1965 Legal Eagle(SC) 50

IN THE SUPREME COURT OF INDIA

Equivalent Citations : 1965 AIR(SC) 1981

Before : J.R.Mudholkar, Raghubar Dayal

Karsandas H.Thacker
Versus
Saran Engineering Company Limited

Case No. : 772 of 1962

Date of Decision : 24-Feb-1965

Advocates Appeared:
Sastri A.V.Viswanatha, Patwardhan S.G., Narain Ravindra, Nag A.K., Mathur O.C., Dadachanji J.B., Chatterjee N.C.

HEADNOTE :
Contract Act, 1872--Section 73 -- Breach of contract -- Damages -- Computation of -- Measurement of damages to compensate for the loss caused to the party must be based on the direct consequences of breach as known to the party. The appellant, on the breach of contract by the respondent, was entitled, under Section 73 of the Contract Act, to receive compensation for any loss by the damage caused to him which naturally arose in the usual course of business from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. Under Section 73 of the Contract Act, such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Illustration (k) to Section 73 of the Contract Act is apt for the purpose of this case. According to that illustration, the person committing breach of contract has to pay to the other party the difference between the contract price of the articles agreed to be sold and the sum paid by the other party for purchasing another article on account of the default of the first party, but the first party has not to pay the compensation which the second party had to pay to third parties as he had not been told at the time of the contract that the second party was making the purchase of the article for delivery to such third parties.

STATUTES REFERRED:
1. Contract Act,1872, Section 73
2. Contract Act,1872, Section 73

JUDGMENT/ORDER:

RAGHUBAR DAYAL. J

.: Karsandas H. Thacker, appellant, sued the respondent for the recovery of Rs. 20,700 for damages for breach of contract. He alleged that he entered into a contract with the respondent for the supply of 200 tons of scrap iron in July 1952 through correspondence, that the respondent did not deliver the scrap iron and expressed his inability to comply with the contract by its letter dated January 30,

1953. In the meantime, the appellant had entered into a contract with M/s. Export Corporation, Calcutta for supplying them 200 tons of scrap iron. On account of the breach of contract by the respondent, the appellant could not comply with his contract with M/s. Export Corporation which in its turn, purchased the necessary scrap iron from the open market and obtained from the appellant the difference in the amount they had to pay and what they would have paid to the appellant in pursuance of the contract.

2. The respondent contested the suit on grounds inter alia that there had been no completed contract between the parties and that the appellant suffered no damages. The controlled price of scrap iron on January 30, 1953, was the same as it was in July 1952 when the contract was made. It was further contended for the defendant that it was not liable to make good the damages the appellant had to pay to the Export Corporation as the appellant had entered into the contract on the basis of principal to principal and had not disclosed that he was purchasing scrap iron for the Export Corporation or for the purpose of export.

3. The trial Court accpeted the plaintiff's case that there was a completed contract between the parties, that the respondent broke the contract and that the appellant was entitled to the damages claimed. It accordingly decreed the suit. On appeal by the respondent, the High Court reversed the decree. It held that there had been a completed contract between the parties on October 25, 1952, but held that the respondent was not responsible for committing breach of contract as it could not perform the contract on account of the laches of the appellant and that the appellant suffered no damages in view of the controlled price for scrap iron being the same on Jaunary 30, 1953 as it was in July 1952. The result was that the appellant's suit was dismissed. The High Court granted the necessary certificate under Art. 133(1)(a) of the Constitution and that is how the appeal has been presented to this Court.

4. It has been urged for the appellant that the Iron and Steel (Scrap Control) Order, 1943, hereinafter called the Scrap Control Order, and consequently, the controlled price of scrap iron, applied to cases of sale of scrap iron for use within the country and did not apply, to sales of scrap iron for purposes of export. We do not find anything in the Defence of India Rules, 1939, under which the Scrap Control Order was issued in 1943, or in the Essential Supplies (Temporary Powers) Act, 1946, that the Control Ordes would not apply to sales of controlled articles for export. Rule 81 of the Defence of India Rules, 1939, authorised the Central Government, inter alia, to provide by order for maintaining supplies and services essential to the life of the community, for the controlling of the prices at which articles or things of any descrpition whatsoever may be sold and there is nothing to suggest that this control of prices was to apply only to sales of any articles within the country and not for purposes of export. Similarly, S. 3(1) of the Essential Supplies (Temporary Powers) Act, 1946, provided that the Central Government may, by notified order, provide for regulation or prohibition of production, supply and distribution of any essential commodity and for trade and commerce therein, in so far as it appears to be necessary and expedient for maintaining or increasing supplies of any essential commodity or securing its equitable distribution or availability at fair prices.

5. There is nothing in the terms of the Scrap Control Order or the Notification issued under Cl. 8 thereof by the Controller at the relevant period, viz., Notification No. S.R.O. 1007 dated 30-6-51, Part II, Section 3, fixing the controlled price of scrap iron among other things, to exclude from its purview sale of scrap iron for purposes of export.

6. Reference is made for the appellant to what is stated in a letter from the Iron and Steel Controller Government of India, to the appellant in March 1954. Letter Exhibit 6 was in reply to a letter from the appellant and stated that there was no statutory price for scrap iron meant for export. This statement might be about the position in March 1954. There is nothing in this letter to show that the statutory price of scrap iron meant for export was not covered by the Control Order in 1952.

7. Another letter from the Deputy Assistant Iron and Steel Controller to the appellant in August-September 1954, Exhibit 1 (Y), in reply to a telegram from the appellant, said that the Scrap Control

Order was not applicable to scraps meant for export and added :

"Scraps which are permitted for export are generally collected from uncontrolled sources by the exporters."

Two things are to be noted. One is that it is not clear from this letter whether the Scrap Control Order was not applicable to scraps meant for export in 1952 and the other is that some sort of permission appeared to have been necessary for exporting scrap iron and that scrap iron for export was generally collected from uncontrolled sources, that is to say, ordinarily the Controller did not authorise purchase of scrap iron for export from controlled sources.

8. The Notification fixing the prices for the sale of scrap iron was applicable for the prices to be charged by persons other than controlled sources. It follows that purchases for exports from uncontrolled sources also offended against the provisions of Cl. 8(4) of the Scrap Control Order if they charged prices higher than those fixed. Clause 8 empowered the Controller, with the approval of the Central Government, to publish the notification in the Official Gazette, prices for different classes of scrap. Sub-clause (4) thereof provided that no person could sell or otherwise dispose of and no person could acquire any scrap at prices in excess of those notified or fixed by the Controller under that clause.

9. We now deal with the quantum of damages. The appellant claimed damage at an amount equal to the difference between the price paid by his venders viz., the Export Corporation, and the price he would have paid to the respondent for 200 tons of scrap iron. He is not entitled to calculate damages on this basis, unless he had entered into the contract with the respondent after informing the latter that he was purchasing the scrap for export, if there was no controlled price applicable to purcahses for export. There is nothing on the record to establish that the defendant was told, before the contract was entered into, that the appellant was purchasing the scrap iron for export. There is nothing about it in the correspondence which concluded the contract. The first indirect indication of the scrap being required for export could be had by the respondent late in October 1952 when it was informed that the scrap iron was to be despatched to the Export Corporation. The respondent could have possibly inferred then that the scrap iron it was to sell to the appellant was meant for export. Such information to it was belated. Its liability to damages for breach of contract on the basis of the market price of scrap iron for export would not depend on its belated knowledge but would depend on its knowledge of the fact at the time it entered into the contrast.

10. The appellant stated in para 7 of the plaint that the plaintiff, to the knowledge of the defendant company, sold the said 200 tons of iron scrap purchased from the defendant to M/s. Export Corporation who required the same for shipping purposes. This statement does not refer to the time when the defendant had the knowledge that the scrap iron was required for shipping purposes. From the contents of the correspondence, such knowledge, as already mentioned, could be possibly be had by the defendant after October 25, 1952. Further, this statement in the plaint refers to the knowledge of the sale to the Export Corporation and does not directly refer to his knowledge about the scrap iron being required for export. The respondent, in its written statement, denied the statements in para 7 of the plaint.

11. In his deposition, the appellant stated that the defendant company knew that he had sold the goods to the Export Corporation and the Export Corporation wanted the goods for shipping, but in cross-examination, had to state that he himself had no concern or interest in the business of the Export Corporation, that he purchased the scrap iron from the defendant company on his own accord and that he had sold 200 tons of scrap iron to the Export Corporation on October 25, 1952. It is clear therefore that the respondent company could not have possibly known in July 1952 when the contract was made that the appellant was purchasing scrap iron for export through the Export Corporation. The appellant himself stated in cross examination that he talked of selling to the Export Corporation after the close of the negotiation with defendant on July 25, 1952.

12. The only other material on which the Appellant relies in support of his contention is that he had purchased to the knowledge of the respondent company scrap iron for export, is the use of the expression 'very fancy price' in the first letter he had written to the respondent on June 9, 1952. The letter said :

"We take pleasure to inform you that we are at present purchasing the scrap iron of the following descriptions at a very fancy price."

and required the respondent to communicate the exact quantity of each of the items mentioned in that letter, available for sale, together with their lowest price. It is urged that when prices were controlled, a suggestion to purchase at a very fancy price was a clear indication of the appellant's purchasing the various items for purposes of export. The offer to purchase at a very fancy price appears to be very remote and slender basis for coming to the conclusion that the respondent company must have known that the appellant wanted to purchase the items for export. The effect of the Controller's fixing the prices is only this that nobody can lawfully charge a price higher than the fixed price. The seller is however at liberty to sell the article at any price lower than the price fixed. It is therefore that the appellant had asked the respondent to quote their lowest prices. Readiness to pay a very fancy price could therefore mean a good price within the price limit fixed by the Controller.

13. We are therefore of opinion that the High Court was right in coming to the conclusion that the defendant respondent did not know that the appellant was purchasing scrap iron for export. The appellant, on the breach of contract by the respondent, was entitled, under S. 73 of the Contract Act, to receive compensation for any loss by the damage caused to him which naturally arose in the usual course of business from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. Under S. 73 of the Contract Act, such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Now, the loss which could have naturally arisen in the usual course of things from the breach of contract by the respondent in the present case would be nil. The appellant agreed to purchase scrap iron from the respondent at Rs. 100 per ton. It may be presumed that he was paying Rs. 70, the controlled price, and Rs. 30, the balance, for other incidental charges. On account of the non-delivery of scrap iron, he could have purchased the scrap iron from the market at the same controlled price and similar incidental charges. This means that he did not stand to pay a higher price than what he was to pay to the respondent and therefore he could not have suffered any loss on account of the breach of contract by the respondent. The actual loss, which, according to the appellant, he suffered on account of the breach of contract by the respondent was the result of his contracting to sell 200 tons of scrap iron for export to the Export Corporation. It may be assumed that, as stated, the market price of scrap iron for export on January 30, 1953, was the price paid by the Export Corporation for the purchase of scrap iron that day. As the parties did not know and could not have known when the contract was made in July 1952 that the scrap iron would be ultimately sold by the appellant to the Export Corporation, the parties could not have known of the likelihood of the loss actually suffered by the appellant, according to him, on account of the failure of the respondent to fulfil the contract.

14. Illusration (k) to Section 73 of the Contract Act is apt for the purpose of this case. According to that illustration, the person committing breach of contract has to pay to the other party the difference between the contract price of the articles agreed to be sold and the sum paid by the other party for purchasing another article on account of the default of the first party, but the first party has not to pay the compensation which the second party had to pay to third parties as he had not been told at the time of the contract that the second party was making the purchase of the article for delivery to such third parties.

15. We therefore hold that the High Court was right in holding that the appellant suffered no such damage which he could recover from the respondent.

16. In view of what we have said above, it is not necessary to discuss whether the correspondence between the parties in June-July 1952 made out a completed contract or not and whether the

appellant committed breach of contract or not.

17. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.