the defendant derived any benefit ?

5. Whether the ingredients of Section 70 of the Indian Contract Act are satisfied for the plaintiff to bring the suit ?

6. Whether the suit framed for taking accounts and for claiming unspecified compensation is maintainable ?

7. To what compensation, if any, is the plaintiff entitled ?

8. Whether the Court has territorial jurisdiction ?

9. Whether the suit has been properly valued for the purpose of Court-fee ?

10. Whether the suit is barred by limitation.

11. Whether the suit is vexations, frivolous and malicious and whether the defendant is entitled to exemplary costs under Section 34-A, Civil Procedure Code?

12. To what relief?

5. Issues 6, 8 and 9 were substituted as per order dated 12th August, 1960 in I.A. No. 93 of 1960 to read as follows:

1. Whether the suit as framed for taking accounts is maintainable ?

2. Whether the Court has no territorial jurisdiction ?'

3. Whether the suit has not been properly valued for purposes of Court-fees?

6. The following additional issues were framed on 9th January, 1961:

1. Whether the suit is barred under Order 2, Rule 2, Civil Procedure Code ?

2. Is the plaintiff entitled to make a claim both on the footing of contract and on the basis of express contract and under Section 70 of the Contract Act in respect of some services?

3. If he is not so entitled, is he bound to elect?

4. Whether the claim in this suit creates a constructive trust and if so, can the defendant retain the benefit ?

7. The trial Court arrived at the following findings on the issues. It first found that the plaintiff surrendered his licence, Exhibit A-1 in order to enable the defendant to get a licence for shifting its undertaking from Oravandur to Pettavaithalai. The next finding of the Subordinate Judge was that having regard to the evidence of P.W. 1, the plaintiff, and the various facts revealed in the correspondence, marked as exhibits, the ambition of the plaintiff was to establish a sugar factory in Pettavaithalai not only for the benefit of Sri N. R. Sundararaja Iyer, to enable him to escape from the impending land Ceiling Reforms, but also for the benefit of the cane-growers of the Pettavaithalai area, and that with that thing in view, the plaintiff relinquished his licence and rendered certain services thereafter for securing capital, etc. and that his ambition was fulfilled after the establishment of the sugar factory by the defendant-company in Pettavaithalai and by the formation of the K. C. F. Limited (The Kulithalai Cane Farms Limited). In the circumstances, the lower Court also held that the case of the plaintiff that he surrendered his licence only for the benefit of the defendant-company was not true.

8. At this stage we may mention a few circumstances which would explain the last-mentioned finding extracted above. Sri N. R. Sundararaja Iyer is a leading landholder of the area, who owned extensive lands which could be brought under sugarcane cultivation, nearly 1,500 acres. The plaintiff has got about 20 acres,. Sri N. R. Sundararaja Iyer was very apprehensive at the period we are concerned with, of the impending land ceiling legislation. That legislation fixed the maximum of cultivable land which a person can own. But it gave valuable exemptions where the lands are cultivated with sugarcane under an agreement for supply of sugarcane to a sugar manufacturing factory. Unless before a specified date an owner of land fit for for raising sugarcane satisfies the authorities that he had entered into an agreement with a sugar manufacturing factory for the cultivation of sugarcane, there was an imminent risk of the Land Ceiling Act being applied in his case and lands surplus to the ceiling taken away under the provisions of that Act.

9. The learned Subordinate Judge found that the plaintiff has not established his case by letting in satisfactory evidence that Sir T. S. Venkataraman had suggested to him to work and help the defendant-company to his own advantage and that he did not surrender his licence in pursuance of the suggestions made by Sir T. S. Venkataraman. The next finding was that the plaintiff did certain service in connection with the securing of capital, site for the factory and the cane growing company,

forming the cane-growing company, obtaining of lease deeds and negotiations with the Irrigation, Electricity, Revenue and Public Works Department for the benefit of himself, Sri N. R. Sundararaja Iyer and for the cane-growners. His next finding was that after doing the above things for the benefit of Sri N. R. Sundararaja Iyer and the cane-growners, the plaintiff was benefited by becoming the Executive Director of the K. C. F. Limited on a monthly salary of Rs. 500.

10. Because of the above findings, the trial Court held that the plaintiff cannot obtain relief by way of compensation under Section 70 of the Indian Contract Act as claimed by him, on the principle stated in that section, namely, that where a person lawfully does anything for another person or deliver anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

11. The learned Subordinate Judge thereafter held that the framing of the prayers in the plaint for the reliefs claimed therein and the Court-fee paid for those reliefs are not open to any of the preliminary legal objections including the bar under Order 2, Rule 2, Civil Procedure Code. But the suit was however dismissed on the findings on the main questions raised in the suit.

12. The plaintiff appealed.

13. The learned District Judge in the appeal reversed the trial Court's Judgment. He put down the following as the two principal questions which were argued in the appeal and which arose for consideration before him (1) whether the plaintiff did anything for the defendant-company not intending to do so gratuitiously, and if so, what were those things done by him and whether the defendant has enjoyed the benefit of what the plaintiff did ? and (2) Whether the suit as framed for taking accounts is maintainable.

14. The learned District Judge found point 2 in the affirmative. So far as point 1 is concerned, he sub-divided the acts which the plaintiff did for the defendant, accord-Zing to his claim, into the following sub-divisions:

> The plaintiff claims to have done the following things for the defendant-company:
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> (1) that he surrendered his licence so that the defendant-company may obtain a licence from the Government of India for shifting their undertaking from Oravandur to PettaVaithalai; and (2) that he did all the work connected with (a) the securing of capital for the defendant-company, (b) the purchase of the site for the factory, (c) the purchase of the machinery, (d) the promotion of a company for growing sugarcane, (e) the negotiation with the departments of the Government of Madras for getting electricity and water and (f) the negotiations with Various landowners for ensuring a continuous supply of sugarcane for the sugar factory. The defendant-company admits that the plaintiff surrendered his licence and participated in the other transaction but contends that the plaintiff is not entitled to claim any compensation therefor.

The learned District Judge in paragraph 28 of his judgment observed that on the facts discussed by him, the proper inferences were that the plaintiff was induced by Sir T. S. Venkataraman to surrender his licence on the promise of being adequately remunerated by the defendant-company and that acting on the faith of that promise the plaintiff surrendered his licence in order that the defendant-company may get the necessary licence for shifting its proposed undertaking from Oravandur to Pettavaithalai. The learned District Judge found further that the plaintiff did not do any work for the defendant-company and that what he did in respect of capital and leases was only for and on behalf of Sri N. R. Sundararaja Iyer and that he participated in the promotion of Kulittalai Cane Farm Limited for his own benefit and for the benefit of Sri N. R. Sundaraja Iyer and other sugarcane growers.

15. After the above finding, the learned District Judge held that under Section 70 of the Indian Contract Act, the plaintiff was entitled to compensation from the defendant-company.

16. Then there arose the question of the quantum of compensation. He noted that the plaintiff wanted compensation computed at the rate of 7 1 /2 per cent. of the profits of the company capitalised for 30 years. He called for a finding from the trial Court about the correct quantum of compensation payable. The learned Subordinate Judge thereafter referred to the fact that the plaintiff was appointed as the Managing Director of the K. C. F. Limited on a monthly salary of Rs. 500 and he resigned that post on 3rd July, 1956 at the instance of Sri N. R. Sundaraja Iyer. The learned Subordinate Judge observed that having regard to the nature and the circumstances of the case, the plaintiff would not have come forward with this suit if he had not been asked to resign that post and he might have ordinarily expected to work in that post for about 15 years. Therefore, he computed the compensation at the rate of Rs. 500 per month for a period of 15 years commencing from 3rd July, 1956. He also held that compensation could not be drawn on the basis of the profits of the defendant-company. When the findings came before the District judge, the incumbant of the post of District Judge was a different person, Sri Colaco. He did not accept the finding as to the quantum of compensation of the Subordinate judge. He observed that the plaintiff could not get compensation on the basis of his employment as Executive Director and that he did not bargain for Executive Directorship at the time he gave up the licence. The learned District Judge expressed his difficulty in fixing the compensation. After stating his difficulty, he decided that 1 per cent of the profits (Rs. 12 lakhs) for 12 years would be the proper amount of compensation. This worked out to Rs. 1,44,000. He passed a decree for that amount.

17. This second appeal is filed by the defendant-company attacking the finding of the lower appellate Court both on the right of the plaintiff to get compensation and secondly in any event, on the quantum of compensation awarded to him.

18. It is urged by Mr. V. Thyagarajan, learned Counsel for the appellant before us, that the lower appellate Court has committed an error of law in omitting to take into account in its appraisal of the evidence data of a Very material character which would affect the decision, and consequently there was substantial error or defect in the procedure. Secondly, it has gone wrong in the application of the correct law, as laid down by various decisions interpreting Section 70 of the Indian Contract Act, to the facts of the case, and therefore there was an error of law, which will attract the jurisdiction of

this Court in second appeal under Section 100, Civil Procedure Code.

19. We have referred to the preliminary finding of the lower appellate Court that the plaintiff was induced by Sir T. S. Venkataraman to surrender the licence on the promise of being adequately remunerated by the defendant-company and it was by acting on the faith of that promise that the plaintiff surrendered his licence to the defendant-company so that the latter may get the necessary licence for shifting its factory from Oravandur to Pettavaitalai. It is submitted by the learned Counsel for the appellant that there is absolutely no evidence that Sir T. S. Venkataraman gave a promise to the plaintiff before he surrendered his licence that the defendant-company would remunerate him. The crucial document for this purpose is Exhibit A-6 whose contents are mentioned by the learned District Judge in paragraph 16 of his judgment. What this letter mentions is that Sri V. Ramakrishna, I.C.S., (retd.) (one of the important persons connected with the K. C. F. Ltd., and who was connected with the management of the Oravandur factory) appears to have contacted at Delhi the concerned Ministry with regard to the proposed sugar factory at Kulithalai. The letter says that in the ordinary course of events, the granting of the needed licence for the shifting of the Cauvery Sugar to Kulithalai, it appears, would take considerable time, as it would involve issue of notices to the plaintiff as holder of the licence for a factory at Kulithalai his reply thereto consenting and then the formal grant of licence to the new one. It was suggested to Sri V. Ramakrishna that a letter from the plaintiff according to the draft enclosed would expedite the matter. Mr. Ramakrishna suggested that the plaintiff should send two letters, one to the Central Government and the second to the Madras Government as mentioned in the draft. If the letters were sent to Mr. Ramakrishna, he would do the needful in the matter. Mr. Ramakrishna wanted these things to be done as early as possible. Then the letter adds:

> Both Mr. Ramakrishna and I are thinking of the manner in which you are to be fitted into the new scheme. You may kindly and freely communicate to me any ideas of yours in this regard.

20. Another circumstance that is stressed before us by the learned Counsel for the appellant is that even the assurance referred to in the letter Exhibit A-6 of Sir T.S. Venkataraman is only about a fitment of the plaintiff in the' new scheme'. Without a clear finding as to what this new scheme was, it would be improper on the part of the Court below to assume that the fitment into the new scheme is equivalent to some form of compensation payable by the defendant-company to the plaintiff. So it was necessary for the Court below to reach a definite finding as to what the new scheme was and which was contemplated at the time between the parties, whether the scheme consisted only in the shifting the defendant's factory from Oravandur to Kulithalai or whether the scheme really represented the transfer of the factory on the one hand and the constitution of a sugarcane growers' organisation on the other, one acting as a complement to the other. It is one of the facts clearly established by the evidence in the case that the factory at Oravandur could not function because there was no adequate cane supply. On the other hand, the growers at Kulithalai who had plenty of sugarcane to supply, were unable to find a factory which would crush their sugarcane. The plaintiff obtained a licence on behalf of the sugarcane growers of Kulithalai, but he could not make any further headway in putting up a factory or getting any factory from some other place to move to Kulitalai until he contacted the defendant-company. This is not in dispute. It is also not in dispute

that the greatest anxiety for the starting of a factory at Kulitalai was on the part of Sri N.R. Sundararaja Iyer and other sugarcane growers, who owned extensive lands, which were under an imminent threat of being taken away under the Land Ceiling Act before a specified date. For these sugarcane growers, therefore, time was of the utmost essence in the matter of securing a factory to take over their sugarcane produced for being made into sugar. Adverting to this part of the implication of the term' fitment into the scheme' the trial Court in paragraph 26 of the judgment observed : " Having regard to Exhibit B-14, it can be said that Sir T.S. Venkataraman might have informed P.W. 1 that he would be fitted in K.C.F. Ltd., and accordingly, P.W. 1 was fitted in that by making him as an Executive Director of that organisation after surrendering his licence. Exhibit B-14 thus referred to is a letter from the plaintiff to the defendant-company on 28th November, 1957 which, according to the learned Counsel, provides the most valuable clue as to what the plaintiff understood by the ' fitment into the scheme' promised by Sir T. S. Venkataraman. This is what he said:

> I volunteered to offer to a surrender my rights and any one who gives up his rights would naturally want to be suitably compensated. No impartial man will say that the compensation I wanted is extraordinary. Everybody came into the scheme with some object or other and everybody has been suitably provided for. Please ask yourselves if I have been compensated or rewarded for the surrender of the licence, for the promotion of the companies and many incidental things for which I was being used by your company up to a certain time. Your Chairman said he would fit me in the K.C.F. with your approval, but it was made difficult for me to continue. I wish I could place all these before an impartial Tribunal so that one may judge who has been sinned against and so that there may be an end to frivolous charges. Will you please agree to this ?
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> The Chairman referred to in this letter is Sir T.S. Venkataraman, Chairman of the defendant-company. It is common ground that the plaintiff was absorbed in the K.C.F. Ltd. in 1954 as Managing Director on a salary of Rs. 500 per month. He drew the salary for 2 years, till he resigned Voluntarily in 1956. The reasons why he resigned are found in the letters exchanged between the plaintiff and N.R. Sundararaja Iyer--Exhibits A-66, B-10, and B-9 on 3rd July, 1956. Sri N.R. Sundararaja Iyer states here that it was desirable in the circumstances that the plaintiff should resign from his directorship of K.C.F. Ltd., and the plaintiff tells the Chairman of the K.C.F. Ltd. that in deference to his wishes he was resigning his post as Director of the K.C.F. Ltd. It is these circumstances that are mentioned by the plaintiff in Exhibit B-14 after referring to the fitment as director in the K.C.F. Ltd. in accordance with the promise of Sir T. S. Venkataraman.

21. One more letter, Exhibit B-115, by the plaintiff, dated 17th September, 1955 to Mr. Hadfield of Parry & Co., the Secretaries of the defendant-company, also shows that was the scheme which the plaintiff was trying to evolve. This is what he stated:

My foremost conviction was to get a factory at this place and to secure the best possible terms and profits for N.R. Sundararaja Iyer keeping in view the forthcoming lands reforms....The Oravandur land deal alone would cost him more than Rs. 75,000 but he could and would certainly forget all these if only the factory is established early and if only he secures all the advantages which prompted him to go in for this scheme, and in these days when things on the side of the Government move rapidly, time is a very essential factor. Mr. N.R. Sundararaja Iyer's prosperity or future depends very largely on the quickness with which the factory is switched on to production.... I repeat my assurance that you will have from us all co-operation in the fullest measure in any scheme that you think of in furthering the progress of hastening the establishment of the Pettaivaithalai Sugar Factory, but at the same time, I would implore you to consider any such scheme from the point of view of Sri N. R. Sundararaja Iyer also....

On 4th July, 1956, the plaintiff wrote Exhibit B-11 to Mr. Hadfield, which again throws important light on what the scheme really was from the point of view of the plaintiff. It is also important for one other relevant point, viz., whether there was in fact compensation to the plaintiff for the services he did in connection with the transfer of the licence and whether he was justified in asking for more in the form of a share in the profits of the defendant-company.

This is what he wrote:

I hope you will not get annoyed at what I think will be my last letter. I have done what was required of me in the hope that there will be smooth sailing hereafter. Rightly or wrongly, we found that peaceful co-existence is not possible. I am very greateful for your appreciating my sentiments and I am also grateful for the Chairman of the Cauvery Sugars for his appreciative reference of what I have done, small though it might be.

I am further thankful for the assurance of you and your Chairman to give me the right to grow hundred acres of sugarcane and supply the same to the factory at Pettaivaithalai. I would request that this assurance will be suitably recorded either by way of executive order or by way of resolution, if necessary.

The problems of K.C.F. are many and difficult and require the unstinted support of the Cauvery Sugars for effective functioning of both. As I have been emphasising K.C.F. should occupy a position that a co-operative has in the Uttar Pradesh or Bihar.

In conclusion I wish to express my appreciation for the manner in which you piloted the scheme against odds and brought it to fruition. With the realisation of my ambition which prompted me in 1953 to apply for the licence, I feel a part of my responsibility to the Nangavaram family is over and I leave with the confidence that the interests of N.R. Sundararaja Iyer are safe in the hands of the Secretaries of the

Factory.

This letter shows that the scheme which the plaintiff visualised at the relevant period was principally to fulfil the ambition of the plaintiff and the sugarcane growers including Sri N.R. Sundararaja Iyer, who owned vast acreage of land, to get a factory unit in the locality as early as possible to enable them to lease out their lands to the factory and thereby to preserve to them their lands and save them from being taken away under the Land Ceiling-Act (Madras Act LVIII of 1961), whose provisions were to come into force at or about the relevant period we are concerned with Thus, under Section 10(xiii) of the said Act, an existing sugar factory is required to furnish the particulars of the land which such sugar factory (a) holds as owner, and (b) holds otherwise than as owner and the basis on which such land is held and which the such sugar factory desires to hold for the cultivation of sugarcane for use in the sugar factory. An enquiry is held before a final statement of land surplus to the ceiling is prepared. Under Section 23 (2), the authorised Officer is required to exclude only land in respect of which it is found that the sugar factory cannot use it continuously for the cultivation of sugarcane. It is a well-known fact that at the above period many landholders holding extensive wet lands managed to preserve large extents of lands from being declared surplus under the Land Ceiling Act by arranging for terms of tenancy with sugar factories and satisfying the authorities that such lands were required by the sugar factories for the cultivation of sugarcane which they could crush in the factory. The above letter is also important in one other respect. It refers to the plaintiff's acknowledgment that the Chairman of the defendant-company had given him a right to cultivate sugarcane on 100 acres of the land out of the lands leased to sugar factory and thereafter supply the same to the sugar factory. In his evidence, the plaintiff has estimated the value of this benefit of Rs. one lakh per annum. This aspect will have relevancy when the question comes to be considered as to how far the plaintiff had been remunerated for his services in connection with the scheme must be treated as adequate.

22. The next question that arises for decision in this case is whether the lower appellate Court has wrongly applied the law as enunciated under Section 70 of the Indian Contract Act to the facts of the case and whether there has been an error of law in this respect; and secondly, whether the facts have been correctly assessed by the lower appellate Court or whether there is an omission in taking into account material facts so as to amount to an error of procedure.

23. Section 70 of the Indian Contract Act requires three conditions to establish the right of action at the suit of a person who does anything for another (1) the thing must be done lawfully ; (2) it must be done by a person not intending to act gratuitously ; and (3) the person for whom the act is done must enjoy the benefit of it. At this stage we may briefly review the decisions cited before us and pick out only those which appear to us to be relevant to the facts of the case. The Privy Council in Ram Tahul Singh v. Bisweswar Lal Sahool (1874-1875) L.R. 2 I.A. 131, held that it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be determined by any considerations of what may be fair or proper according

to the highest morality. To support such a suit there must be an obligation, express or implied, to repay. In order to ascertain whether an act is lawfully done within the purview of Section 70 of the Indian Contract Act, it must be ascertained whether the person so acting held such a position to the other as either directly create or by implication reasonably to justify the inference that by the act done for the other person, he was entitled to look for compensation for it from the other person for whom it was done. (Vide Punjabhai v. Bhagawandas A.I.R. 1929 Bom. 89, and Raghunath Abaji v. Lahanu A.I.R. 1931 Bom. 39. The words ' for' and ' lawfully' have come in for divergent views in prior decisions of Courts. Jackson, J., in the Bench decision in Avudayappa v. Thandavaraya A.I.R. 1928 Mad. 320, held that the word 'for' must be given a narrower meaning, that is, 'doing anything for another person in some way taking his place as the doer,' that it would not suffice if the plaintiff says 'I know that so and so would benefit from my act and I hoped to get something from him and therefore I am entitled to get compensation', but that he must say, " I acted in his place and therefore I am entitled to compensation, because he has not proved that I intented to act gratuitously. This was followed by the Andhra Pradesh High Court in Hyderabad State Bank v. Ranganath A.I.R. 1958 Andh. Pra. 605 and Kanaka Rao v. Sriranga Venkata . Wallace, J., in Ganapathi Bhatta v. Sanna Sedu A.I.R. 1930 Mad. 644, made the comment that the view in Avudayappa v. Thandavaraya A.I.R. 1928 Mad. 320, was narrower than that in Krishnachandra Deo Garu v. Srinivasacharyulu (1913) 25 M.L.J. 433 : I.L.R. 38 Mad. 235, where the view was held that if a party pays in his own interest, he cannot ordinarily be held to have made the payment for another, but whether he did so or not is a question of fact in each case. Wallace, J., also observed that the sole and dominent motive for the payment (or the doing of the service) would be a relevant factor.

24. In our opinion, the apparent conflict in these decisions about the scope of Section 70 of the Indian Contract Act must be treated as being set at rest by the Supreme Court in its decision in State of West Bengal v. Mondal & Sons , where it was observed:

> Between the person claiming compensation and the person against whom it is claimed, some lawful relationship must subsist, for that is the implication of the use of the word' lawfully' in Section 70 ; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom compensation is claimed, but because what has been done by the former has been accepted and enjoyed by the latter.
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> This observation provides the clue for interpreting both the words ' lawfully' and 'for' used in Section 70 of the Indian Contract Act. The lawful relationship mentioned in the section need not be one anterior to the doing of the Act. It can arise from the very circumstance of the doing of the act by one for another's benefit and his acceptance and enjoyment of that benefit.

25. Then there is a chain of decisions which deals with the question whether the benefit is a joint one between the plaintiff and the defendant, or whether the benefit to the plaintiff is the primary one and the benefit to the defendant is indirect or incidental. In. the former class of decisions falls the decision in Viswanatha Vijia Kumara Bangaroo v. G.R. Ors. (1918) 45 I.C, 786, where the view was held that Section 70 of the Indian Contract Act will not apply to cases where a person does an act for

his own benefit and that act incidentally benefits his neighbour or any other person. In such cases, the latter need not pay for the extent of the benefit derived by him from the act. Horwill, J., in Muthuswami Ayyar v. Velammal (1946) 2 M.L.J. 273, doubted the correctness of this decision. Horwill, J., had before him a case where the plaintiff, who had a half share in an irrigation well, repaired it and which repair benefited the defendant co-owner, who had also a share in the well. That was clearly a case where the benefit was not incidental. Horwill, J., referred to earlier cases is Saptarshi Reddiar v. Secretary of State for India (1915) 28 M.L.J. 384, and the Full Bench decision in Srirama Raja v. Secretary of State for India (1942) 2 M.L.J. 800 : I.L.R. (1943) Mad. 158. They were all cases where there was a common irrigation source of which the plaintiff and the defendant were co-owners and the repair to the irrigation source by the plaintiff benefited the defendant as well as the plaintiff. The view was held in these cases that Section 70 of the Indian Contract Act would apply.

26. There is one other view which may be relevant for our purpose, laid down in Radhakrishna Iyer v. Secretary of State for India A.I.R. 1936 Mad. 930, and S.I. Railway Company v. Madura Municipality I.L.R. (1946) Mad. 333 : (1945) 2 M.L.J. 155 : A.I.R. 1945 Mad. 427, The fact in Radhakrishna Iyer v. Secretary of State for India A.I.R. 1936 Mad. 930, were these. The Government collected from the ryots of a district a voluntary irrigation cess and one of the objects for which the money so collected was spent was silt clearance of the channels in the village. This Voluntary cess was separate and did not form part of the general revenues of the country. Subsequently, there was a resettlement of the district and the system of voluntary irrigation cess was abolished and the wet lands irrigated by the channel were reclassified and the assessment was substantially increased. The Government relieved the ryots of the voluntary cess and decided to maintain the channels free from silt at its own cost. But the Government neglected to do so, whereupon the ryots to save their own crops, cleared the silt themselves and brought a suit against the Government for the amount which they had spent. It was held that the act of the Government in deciding not to collect the voluntary irrigation cess and to maintain the channels free from silt at its own cost was an act of the Sovereign Power and not to be the acknowledgment of a contractual obligation. They also held at page 936:

> The silt was cleared for the purpose of enabling the appellants' lands to get the necessary supply of water for their cultivation and it was primarily for their benefit that the work was done. How has the Government been benefited ? It is contended that Government has been saved the cost of clearing the channels and that to that extent Government has benefited. In our opinion, the benefit that is meant in Section 70, Contract Act, is the direct and natural benefit of what has been done. If the object was to clear the silt for the benefit of the appellants' lands, that was the direct and natural result of the work. The benefit to Government has merely been in consequence of the direct benefit to the mirasdars and, in our view, the latter is an indirect benefit, and upon this part of the case we agree with Madhavan Naire, J.

27. In S.I. Railway Co. v. Madura Municipality I.L.R. (1946) Mad. 333 : (1945) 2 M.L.J. 155 : A.I.R. 1945 Mad. 427, the railway track passed over a tank and the S.I. Railway Co., built a culvert to take off the water flowing out of the tank. As this culvert was not sufficient,, the Madura Municipality built four other culverts. As this also was not sufficient to take away the water, after some

correspondence, the Railway Administration widened their railway culverts and the Municipality also widened the municipal culverts. The South Indian Railway Co., filed a suit against the Municipality for recovery of a sum of money being the alleged cost of the work which it had to do for widening the railway culvert. The Bench of this Court observed:

> The object of the work was to prevent the flooding of houses and buildings in the locality. It has not been suggested that the municipality owned any of these buildings or houses. Therefore, the work which was done was done primarily for the private owners of the property in the neighbourhood. While the railway company recognises this to be the case, it is said that indirectly the municipality receives a benefit because it recovers taxes from the owners or occupiers of the property. This is a very indirect benefit, and Section 70 can in our opinion only have application where there is direct benefit to the person for whom the work is done.

28. Coming to the facts of the case, the lower appellate Court in paragraph 35 of its judgment observed : " Even though by reason of the surrender of the licence, the plaintiff and other cane-growers were expected to be benefited by the establishment of the sugar factory, still he is entitled to compensation for the surrender of the licence, which was a valuable property to him and the benefit of which has been enjoyed by the defendant-company." In making this observation, the lower appellate Court has omitted to note an important fact in this case that when the plaintiff surrendered the licence on 2nd May, 1954, as per Exhibit A-6, its value to the plaintiff was practically nil. Prior to the writing of this letter, the agreement, Exhibit B-53, had been signed on 21st April, 1954, between Sri N.R. Sundararaja Iyer and the members of his family, on the one hand, and Messrs. Parry & Co., represented by Mr. Hadfield, and the K.C.F. Limited represented by Mr. V. Ramakrishna, on the other, for the leasing out of the wet lands of Sri N.R. Sundararaja Iyer and other cane-growers to the defendant-company for the cultivation of sugarcane for being crushed in their factories. This proposal would cover directly the requirement of the Land Ceiling Act for enabling the cane-growers of Pettaivaithalai to get exemption from the application of the Act. As regards the plaintiff, by the time of this agreement, it is amply borne out by the evidence that he had completely lost all means of exploiting the licence for his benefit. The licence granted to the plaintiff, Exhibit A-1, on 15th April, 1953, required that he should take effective steps for the establishment of a new industrial undertaking within six months from the date of the issue of the licence. He was also required to send periodical returns showing the progress. On 4th January, 1954, he wrote a letter, Exhibit B-127, to the Secretary, Ministry of Commerce and Industry, New Delhi, expressing various difficulties which he found in getting factory owners to interest themselves in his scheme. He prayed for grant of further time to comply with the conditions of the licence till April, 1954. Therefore, when the agreement had been signed with Messrs. Parry & Co., and the K.C.F. Ltd., for leasing out the lands to the defendant-company on 21st April, 1954, under Exhibit B-53 the plaintiff had no longer any use for his licence. We may also note that this is not a question of the transfer of the plaintiff's licence to the defendant-company, here the defendant-company had to get a licence of its own or get its own licence for the factory at Oravandur transferred to Pettaivaithalai. The under Secretary of the concerned department of the Government of India, Sri B.R. Abhayankar, referred to the fact that in issuing the licence care is taken to ensure that every unit will be able to function effectively from the production point of view and that whether a particular area should have one, two or three units will

depend upon the number of units which the area may have facilities for the efficient functioning of the units. So far as the Pettaivaithalai area was concerned, the Government was of the view that two units should not be permitted in the same area. Therefore, the object of the plaintiff in surrendering his licence, after Exhibit B-53 the lease deed had been executed on 21st April, 1954 was only to enable the defendant factory to get its licence quickly and to conform to the policy of the Government that for the area in question two factories may not be necessary to meet the requirements of the cane-growers. Next the benefit to the defendant-company by the surrender of the plaintiff's licence was only incidental in the sense that but for the surrender the defendant-company would have to address the Government of India to give notice to the plaintiff for cancellation, of the licence. In the circumstances, which obtained at the time of the surrender, the plaintiff would have readily agreed to the cancellation, if notice had been sent to him. It was to avoid this formality of issuing a notice, which became an empty formality, so far as the plaintiff was concerned after the execution of the lease on 21st April, 1954, that the plaintiff surrendered his licence. Its value to the defendant-company was only to the extent that it saved the interval of time and the correspondence which might have resulted if the plaintiff had insisted on notice being given to him for cancellation. The correspondence shows that the plaintiff had obtained extension of time only till April, 1954, for finding a factory to exploit his licence. He had already exceeded the time given to him originally when the license was granted. There was however possibility that even if he wanted to be recalcitrant in the matter of the surrender of his licence or had insisted on more time, he would not have succeeded. But this is entirely hypothetical. In the circumstances which existed at the end of April, 1954, the plaintiff was not in a position to place any obstacle to the cancellation of his licence. He was only too willing to give it up. Thus, it can be held that the benefit obtained by the defendant-company was purely hypothetical and of a negative character, negative in the sense that the defendant-company saved the time it would have taken to move the concerned Ministry of the Government of India to issue a notice to the plaintiff for cancellation of the licence. In such circumstances the benefit to the defendant-company can also have no relation to the profits earned by the defendant-company. Such a relation may exist if this was a case of transfer of the licence from the plaintiff to the defendant-company and the defendant-company exploiting the plaintiff's licence in his place ; but that is not the case here. The defendant-company exploited its own licence. The surrender of the plaintiff's licence had only a minimal part to play in so far as it effected the saving of time to the defendant-company in the procedure for getting a licence for the purpose of commencement of the working of the factory.

29. There is evidence that notwithstanding the surrender of the licence by the plaintiff on 21st April 1954, the defendant's factory went into production only in 1958, that is, about four years later. Therefore, if the plaintiff surrendered it to effect a saving of time, it can be only evaluated as a proportion out of the total period of four years which it took the defendant-company for commencing its factory. Unless it is possible to get an approximate idea of this ratio, namely, the ratio of the time saved by the surrender of the licence to the total time taken from the lease agreement to the starting of the factory, namely, four years, it may not be possible to arrive at an estimate of the value of the benefit derived by the defendant-company by the surrender of the licence.

30. We may also note in this connection that the anxiety to start the factory early was primarily on the part of the cane-growers. The correspondence shows that Messrs. Parry & Co., did not act with any similar feeling of urgency. In the Memorandum known as the Wonfor Memorandum, Mr. Wonfor being a director of Messrs. Parry & Co., Exhibit B-52, dated 16th March, 1954, Mr. Wonfor concluded that so far as was known, there was no secondhand factory available and that in the event of new machinery having to be purchased, it was not considered possible that the factory could be in operation within a period of two years from the time when the order was placed. Again, Mr. Hadfield of Messrs. Parry & Co., in Exhibit A-17, dated 4th January, 1954, says that Messrs. Parry & Co., had taken a decision to operate the Pugalur factory on its then site, particularly when the suggestion to move it to Kulitalai was largely influenced by the fact that the main enthusiast for it was the plaintiff. The situation at Kulitalai did not appear to be materially different from that obtaining at Pugalur, The letter concluded by saying that Messrs. Parry & Co., could do nothing in the matter. This would show that the entire anxiety to start the factory as quickly as possible at Kulitalai came from the plaintiff's side and the side of the cane-growers. For Messrs. Parry and Co., who were to manage the factory at Kulitalai as per the agreement, the urgency in the sense as it prevailed with the cane-growers, did not exist.

31. There is ample authority for the view that the value of the benefit for the purpose of Section 70 of the Indian Contract Act cannot be equated to the quantum of damages for breach of contract but it is based on quasi-contract or restitution. The Supreme Court in Mulamchand v. State of M.P. , has observed:

> The important point to notice is that in a case falling under Section 70, the person doing something for another of delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So, where a claim for compensation is made, by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not found upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.
>
> It is also relevant in this connection to refer to Pallonjee and Sons v. Lonavala Municipality A.I.R. 1937 Bom. 417, where Tyabji, J., observed:
>
> The basis of the compensation under Section 70 of the Contract Act is not the same as of contractual rights. The latter would be on the footing of the contract between the parties. The basis of the compensation under Section 70 should be in proportion to the benefit enjoyed by the party for whom anything is done and to whom anything is delivered, and appropriate compensation is to be awarded mainly from that aspect.

32. Therefore, from the point of view of the award of compensation in the present case, it can be awarded only by way of restitution only if it is shown that the saving of time and the incidental

labour involved in issuing a notice to the plaintiff for cancellation of the contract had any material value, when compared with the period of four years which it took ultimately from the date of the lease to the date of the commencement of the defendant factory, and when it began to earn tangible profits. In the absence of any data which will give a measure of the time (and labour) saved and its relationship to the entire time taken, it is safe to hold that this is a case where the benefit to the defendant, by the surrender of the license must be viewed as minimal and, in any event, so hypothetical, as to make it difficult to make a computation of its value in terms of money.

33. It is pertinent to observe in this case that the Courts below found themselves faced with considerable difficulties when it came to the assessment of the value of the benefit received. We may also note that one of the important points urged by the learned Counsel for the appellant before us is that in any event the compensation has been awarded arbitrarily and without any basis whatsoever and would therefore require re-consideration. The trial Court, when it was directed to determine the compensation after an order of remand passed by the lower appellate Court, observed that the plaintiff would not have come forward with the suit if he had not been asked to resign the post of Managing Director of the K.C.F. Ltd., for which he was remunerated at Rs. 500 per month. If he had not resigned, the plaintiff could have expected to be continued in that post for 15 years. Therefore, the quantum of compensation was fixed at 15 years salary at Rs. 500 per month, or Rs. 90,000t When this finding came before the lower appellate Court (presided by a different. District Judge, Mr. Colaco), the problem again arose of obtaining an adequate yard-stick for fixing the quantum of compensation. The learned District Judge observed that the Subordinate Judge had no solid material before him for fixing the compensation, and that the method which the Subordinate Judge followed thereafter was not proper. The learned District Judge On his part recognised the difficulty in fixing the compensation. Thereafter he adopted an equally arbitrary yardstick, by fixing the compensation at 1 per cent. of the profits of the defendant-company for 12 years, taking the average profit at Rs. 12 lakhs, and arrived at the figure of Rs. 1,44,000.

34. The learned Counsel for the appellant before us strenuously attacked this method of computation of the value of the benefit as entirely arbitrary. He pointed out that there is no justification for equating the benefit at a percentage of the profits earned by the defendant-company by its own efforts. The saving in time and labour obtained by the plaintiff's surrender of the licence four years anterior to the going into production will not have any bearing on the earning of the profits by the defendant-company. As mentioned above, its relevancy was only in the saving of a part of the time and correspondence which it would have otherwise taken for the defendant-company to get its licence. Plaintiff could not have resisted the cancellation ; he was only too eager to give it up. The learned Counsel also urges that during these 12 years subsequent to the starting of the company, as per the balance sheets, there were losses in some years and that would have reduced the average profit.

35. We referred to the divergent methods of computing the compensation adopted by the Courts below only to emphasise the point that the compensation in this case cannot have any real relationship to the profits earned by the defendant-company. Nor can it have any relationship to the income of the plaintiff as Managing Director of the K.C.F. Ltd., which he would have earned for (himself) if he had served on this capacity for a certain number of years. That job he lost for other

reasons. The evidence shows that he had differences with Sri N.R. Sundararaja Iyer himself, who was upto that time his great friend. In Exhibit 14, the plaintiff referred to the difficulty which he felt in continuing as Chairman of the K.C.F. Ltd. In Exhibit B-12, Sri N.R. Sundararaja Iyer wrote to the defendant-company on 27th March, 1957 to the effect that he had not authorised Sundararajan, the plaintiff, to write to the defendant-company or negotiate with it on his behalf on anything concerning his own and his family lands or matters relating to K.C.F. Ltd. Therefore the loss of the appointment as Chairman of the K.C.F. Ltd., which the plaintiff suffered in 1956 was due to reasons in which the defendant-company had no part to play.

36. The learned Counsel, Mr. M. K. Nambiar, referred to several decisions of the Supreme Court laying down the limits of the jurisdiction of this Court hearing a case in second appeal under Section 100, Civil Procedure Code, like D. Pattabhiramaswamy v. S. Hanymayyd A.I.R. 1959 S.C 57 and Sinna Ramanuja Jeer v. Ranga Ramanuja Jeer (1962) 2 S.C.R. 509 : (1962) 1 S.C.J. 17 : (1962) 1 M.L.J.(S.C) 1 : (1962) 1 An.W.R. (S.C). 1 : A.I.R. 1961 S.C. 1720, that this Court had no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however grave the error may seem to be. He urged that we should straightaway accept the findings of the lower appellate Court which are referred to earlier on this judgment about the benefit which the plaintiff lost by the surrender of his licence and the benefit which the defendant-company got by such surrender and therefore to the need of affording compensation to the plaintiff by evaluating the benefit received by the defendant-company by reason of the surrender. In our opinion, there have been crucial errors of law and procedure in the approach of the lower appellate Court in this case which attract our jurisdiction under Section 100, Civil Procedure Code. It has been well established that application of the law to the facts of a case is a question of law within the meaning of Section 100, Civil Procedure Code. In the application of Section 70 of the Indian Contract Act, it is relevant to consider whether the benefit received by the defendant-company is indirect. Considering the requirement that the approach in such a case, is not the same as the approach in the case of damages for breach of. contract, but, on the other hand, the Court has a duty to find out the value of the benefit for affording restitution, it is necessary for the Court to consider whether the benefit enjoyed is hypothetical or so minimal as to afford no reasonable basis for evaluation. It was not proper on the part of the lower appellate Court to leave these questions undecided as it did, merely recording that there was benefit. The lower Tribunals, which were thereafter charged with the duty of evaluating the benefit, found themselves faced with insurmountable difficulties. That is obviously the result of the benefit being purely hypothetical or minimal and not being capable of any real valuation in concrete terms.

37. Secondly, there is an admission by the plaintiff that he received a benefit from the scheme by being made the Executive Director of the K.C.F. Ltd., and being afforded by the defendant-company the right to grow and supply sugarcane on 100 acres of land leased out to the defendant-company. In his evidence, the plaintiff has stated that the value of this benefit would be Rs. one lakh per annum if there were good crops and if there were not good crops, the value would be less. It has also got to be noted that in the letter which we have referred to earlier, written by the plaintiff to Mr. Hadfield, Exhibit B-11 on 4th July, 1956, he has referred to these benefits and had dealt with it as almost his final letter of acknowledgment of gratitude for the help rendered to him by the defendant-company. It is only long afterwords that the plaintiff began to reagitate for relief by

writing several letters to the defendant-company and only much later he decided to put forward the claim to a share in the profits. This has a crucial bearing on the question whether the plaintiff has considered himself adequately remunerated for his services in the scheme. That has not been considered by the Courts below. Secondly, as pointed out earlier in the judgment the lower appellate Court has made the cardinal error by ignoring the fact that there was no offer by Sir T.S. Venkataraman on behalf of the defendant-company about his fitment into the scheme ; nor has the lower appellate Court considered what this fitment into the scheme really meant, whether it stopped with the appointment of the plaintiff as director of the K.C.F. Ltd., or whether it involved also some more participation in the profits of the defendant-company. These essential facts of the case have not been taken into account by the lower appellate Court and this has materially affected its judgment.

38. We therefore allow the appeal and dismiss the suit of the plaintiff with costs throughout.

List of documents marked on behalf of the appellant (defendant) as per order of Court dated 19th September, 1969 in C.M.P. No. 11626 of 1969 in S.A. No. 899 of 1963.

B. 140. Profit and Loss Account of the defendant-company for the period ended 30-6-1959.

B.	141	Do	for the period ended	30-6-60.
B.	142	Do	Do	30.6.61.
B.	143	Do	Do	30-6-62.
B.	144	Do	Do	30-6-63.
B.	145	Do	Do	30-6-64.
B.	146	Do	Do	30-6-65.
B.	147	Do	Do	30-6-66.
B.	148	Do	Do	30-6-67.
B.	149	Do	Do	30-6-68.