

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 310 of 1980

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

M/S. PATNI OIL MILLS. A REGISTERED FIRM,

Versus

KRISHNA OIL CAKES INDUSTRIES. A REGISTERED FIRM,

Appearance:

1. First Appeal No. 310 of 1980
MR JR NANAVATI for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. J.R. Nanavati for
the appellant. Initially, after being served, the

present respondent was appearing through learned advocate Mr. GK Sukhwani was appearing. After his death, notices were issued to the respondent for engaging another advocate in view of the death of his advocate but the said notices have remained unserved. However, since it is an appeal of the year 1980 arising out of the civil suit no. 14 of 1973, the Court has examined the merits of the matter in absence of the respondent.

This appeal was admitted by this Court on 24th March, 1980.

The present respondent original plaintiff a partnership firm filed the special civil suit no. 14 of 1973 before the trial court against the defendant. According to the original plaintiff, the defendant firm entered into an agreement to sell to the plaintiff firm through Dalal Shri Khushaldas Mohanlal of Amreli 350 bags of ground nut oil cakes at the rate of Rs.700.0 per ton on 12.7.1972; the Sauda was ready for delivery and the contract was non transferable delivery contract; the defendant failed to give delivery of 82 bags out of 350 bags of ground nut oil cakes; in this transaction, a sum of Rs.1435.00 remains credited to the defendant and the said amount was shown as credited against the suit transaction; the defendant entered into an agreement to sell 525 bags of ground nut oil cakes to the plaintiff at the rate of Rs.700.00 per ton on 14.7.1972 and the said contract was non transferable delivery contract. The plaintiff was a buyer and the defendant was a seller; the plaintiff received Sauda Nondh No. 1453 dated 12.7.1972 and No. 104 dated 14.7.1972 through Dalal Shri Khushaldas Mohanlal; the plaintiff submitted that as the market rates were increasing, the defendant failed to give delivery of 82 bags plus 525 bags of ground nut oil cakes to the plaintiff. The plaintiff made demands for delivery of the goods from the defendant but in vain and, therefore, the plaintiff gave a registered notice dated 27.12.1972 asking the defendant to give delivery and to accept the price of the goods but the defendant failed to give delivery and thereby committed a breach of the contract. The plaintiff, therefore, filed the aforesaid suit for recovery of damages for non delivery of goods. According to the plaintiff, the market value of the goods on the date of breach was about Rs.1300.00 per ton on or about 3.1.1973 and 10.1.1972 when the defendant gave a reply to the plaintiff's notice dated 27.12.1972. The plaintiff claimed in all an amount of Rs.27,315.00 as damages at the rate of Rs.600.00 per ton being difference between the contract price and the market price on the date of the breach, for 607 bags of ground nut oil cakes

i.e. 45 tons and 525 k.Gms. The plaintiff claimed Rs.50.00 towards notice charges and after giving credit of Rs.1435.00, the plaintiff prayed for a decree of Rs.25,930.00 against the defendant with costs and interest at the rate of 12 per cent per annum.

The suit filed by the plaintiff against the defendant was contested by the defendant present appellant by filing written statement at Exh. 8 contending inter alia that the plaintiff firm is not a registered partnership firm and that the signatory to the plaintiff in the suit is not a partner in the firm and therefore, the plaintiff in the suit was not properly presented. It was denied by the defendant that the plaintiff firm entered into the suit transaction with the defendant as alleged; the defendant submitted that the said Shri Khushaldas Mangaldas was not a broker (Dalal) of the defendant. The Sauda for 350 bags was admitted by the defendant. It was contended by the defendant that the plaintiff did not make payment and did take delivery of the goods; that the plaintiff took delivery of 268 bags and the plaintiff did not make payment in full to the defendant and Rs.1435.00 remained due to the defendant from the plaintiff. It was his case that the plaintiff did not take delivery of 82 bags as the market rate of the goods was declining and the plaintiff has committed a breach of contract and, therefore, the plaintiff is not entitled for the damages as alleged. It was also its case before the trial court that the plaintiff is not entitled to difference between the contract price and the market price prevailing on or about 3.1.1973 or 18.1.1973. The defendant denied the suit sauda no. 104 dated 14.7.72 for 525 bags at the rate of Rs.700.00 per ton. The defendant denied that Dalal Shri Khushaldas Mohanlal had not entered into the alleged Sauda on his behalf. The defendant denied that the suit Sauda was not transferable delivery contract. The defendant contended that he has not committed breach of contract as alleged and, therefore, the plaintiff is not entitled to damages as alleged. The defendant denied that the market price was about Rs.1300.00 per ton on or about 3.1.1973. The defendant denied that the market price was about Rs.1300.00 per ton on or about 3.1.1973. The defendant submitted that the suit sauda were forwarded contracts and they were prohibited under the Forwarded Contracts (Regulation) Act. It was also his case that the trial court was having no jurisdiction to hear the suit as no cause of action arose within the jurisdiction of the trial court. It was submitted by the defendant that the suit sauda was not made at Upleta but the suit Sauda was made at Kunkavad. The delivery of the

goods was to be given at Kunkavav and the price of the goods was payable at Kunkavav. In view of the submissions as aforesaid, it was prayed by the defendant for dismissing the suit of the plaintiff with costs.

In all, 14 issues were framed by the trial court at Exh. 52. After considering the evidence on record, the trial court held that the plaintiff firm is the registered partnership firm; signatory to the plaintiff suit is a partner in the plaintiff firm; Khushaldas Mohanlal is a broker of the defendant firm; the defendant entered into Sauda of loose oil cakes on 12.7.72 as alleged by the plaintiff; defendant failed to give delivery of goods under the suit sauda to the plaintiff; the defendant is liable to pay damages to the plaintiff on failure to give delivery; the plaintiff is entitled to claim damages by way of difference in price; the defendant has committed breach of contract on or about and in view of such findings, the trial court answered issues no. 1 to 8 in the affirmative. Issue No. 9 framed by the trial court was to the effect as to whether the price was Rs.1300.00 per ton on or about 3.1.1973. In answer to the said issue no.9, the trial court held that the damages are calculated at the rate of Rs.200.00 per ton being the difference between the contract price of Rs.700.00 and the market price of Rs.900.00 per ton. In views of the aforesaid finding on issue no.1 to 8 as well as issue no. 9 in particular, the trial court after considering the evidence on record, held that the plaintiff is entitled to recovery of Rs.7670.00 only from the defendant and answered issue no. 10 accordingly. The trial court negatived the contentions of the defendant and held that the trial court was having jurisdiction to hear the suit and in answer to issue no. 12, as to whether the Saudas in the suit were forward contracts or not, the trial court answered in the negative and in view of aforesaid findings recorded by the trial court, the trial court decreed the suit of the for Rs.7670.00 against the defendant with proportionate costs and interest at the rate of 6 per cent p.a. from the date of the decree till the payment from the defendant firm. The trial court has considered the oral evidence of the witness for the plaintiff namely Shri Ratilal Dahyabhai at Exh. 71 that the plaintiff firm purchased 525 bags of new ground nut oil cakes from the defendant at the rate of Rs.700.00 per ton through Dalal Khushaldas Mohanlal on 14.7.1972; the kabala chitthi Exh.75 dated 14.7.72 was considered by the trial court. According to the plaintiff, the delivery was to be made at Upleta in November, December, 1972. It was observed by the trial court that it appears from the evidence of

Jayantkumar Exh.97 that the suit Sauda was made on behalf of the parties on 14.7.72; the kabala chitthi Exh. 75 is in his hand writing; the suit contract was in respect of new ground nut oil cakes manufactured in November December, 1972; the suit contract was in respect of new ground nut oil cakes manufactured in November December, 1972. The goods were to be despatched in truck and delivery was to be made to the plaintiff at Upleta. Thereafter, the trial court considered the oral evidence of the defendant witness at Exh. 107 and observed that Jayantibhai is the son of Khushaldas Mohanlal and he has no ill feelings against him; Khushaldas has acted as a broker for the defendant and it was also observed that it appears from the evidence that the suit sauda was non transferable delivery contracts. The new ground nut oil cakes are manufactured in the beginning of October; there is evidence to show that the suit contract was made on behalf of the parties through said Dalal; it was also held by the trial court that it was having jurisdiction. Ultimately, the trial court has considered further evidence and came to the conclusion that there is no dispute that there was contract of 350 bags between the parties as alleged. After considering the evidence of the defendant, it was observed by the trial court that it appears from the evidence of the defendant himself that the market price began to increase in September, October. The plaintiff was making demands for delivery of the goods from the defendant about fifteen days prior to 7.11.1972. Therefore, breach of contract can be deemed to have arisen in October. it was also observed that it appears on record that the market price was about Rs.930.00 per ton on or about 25.10.1972. It was observed that Jayantikumar has stated in his evidence that the market price was about Rs.1015.00 per ton on 3.11.1972. There is no definite evidence to show that the market price was about Rs.1300.00; the suit sauda was made for Rs.700.00 per ton on 14.7.1972. In view of the aforesaid findings, the trial court assessed the damages at the rate of Rs.200.00 only per ton which come to Rs.9105.00 for 45 tons and 525 kgms i.e. 607 bags of ground nut oil cakes. Then the trial court deducted amount of Rs.1435.00 which was due to the defendant from the aforesaid amount of Rs.9105.00 and thus, the amount due and payable to the plaintiff by way of damages by the defendant was of Rs.7670.00. Interest on the decretal amount was claimed by the plaintiff at the rate of 12 per cent per annum from the date of the suit but the trial court was of the view that the suit was for recovery of damages for breach of contract and, therefore, trial court awarded interest only from the date of the decree and that too at the rate of 6 per cent p.a.

I have perused the impugned judgment delivered by the trial court. According to my opinion, the trial court has rightly discussed the evidence on record. From the evidence on record, it appears that the trial court has, after considering the evidence of the defendant's witness, held that the prices of the goods in question were increasing in September, October, 1972. This was the admission made by the witness for the defendant before the trial court. Considering the reasoning given by the trial court after considering the evidence on merits, according to my opinion, the trial court was right in observing that there was breach of contract between the parties and the plaintiff is entitled for the damages from the defendant which has been rightly calculated and assessed by the trial court on the basis of the evidence on record and, therefore, according to my opinion, the trial court has rightly passed the order and decreed the suit of the plaintiff against the defendant in part. Considering the findings given by the trial court as regards interest part, interest at the rate of 12 per cent p.a. was prayed for by the plaintiff from the date of the suit but instead of that, the trial court awarded interest only from the date of the decree and that too at the rate of 6 per cent p.a. alone. Thus, the order of the trial court is just, proper and balanced order passed after considering the evidence on record and, therefore, there is no substance in this appeal and the same is required to be dismissed.

In the result, this appeal is dismissed. Interim relief if any, shall stand vacated. There shall be no order as to costs.

Dt. 29.8.2003. (H.K. Rathod, J.)

Vyas