1962

M/s. Surajmull Nagarmull v. State of West Bengal

Shah J.

by the Arbitrator. But, however, unusual the rule may appear to be, it would not open to the Court to extend the right to appeal and to enable a claimant whose claim has been rejected completely to appeal to the High Court. The right to appeal is exercisable only if the amount awarded exceeds Rs. 5,000/-.

In that view of the case, the High Court was right in not entertaining the appeal. The appeal fails and is dismissed.

Appeal dismissed.

1962

April 12.

KAPUR CHAND GODHA

v.

MIR NAWAB HIMAYATALIKHAN AZAMJAH

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Contract—Province accepting performance from third person in full satisfaction of claim—If can sue promisor for balance—Indian Contract Act, 1872 (9 of 1872), ss. 41, 63, illustration (c).

In January 1937 one M & Co. sold and delivered jewellery valued at about 13 lakhs to the respondent, the Prince of Berar. The Prince acknowledged in writing the purchase of the jewellery and the price thereof and passed various acknowledgments in respect of the debts due and the last of such acknowledgments was made for sum of Rs. 27,79,000. In April 1948, the appellants presented their bill and were informed in January, 1949, that the Nizam had passed the bill. In February, 1949, when Hyderabad was under military occupation, a Committee was set up by the Military Governor to scrutinise all debts of the Prince of Berar and his younger brother. The claim of the appellants was considered by the Committee which recommended that the appellants should be paid a sum of Rs. 20 lakhs in full satisfaction of their claim. The appellants were paid the sum of Rs. 20 lakhs in two instalments. The appellants tried to pass a receipt when they received the second instalment reserving their right to recover the balance under the pronote from the

Prince of Berar. The relevant authorities refused to make payment on the said receipt. Thereupon the appellants discharged all the previous pronotes and on each one of them recorded a satisfaction of the full amount. The appellants thereafter sued the respondent for the recovery of the balance of the monies due to them on the pronote. The trial court decreed the suit on the ground that there was no accord and satisfaction when the plaintiff received the second cheque from the Accountant General, Hyderabad. In appeal by the respondent the Appellate Court set aside the decree holding that the appellants had accepted the sum of Rs. 20 lakhs in full satisfaction of their claim and duly discharged the promisory notes by endorsing full satisfaction thereon.

The appellants came up to the Supreme Court in appeal by cetificate granted by the High Court.

Held, that when payment is accepted on the condition on which it is offered, it is not open to the person receiving the payment to say, either in fact or in law, that they have accepeted the money but not the condition.

A promisee accepting performance of the promise from a third person, can not afterwards enforce it against the promiser.

In the present case the appellants had given a full discharge when they received the second instalment; and as they accepted the money in full satisfaction of their claim, they were not entitled to sue the respondent for the balance.

Obiter: When a statute clearly covers the case it is hardly necessary to refer to a decision.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 52 of 60.

Appeal from the judgment and decree dated April 15, 1958, of the Bombay High Court in Appeal No. 25 of 1957.

B. R. L. Iyengar, for the appellants.

M. C. Setalvad, Attorney General of India, S. R. Vakil, K. H. Bhabha, J. B. Dadachanji, O. C. Mathur and *Ravindra Narain*, for the respondent.

1962

Kapur Chand Godha
v.
Mir Nawab Himayatalikhan Azamjah

Das J.

1962. April 12. The Judgment of the Court was delivered by

S. K. DAS, J.—This is an appeal on a certificate granted by the High Court of Bombay under s. 110 of the Code of Civil Procedure, and arises out of a suit which the appellants had brought for recovery of Rs. 9,99,940/- with interest and cost from Mir Nawab Himayatalikhan Azamjah, who was then known as the Prince of Berar, being the eldest son of the Nizam of Hyderabad. The circumstances in which the appeal has arisen are these.

On or about January 31, 1937 Baboo Mull and Co. sold and delivered to the Prince of Berar in Bombay various articles of jewellery the aggregate value of which was Rs. 13,20,750/-. Lala Kapurchand Godha, who was the first plaintiff in the action and Lala Heeralal Godha, the original second plaintiff, carried on business in jewellery in partnership with their father and one Lala Baboo Mull (since deceased) in the name and style of Baboo Mull and Co. It is not disputed that the appellants now before us own the entire interest in the Subject matter of the suit and instead of using the name of Baboo Mull and Co. we shall name the appellants as the persons who sold the jewellery to the Prince of Berar on January 31, 1937. A writing dated January 31, 1937 was executed by the Prince of Berar, respondent before us, by which he declared and acknowledged having purchased the jewellery specified in a schedule from the appellants at the aggregate price of Rs. 13,20,750/-. In that writing (Ex. A) the respondent stated:

> "I promise on behalf of myself and my heirs, executors, administrators and successors to pay to you or to your order at my option and leisure at your abovementioned

address the said sum of rupees thirteen lacs twenty thousand seven hundred and fifty only together with simple interest thereon @ 10% ten per cent. per annum."

It is not disputed that the jewellery was in fact delivered by the appellants to the respondent, and after January 31, 1937 the respondent passed various acknowledgements in respect of the debt due at the time of the passing of the respective acknowledgments. These documents consisted of an acknowledgement of liability and a promise to pay on behalf of the respondent and the last of such acknowledgments was passed on February 15/16, 1948. By that time the debt of Rs.13,20, 750/-with ten per cent. interest thereon had increased to about Rs.27,79,000/-. By that last document the respondent admitted his liability for the amount of Rs. 27,79,078-2-0 and promised to pay the amount, again at his option and leisure. On April 30, 1948, the appellants presented their bill and some time in January, 1949, one of the appellants had an interview with the respondent and was told that the Nizam had passed the bill. In 1949 when Hyderabad was under military occupation after the Police Action, a Committee was set up on February 8, 1949, by the Military Governor known as the Princes Debts Settlement Committee. The report of this Committee shows that it was set up in accordance with a resolution made by the Military Governor in order to scrutinise all debts of the Prince of Berar and his younger brother. On February 19, 1949, the appellants presented a petition to the Military Governor with regard to their claim and asked for payment of the amount due to them or in the alternative for the return of the jewellery. The claim of the appellants was considered by the Committee in para. 11 of their report. The Committee recommended that the appellants should

1963

Kapur Chand Godha
v.
Mir Nawab Himayatalikhan Azamjah

Das J.

be paid a sum of Rs. 20 lacs in full satisfaction of their claim. The Committee further stated that they did not recommend the return of the jewellery. It may be here stated that the Committee consisted of two persons, namely, Zaheruddin Ahmed, who was the Controller of Accounts to the Nizam and A. N. Shah, a member of the Indian Civil Service. It may also be stated that the report of the Committee shows that it made a reduction of about ten per cent. In the case of all suppliers of goods to the two Princes because the Committee thought that in most of the cases the suppliers inflated the price for the supply of goods to the two Princes. The Committee also thought that the reasonable rate of interest would be six per cent. in the case of creditors who had to wait for a number of years for payment of their dues. On September 27, 1949, a sum of Rs.11,25,000/-was paid to the appellants. At that time there was a dispute going on as to whether the appellants were entitled to the entire amount of Rs.20 lacs or to only 9/16th share thereof. That dispute having been finally settled in favour of the appellant, the appellants received a second payment of Rs.8,75,000/- on February 14, 1950. This amount along with the earlier amount paid to the appellants came to the total of Rs.20 lacs. which the Committee had recommended should be paid to the appellants in full satisfaction of their claim. On February 14, 1950, a receipt was passed by the appellants for the sum of Rs.8,75,000/- (Ex. C) and this receipt ran in the following terms:

> "Received from the Controller General of Accounts and Audit, Hyderabad Government, the sum of Rs.8,75,000/- (Rupees eight lacs and seventy-five thousand) only in full and final payment of the balance of rupees twenty lacs allowed by the Government in respect of my claim under the pronote dated 15 February 1948 passed by the Prince

> of Berar in my fovour, reserving however my right to recover the balance amount due to me under the said pronote from the Prince of Berar."

The relevant authorities refused, however, to make payment on the receipt Ex. C in which the appellants reserved their right to recover the balance amount due from the Prince of Berar. Thereupon, the appellants discharged all the previous pronotes and on each one of them recorded a satisfaction of full payment. We may refer to the last of them, namely, the one dated February 15/16, 1948. This was for a sum of Rs.27,79,078-2-0 and on this document Kapurchand Godha, one of the appellants recorded "received payment in full".

Then, on August 14, 1950, the appellants served through their solicitors a notice on the respondent asking him to make payment of the balance of Rs.9,99,940/- with interest at ten per cent. The respondent not having paid the amount a suit was instituted on February 5, 1951, in the High Court of Bombay for recovery of the amount.

The suit was tried by Coyajee, J. The principal issue for trial was issue No. 6, namely, whether the appellants had accepted payment of Rs. 20 lacs in full satisfaction of their claim against the respondent and surrendered all the writings duly discharged and there was absolute release of the debt as stated in paras. 7, 8 and 11 of the written-statement. On a consideration of the oral and documentary evidence given in the case and relying particularly on Ex. C, Coyajee, J. came to the conclusion that the appellants did not take the sum of Rs. 20 lacs in full satisfaction of their claim. The learned Judge said :

> "Ordinarily, a plaintiff would have been in a most difficult and unenviable position to

1962

Kapur Chand Godha
v.
Mir Nawab Himawitalik'. n Azamjah

Das J.

enforce this claim after having endorsed those documents namely Ex. No. I as payment in full satisfaction. But evidently "payment in full satisfaction" there meant full satisfaction as regards the liability of the Hyderabad State and that would naturally be the meaning if taken in conjunction with Ex. C where he reserved liberty to proceed personally against the Prince of Berar. I have therefore come to the conclusion on the main issue in the suit namely, that there was no accord and satisfaction when the plaintiff received the second cheque from the Accountant-General of Hyderabad State."

Then there was an appeal by the respondent which was heard by the appellate court (Chagla, C. J. and Mody, J.) By its judgment dated April 15, 1958, the appellate court came to a contrary conclusion and held that on the evidence, oral and documentary, given in the case it was clearly established that the appellants accepted the sum of Rs. 20 lacs in full satisfaction of their claim and duly discharged the promissory notes by endorsing full satisfaction thereon; therefore, s. 63 of the Indian Contract Act, 1872, applied and the suit of the appellants was liable to be dismissed. It accordingly allowed the appeal and dismissed the suit with costs.

In the appeal before us Mr. B. R. L. Iyengar appearing on behalf of the appellants has very strongly contended that the view of Coyajee, J. is the correct view on the evidence given in the case. He has emphasised two points in connection therewith: (1) the crucial question is—what does the evidence show as to the intention of the creditor in accepting Rs. 20 lacs? and (2) what is the effect of Ex. C, a receipt executed contemporaneously with the payment of the second instalment of Rs. 8, 75,000 ? Mr. Iyengar has argued that the appellate

court did not attach sufficient importance to these two points and the conclusion which it reached is vitiated for that reason. As the judgment of the appellate court is a judgment in reversal and the question raised are essentially questions of fact on which there are conflicting findings, we allowed counsel for the parties to place before us the relevant evidence along with the pleadings of the parties. Two of the witnesses whose evidence appears to be decisive of the questions raised were Putta Madhava Rao who was examined on behalf of the appellants and Kapurchand Godha, one of the appellants. Putta Madhava Rao was at the relevant time, Assistant Accountant-General, Hyderabad and he was present before the Committee on more than one occasion when the claim of the appellants was considered. Before Coyajee, J. a questson was raised whether the statements of this witness as to what transpired before the Committee were admissible in evidence, when none of the two members of the Committee was called for examination. Madhava Rao was undoubtedly competent to prove what he himself heard or saw if such hearing or seeing was a fact in issue, and we consider it unnecessary to determine the further question as to whether he was competent to prove the statements alleged to have been made by one or other of the two members of the Committee. Therefore, we confine ourselves to the statements of Madhava Rao as to what happened before him. Madhava Rao said that before the Committee the appellants insisted on payment of their full claim, but the Committee decided that the appellants must take Rs. 20 lacs in full satisfaction of their claim; on this Kapurchand Godha protested and said that he would have to reserve his right for the balance. The Committee thereupon made it clear that they could not recommend payment of anything more, because a specific amount for distribution had been allotted to them. The reference to "a specific

1962

Kapur Chand Godha v. Mir Nawab Himayatali khan Azamjah

Das J.

amount" was to a sum of rupees two crores earmarked for the liquidation of the debts of the two Princes out of a fund known as Sarf-e-Khan. What happened after the Committee had made its recommendation is very important. The first instalment of Rs. 11,25,000/-was paid on September 27, 1949. At that time a dispute was going on about the share of the appellants to the money. The receipt which was passed for the payment of Rs. 11,25,000/- is marked Ex. B. That receipt does not show whether the appellants had agreed to accept Rs. 20 lacs in full satisfaction of their claim. As to the second instalment of Rs. 8,75,000/- which was paid on February 14, 1950, Madhava Rao give the following evidence. He said that when Ex. C was brought to him by Kapurchand Godha, the witness told the latter that he could not make payment against that receipt as the receipt recited, reservation of the right of the appellants for the balance. The witness took the document, Ex. C, to Zaheruddin Ahmed who was the Accountant-General then. Zaheruddin Ahmed suggested that the claimant should endorse full satisfaction and payment of all the promissory notes and then only the payment would be made. The witness then said:

> "Thereupon I obtained these endorsements (on the promissory notes) from Kapurchand. Kapurchand whilst endorsing these documents protested that he had been forced to endorse these and he was not at all satisfied. This happened on the 14th of February, 1950."

We may here state that no plea was raised by the appellants to the effect that the endorsements on the promissory notes had been obtained by coercion, and no issue was struck between the parties as to the endorsements on the promissory notes having been obtained by coercion. That

being the position, what is the effect of Madhava Rao's evidence? The clear effect is that the authorities who were paying the money in discharge of the debt of the respondent made it clear that they would pay the money only if a full satisfaction of the claim was given by the appellants. The appellants after some initial protests agreed and duly discharged all the promissory notes by endorsing thereon full payment and satisfaction. The question of coercion was introduced as and by way of after-thought. Two facts seem to be clearly established by the evidence of Madhava Rao. One is that the authorities refused to pay the second instalment unless full satisfaction of the claim was endorsed in accordance with the recommendation of the Committee; the second is that the appellants did record full payment in satisfaction of the promissory notes before they received the money. In our opinion, these two facts clearly established the case of the respondent that the appellants had given a full discharge when they received the second instalment. Indeed, the evidence of Madhava Rao is supported by the evidence of Kapurchand Godha. Kapurchand Godha said that when he presented the receipt, Ex. C, to Madhava Rao the latter said that he would not accept the receipt in that form. Madhava Rao then took Kapurchand to the Accountant-General. Kapurchand was asked to produce the promissory notes and was told that unless the promissory notes were endorsed with full satisfaction, no payment would be made. Kapurchand then said:

> "I was told that unless I signed the receipt for full payment, no cheque would be issued to me. Thereupon I endorsed the receipt for full payment. By that I mean I was asked to endorse full payment on the vouchers and I did so. I protested and said that as I was asked to endorse full payment, I

1963]

Kapur Chand Godha v. Mir Nawab Umayatalikhan Azamjah

was doing so despite the fact that I was not receiving full payment. Thereafter I signed the receipt as the vouchers and handed over the documents to the Accountant-General."

This evidence is in accord with the evidence of Madhava Rao and again establishes that appellants when they received the second and the last instalment of Rs. 8,75,000/-gave a full discharge of their claim and the plea of coercion was later introduced as and by way of an after-thought.

There was some difference of evidence as to whether Ex. C bore the signature of Kapurchand when it was first presented to Madhava Rao or whether the signature was later put on it. With that difference we are not now concerned. Nor are we concerned with certain minor discrepancies between the evidence of the two witnesses referred to above. The substantial result of the evidence of the two witnesses to whom we have referred is that whatever reluctance Kapurchand might have had in accepting Rs. 20 lacs in full satification of the claim of the appellants, he ultimately agreed to do so. Not only did he agree, but he actually endorsed full satisfaction and payment on all the promissory notes and thereafter he receive payment of the second instalment of Rs. 8,75,000/- which along with the first instalment of Rs. 11,25,000/-made up the sum of Rs. 20 lacs. On these facts which are established by the evidence given on behalf of the appellants themselves, the only conclusion is that there was full satisfaction of the claim of the appellants.

The legal position is clear enough. Section 63 of the Indian Contract Act reads :

> "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept

instead of it any satisfaction which he thinks fit."

Illustration (c) to the section says :

"A owes B 5000 rupees. C pays to B 1000 rupees, and B accepts them in satisfaction of his claim on A. This payment is a discharge of the whole claim."

It seems to us that this case is completely covered by s. 63 and illustration (c) thereof. The appellants having accepted payment in full satisfaction of their claim, are not now entitled to sue the respondent for the balance. A reference may also be made in this connection to s. 41 of the Contract Act under which when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. There is some English authority to the effect that discharge of a contract by a third person is effectual only if authorised or ratified by the debtor. In India, however, the words of s. 41 of the Contract Act leave no room for doubt, and when the appellants have accepted performance of the promise from a third person, they cannot afterwards enforce it against the promisor, namely, the respondent.

When a statute clearly covers a case, it is hardly necessary to refer to decisions. In deference however, to the arguments advanced on behalf of the appellants, we refer to the two decisions on which learned counsel for the appellant has relied. One is the decision in *Day* v. *Mc Lea* (1). In that case the plaintiffs made a claim against the defendants for a sum of money as damages for breach of contract ; the defendants sent a cheque for a less amount stating that it was in full payment of all demands. The plaintiffs kept the cheque stating they did so on account and brought an action for

(1) (1899) 32 Q. B. D. 610. 613.

1963

Kapur Chand Golha v. Mir Nawab Timayatalikhan Azamjah

Das J.

the balance of their claim. It was held that keeping the cheque was not as a matter of law conclusive that there was an accord and satisfaction of the claim; but that it was a question of fact on what terms the cheque was kept. We do not think that that decision is of any help to the appellant. As Lord Justice Bowen said in *Day* v. *Mc Lea* (1):

> "If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim; and if the money is kept, it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an argeement to take the money in satisfaction of the olaim in respect of which it is sent. If accord is a question of agreement there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim, and to cause him to act upon that view.
>
> In either case it is a question of fact."

We have already referred to the facts which are clearly established by the evidence in this case. Those facts clearly established that the appellants took the second instalment in full satisfaction of their claim. The second decision relied on on behalf of the appellants *Neuchatel Asphalte Co. Ltd.* v. *Barnett* (2) also proceded on a similar ground. In that case the claim of the plaintiff company amounted to £259, but the defendant raised some minor question which might reduce it by £14 or £15. The defendant then sent a cheque for £125 and stated in covering letter that this sum was "on account" pending the receipt of the plaintiff's reply to outstanding queries in connection with the work done. Some time later the defendant enclosed a further cheque for £75 and on the back of the

(1) (1899) 32 Q.B. D.610, 613. (2) [1957] 1 All. R.R. 962.

cheque was endorsed "in full and final settlement of the account". The cheque was accepted by the plaintiff company, which later sued for the balance of the amount of the claim. It was held that having regard to the correspondence and the surrounding circumstances, there was no intention on the part of the plaintiff company to accept the cheque for £75 in full satisfaction of the plaintiff's claim, because the words "in full and final settlement of the account" typed on the back of the cheque were inconsistent with the main object and intention of the transaction, particularly since (a) the covering letter sent by ths defendants plainly imported that the cheque was sent only on account and not in full and final settlement, and (b) it could not reasonably be supposed that, in the circumstances, the plaintiff company had agreed to a reduction of the amount claimed. The facts of the case before us are entirely different. The appellants were clearly and unambiguously told that unless they gave a full satisfaction of their claim, they would not be paid the amount. The appellants were left in no doubt as to the condition on which payment would be made to them. The appellants clearly accepted the condition and recorded full satisfaction on all the promissory notes. It is now impossible to accept the position that the appellants reserved their right to sue the respondent for the balance of the amount. In *Hirachand Punamchand* v. *Temple* (1) the father of a debtor wrote to the creditor offering an amount less than that of the debt in full settlement of the debt and enclosing a draft for that amount. Tha creditor cashed and retained the proceeds of the draft and afterwards brought an action against the debtor for the balance of the debt. It was held that the creditor must be takan to have accepted the amount received by him on the terms upon which it was offered and therefore he could not

(1) [1911] 2 K.B. 330.

1962

Kapur Chand Godha v. Mir Nawab Himayatalikhan Azamjah

Das J.

maintain the action. The case was considered under the English law and it was observed that assuming that there was no accord and satisfaction in the strict sense of the law in England, it could still be held that the creditor had ceased really to be holder of the negotiable instrument on which he sued. With the niceties of English law in the matter of accord and satisfaction we are not concerned. The position in the present case is that the appellants must have known that they could receive the second instalment and retain the first instalment by accepting the condition on which the sum of Rs. 20 lacs was offered to them, namely that they must record a full satisfaction of their claim. They accepted the money on the condition on which it was offered and it is not now open to them to say, either in fact or in law, that they accepted the money but not the condition.

For these reasons we are satisfied that the appellate court was right in the view which it took. Therefore, the appeal fails and is dismissed with costs.

Appeal dismissed.