1958

September 23.

SALES TAX OFFICER, BANARAS & OTHERS

v.

KANHAIYA LAL MUKUNDLAL SARAF

(S. R. DAS C. J., BHAGWATI, B. P. SINHA, SUBBA RAO and K. N. WANCHOO JJ.)

Mistake of Law—Payment—Sales tax on forward transactions, subsequently held invalid—Claim for refund—Voluntary payment—Equitable considerations—Indian Contract Act, 1872 (9 of 1872), s. 72.

Under s. 72 of the Indian Contract Act, 1872: "A person to whom money has been paid...by mistake or under coercion must repay or return it".

The respondent, a registered firm, paid sales tax in respect of its forward transactions in pursuance of the assessment orders passed by the sales tax officer for the years 1949-51, but in 1952, the Allahabad High Court having held in *Messrs. Budh Prakash Jai Prakash* v. *Sales Tax Officer, Kanpur*, 1952 A. L. J 332, that the levy of sales tax on forward transactions was *ultra vires*, the respondent applied for a refund of the amounts paid, by a writ petition under Art. 226 of the Constitution. It was contended for the sales tax authorities that the respondent was not entitled to a refund because (1) the amounts in dispute were paid by the respondent under a mistake of law and were therefore irrecoverable, (2) the payments were in discharge of the liability under the Sales Tax Act and were voluntary payments without protest, and (3) inasmuch as the monies which had been received by the Government had not been retained but had been spent away by it, the respondent was disentitled to recover the said amounts.

Held, that the term "mistake" in s. 72 of the Indian Contract Act comprises within its scope a mistake of law as well as a mistake of fact and that, under that section a party is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the like.

Shib Prasad Singh v. *Maharaja Srish Chandra Nandi*, (1949) L.R. 76 I.A. 244, relied on.

Where there is a clear and unambiguous provision of law which entitles a party to the relief claimed by him, equitable considerations cannot be imported and, in the instant case, the fact that the Government had not retained the monies paid by the respondent but had spent them away in the ordinary course

of business of the State would not make any difference, and under the plain terms of s. 72 of the Act the respondent was entitled to recover the amounts.

Observations in *Nagorao* v. *Governor-General in Council*, A. I. R. 1951 Nag. 372, 374, to the effect that where a party receiving money paid under a mistake has no longer the money with him, equitable considerations might arise, disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 87 of 1957.

Appeal from the judgment and decree dated December 1, 1955, of the Allahabad High Court in Special Appeal No. 18 of 1955, arising out of the judgment and order dated November 30, 1954, of the said Court in Civil Misc. Writ No. 355 of 1952.

H. N. Sanyal, Additional Solicitor-General of India, G. C. Mathur and *C. P. Lal*, for the appellants.

P. R. Das and *B. P. Maheshwari*, for the respondent.

B. P. Maheshwari, for Agra Bullion Exchange (Intervener).

K. Veeraswami and *T. M. Sen*, for the State of Madras (Intervener).

R. C. Prasad, for the State of Bihar (Intervener).

H. N. Sanyal, Additional Solicitor-General of India, R. Gopalakrishnan and *T. M. Sen*, for the Union of India (Intervener).

1958. September 23. The Judgment of the Court was delivered by

Bhagwati J.

BHAGWATI J.—The facts leading up to this appeal lie within a narrow compass. The respondent is a firm registered under the Indian Partnership Act dealing in Bullion, Gold and Silver ornaments and forward contracts in Silver Bullion at Banaras in the State of Uttar Pradesh. For the assessment years 1948-49, 1949-50 and 1950-51 the Sales Tax Officer, Banaras, the appellant No. 1 herein assessed the respondent to U. P. Sales Tax on its forward transactions in Silver Bullion. The respondent had deposited the sums of Rs. 150-12-0, Rs. 470-0-0 and Rs. 741-0-0 for the said

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

three years which sums were appropriated towards the payment of the sales tax liability of the firm under the respective assessment orders passed on May 31, 1949, October 30, 1950 and August 22, 1951.

The levy of sales tax on forward transactions was held to be *ultra vires*, by the High Court of Allahabad by its judgment delivered on February 27, 1952, in *Messrs. Budh Prakash Jai Prakash* v. *Sales Tax Officer, Kanpur* (1) and the respondent by its letter dated July 8, 1952, asked for a refund of the amounts of sales tax paid as aforesaid. The appellant No. 2, the Commissioner of Sales Tax, U. P., Lucknow, however, by his letter dated July 19, 1952, refused to refund the same.

The respondent thereafter filed in the High Court of Allahabad the Civil Misc. Writ Petition No. 355 of 1952 under Art. 226 of the Constitution and asked for a writ of certiorari for quashing the aforesaid three assessment orders and a writ of mandamus requiring the appellants to refund the aforesaid amounts aggregating to Rs. 1,365-12-0. The judgment of the Allahabad High Court was confirmed by this Court on May 3, 1954, in *Sales Tax Officer, Pilibhit* v. *Budh Prakash Jai Prakash* (2) and the writ petition aforesaid was heard by Chaturvedi J. The learned judge by an order dated November 30, 1954, quashed the said assessment orders in so far as they purported to assess the respondent in respect of forward contracts in silver and also issued a writ of mandamus directing the appellants to refund the amounts paid by the respondent.

The appellants filed a Special Appeal No. 18 of 1955 in the High Court of Allahabad against that order of the learned Judge. A Division Bench of the said High Court heard the said appeal on December 1, 1955. It was argued by the Advocate-General on behalf of the appellants that the amounts in dispute were paid by the respondent under a mistake of law and were therefore irrecoverable. The Advocate-General also stated categorically that in that appeal he did not contend that the respondent ought to have

(1) (1952) A.L.J. 332. (2) [1955] 1 S.C.R. 243.

proceeded for the recovery of the amount claimed otherwise than by way of a petition under Art. 226 of the Constitution. The High Court came to the conclusion that s. 72 of the Indian Contract Act applied to the present case and the State Government must refund the moneys unlawfully received by it from the respondent on account of Sales Tax. It accordingly dismissed the appeal with costs.

The appellants then applied for a certificate under Art. 133(1)(b) of the Constitution which certificate was granted by the High Court on July 30, 1956, on the Advocate-General's giving to the Court an undertaking that the State will, in any event, pay the costs, charges and expenses incurred by or on behalf of the respondent as taxed by this Court. This appeal has accordingly come up for hearing and final disposal before us at the instance of the Sales Tax Officer, Banaras, appellant No. 1, the Commissioner, Sales Tax, U.P., Lucknow, appellant No. 2 and the State of U.P., appellant No. 3.

The question that arises for our determination in this appeal is whether s. 72 of the Indian Contract Act applies to the facts of the present case.

The learned Additional Solicitor-General appearing for the appellants tried to urge before us that the procedure laid down in the U.P. Sales Tax Act by way of appeal and/or revision against the assessment orders in question ought to have been followed by the respondent and that not having been done the respondent was debarred from proceeding in the civil courts for obtaining a refund of the monies paid as aforesaid. He also tried to urge that in any event a writ petition could not lie for recovering the monies thus paid by the respondent. Both those contentions were, however, not available to him by reason of the categorical statement made by the Advocate-General before the High Court. The whole matter had proceeded on the basis that the respondent was entitled to recover the amount claimed in the writ petition which was filed. No such point had been taken either in the grounds of appeal or in the statement of case filed before us in this Court and we did not feel justified in allowing the

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

learned Additional Solicitor-General to take this point at this stage.

Section 72 of the Indian Contract Act is in the following terms:

"A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it."

As will be observed the section in terms does not make any distinction between a mistake of law or a mistake of fact. The term "mistake" has been used without any qualification or limitation whatever and comprises within its scope a mistake of law as well as a mistake of fact. It was, however, attempted to be argued on the analogy of the position in law obtaining in England, America and Australia that money paid under a mistake of law could not be recovered and that that was also the intendment of s. 72 of the Indian Contract Act.

The position in English law is thus summarised in Kerr on "Fraud and Mistake" 7th Edn., at p. 140:

"As a general rule it is well-established in equity as well as at law, that money paid under a mistake of law, with full knowledge of the facts, is not recoverable, and that even a promise to pay, upon a supposed liability, and in ignorance of the law, will bind the party."

The ratio of the rule was thus stated by James L. J. in *Rogers* v. *Ingham* (1):

"If that proposition were true in respect of this case it must be true in respect to every case in the High Court of Justice where money has been paid under a mistake as to legal rights, it would open a fearful amount of litigation and evil in the cases of distribution of estates, and it would be difficult to say what limit could be placed to this kind of claim, if it could be made after an executor or trustee had distributed the whole estate among the persons supposed to be entitled, every one of them having knowledge of all the facts, and having given a release. The thing has never been done, and it is not a thing which, in my opinion, is to be encouraged. Where people have a

(1) (1876) 3 Ch. D. 351, 356.

knowledge of all the facts and take advice, and whether they get proper advice or not, the money is divided and the business is settled, it is not for the good of mankind that it should be reopened..." (See also *National Pari Mutual Association Ltd.* v. *The King*(1) and Pollock on Contract, 13th Edn., at pp. 367 & 374).

The American doctrine is also to the same effect as appears from the following passage in Willoughby on the Constitution of the United States, Vol. 1, p. 12:

"The general doctrine that no legal rights or obligation can accrue under an unconstitutional law is applied in civil as well as criminal cases. However, in the case of taxes levied and collected under statutes later held to be unconstitutional, the tax payer cannot recover unless he protested the payment at the time made. This, however, is a special doctrine applicable only in the case of taxes paid to the State. Thus, in transactions between private individuals, moneys paid under or in pursuance of a statute later held to be unconstitutional, may be recovered, or release from other undertakings entered into obtained."

The High Court of Australia also expressed a similar opinion in *Werrin* v. *The Commonwealth* (2) where Latham C. J. and MacTiernan J. held that money paid voluntarily under a mistake of law was irrecoverable. Latham C. J. in the course of his judgment at p. 157 relied upon the general rule, as stated in Leake on Contracts, 6th Edn. (1911), p. 63 "that money paid voluntarily, that is to say, without compulsion or extortion or undue influence and with a knowledge of all the facts, cannot be recovered although paid without any consideration."

It is no doubt true that in England, America and Australia the position in law is that monies paid voluntarily, that is to say, without compulsion or extortion or undue influence and with a knowledge of all facts, cannot be recovered although paid without any consideration. Is the position the same in India?

(1) 47 T.L.R. 110. (2) 59 C.L.R. 150.

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

It is necessary to observe at the outset that what we have got to consider are the plain terms of s. 72 of the Indian Contract Act as enacted by the Legislature. If the terms are plain and unambiguous we cannot have resort to the position in law as it obtained in England or in other countries when the statute was enacted by the Legislature. Such recourse would be permissible only if there was any latent or patent ambiguity and the courts were required to find out what was the true intendment of the Legislature. Where, however, the terms of the statute do not admit of any such ambiguity, it is the clear duty of the courts to construe the plain terms of the statute and give them their legal effect.

As was observed by Lord Herschell in the *Bank of England* v. *Vagliano Brothers* (1):

"I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view."

"If a Statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decision.....".

This passage was quoted with approval by their Lordships of the Privy Council in *Narendranath Sircar* v. *Kamal-Basini Dasi* (2) while laying down the proper mode of dealing with an Act enacted to codify a particular branch of the law.

(1) [1891] A.C. 107, 144. (2) (1896) I.L.R. 23 Cal. 563, 571.

The Privy Council adopted a similar reasoning in *Mohori Bibee* v. *Dhurmodas Ghose* (1) where they had to interpret s. 11 of the Indian Contract Act. They had before them the general current of decisions in India that ever since the passing of the Indian Contract Act the contracts of infants were voidable only. There were, however, vigorous protests by various judges from time to time; and there were also decisions to the contrary effect. Under these circumstances, their Lordships considered themselves at liberty to act on their own view of the law as declared by the Contract Act, and they had thought it right to have the case re-argued before them upon this point. They did not consider it necessary to examine in detail the numerous decisions above referred to, as in their opinion the "whole question turns upon what is the true construction of the Contract Act itself". They then referred to the various relevant sections of the Indian Contract Act and came to the conclusion that the question whether a contract is void or voidable pre-supposes the existence of a contract within the meaning of the Act and cannot arise in the case of an infant who is not "competent to contract."

In *Satyabrata Ghose* v. *Mugneeram Bangur & Co.* (2), s. 56 of the Indian Contract Act came up for consideration by this Court. B. K. Mukherjea J. (as he then was) while delivering the judgment of the Court quoted with approval the following observations of Fazl Ali J. in *Ganga Saran* v. *Ram Charan* (3):

"It seems necessary for us to emphasise that so far as the courts in this country are concerned, they must look primarily to the law as embodied in sections 32 and 56 of the Indian Contract Act, 1872."

and proceeded to observe:

"It would be incorrect to say that section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principle of English law on the subject of frustration. It must be held also that to the extent that the Indian Contract Act deals

(1) (1902) L.R. 30 I.A. 114. (2) [1954] S.C.R. 310.
(3) [1952] S.C.R. 36, 52.

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law *dehors* these statutory provisions. The decisions of the English courts possess only a persuasive value and may be helpful in showing how the courts in England have decided cases under circumstances similar to those which have come before our courts."

It is, therefore, clear that in order to ascertain the true meaning and intent of the provisions, we have got to turn to the very terms of the statute itself, divorced from all considerations as to what was the state of the previous law or the law in England or elsewhere at the time when the statute was enacted. To do otherwise would be to make the law, not to interpret it. (See *Gwynne* v. *Burnell* (1) and *Kumar Kamalranjan Roy* v. *Secretary of State* (2).

The courts in India do not appear to have consistently adopted this course and there were several decisions reached to the effect that s. 72 did not apply to money paid under a mistake of law, e.g., *Wolf & Sons* v. *Dadyba Khimji & Co.* (3) and *Appavoo Chettiar* v. *S. I. Ry. Co.* (4). In reaching those decisions the courts were particularly influenced by the English decisions and also provisions of s. 21 of the Indian Contract Act which provides that a contract is not voidable because it was caused by a mistake as to any law in force in British India. On the other hand, the Calcutta High Court had decided in *Jagdish Prasad Pannalal* v. *Produce Exchange Corporation Ltd.* (5), that the word "mistake" in s. 72 of the Indian Contract Act, included not only a mistake of fact but also a mistake of law and it was further pointed out that this section did not conflict with s. 21 because that section dealt not with a payment made under a mistake of law but a contract caused by a mistake of law, whereas s. 72 dealt with a payment which was either not under a contract at all or even if under a contract, it was not a cause of the contract.

(1) 7 Cl. & F. 696. (2) L. R. 66 I. A. 1, 10.
(3) (1919) I.L.R. 44 Bom. 631, 649. (4) A.I.R. 1929 Mad. 177.
(5) A.I.R. 1946 Cal. 245.

The Privy Council resolved this conflict in *Shiba Prasad Singh* v. *Srish Chandra Nundi* (1). Their Lordships of the Privy Council observed that the authorities which dealt with the meaning of "mistake" in the section were surprisingly few and it could not be said that there was any settled trend of authority. Their Lordships were therefore bound to consider this matter as an open question, and stated at p. 253:

"Those learned judges who have held that mistake in this context must be given a limited meaning appear to have been largely influenced by the view expressed in Pollock and Mulla's commentary on s. 72 of the Indian Contract Act, where it is stated (Indian Contract & Specific Relief Acts, 6th Edn., p. 402): "Mistake of law is not expressly excluded by the words of this section; but s. 21 shows that it is not included". For example, *Wolf & Sons* v. *Dadyaba Khimji & Co.* (2). Macleod J. said referring to s. 72 "on the face of it mistake includes mistake of law. But it is said that under s. 21 a contract is not voidable on the ground that the parties contracted under a mistaken belief of the law existing in British India, and the effect of that section would be neutralized if a party to such a contract could recover what he had paid by means of s. 72 though under s. 21 the contract remained legally enforceable. This seems to be the argument of Messrs. Pollock and Mulla and as far as I can see it is sound." In *Appavoo Chettiar* v. *South Indian Rly.* (3), Ramesam and Jackson JJ. say: "Though the word 'mistake' in s. 72 is not limited it must refer to the kind of mistake that can afford a ground for relief as laid down in ss. 20 and 21 of the Act..... Indian law seems to be clear, namely, that a mistake, in the sense that it is a pure mistake as to the law in India resulting in the payment by one person to another and making it equitable that the payee should return the money is no ground for relief." Their Lordships have found no case in which an opinion that "mistake" in s. 72 must be given a limited meaning has been based on any other ground. In their

(1) (1949) L.R. 76 I.A. 244. (2) (1919) I.L.R. 44 Bom. 631.
(3) A.I.R. 1929 Mad. 648.

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

Lordships' opinion this reasoning is fallacious. If a mistake of law has led to the formation of a contract, s. 21 enacts that that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that that money was paid under mistake of law ; it was paid because it was due under a valid contract, and if it had not been paid payment could have been enforced. Payment "by mistake" in s. 72 must refer to a payment which was not legally due and which could not have been enforced ; the "mistake" is thinking that the money paid was due when, in fact, it was not due. There is nothing inconsistent in enacting on the one hand that if parties enter into a contract under mistake in law that contract must stand and is enforceable, but, on the other hand, that if one party acting under mistake of law pays to another party money which is not due by contract or otherwise, that money must be repaid. Moreover, if the argument based on inconsistency with s. 21 were valid, a similar argument based on inconsistency with s. 22 would be valid and would lead to the conclusion that s. 72 does not even apply to mistake of fact. The argument submitted to their Lordships was that s. 72 only applies if there is no subsisting contract between the person making the payment and the payee, and that the Indian Contract Act does not deal with the case where there is a subsisting contract but the payment was not due under it. But there appears to their Lordships to be no good reason for so limiting the scope of the Act. Once it is established that the payment in question was not due, it appears to their Lordships to be irrelevant to consider whether or not there was a contract between the parties under which some other sum was due. Their Lordships do not find it necessary to examine in detail the Indian authorities for the wider interpretation of "mistake" in s. 72. They would only refer to the latest of these authorities, *Pannalal* v. *Produce Exchange Corp. Ltd.* (1), in which a carefully reasoned judgment was given by Sen J. Their Lordships agree with this judgment. It may be well to add that their

(1) A.I.R. 1946 Cal. 245.

Lordships' judgment does not imply that every sum paid under mistake is recoverable, no matter what the circumstances may be. There may in a particular case be circumstances which disentitle a plaintiff by estoppel or otherwise."

We are of opinion that this interpretation put by their Lordships of the Privy Council on s. 72 is correct. There is no warrant for ascribing any limited meaning to the word 'mistake' as has been used therein and it is wide enough to cover not only a mistake of fact but also a mistake of law. There is no conflict between the provisions of s. 72 on the one hand and ss. 21 and 22 of the Indian Contract Act on the other and the true principle enunciated is that if one party under a mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise that money must be repaid. The mistake lies in thinking that the money paid was due when in fact it was not due and that mistake, if established, entitles the party paying the money to recover it back from the party receiving the same.

The learned Additional Solicitor-General, however, sought to bring his case within the observations of their Lordships of the Privy Council that their judgment did not imply that every sum paid under mistake is recoverable no matter what the circumstances might be and that there might be in a particular case circumstances which disentitle a plaintiff by estoppel or otherwise. It was thus urged that having regard to the circumstances of the present case, (i) in so far as the payments were in discharge of the liability under the U. P. Sales Tax Act and were voluntary payments without protest and also (ii) inasmuch as the monies which had been received by the State of U. P. had not been retained but had been spent away by it, the respondent was disentitled to recover the said amounts. Here also, we may observe that these contentions were not specifically urged in the High Court or in the statement of case filed by the appellants in this court; but we heard arguments on the same, as they were necessarily involved in the question whether s. 72 of

1958

Sales Tax Officer
v.
Mukundlal Saraf

Bhagwati J.

the Indian Contract Act applied to the facts of the present case.

Re: (i):—The respondent was assessed for the said amounts under the U. P. Sales Tax Act and paid the same; but these payments were in respect of forward transactions in silver. If the State of U. P. was not entitled to receive the sales tax on these transactions, the provision in that behalf being ultra vires, that could not avail the State and the amounts were paid by the respondent, even though they were not due by contract or otherwise. The respondent committed the mistake in thinking that the monies paid were due when in fact they were not due and that mistake on being established entitled it to recover the same back from the State under s. 72 of the Indian Contract Act. It was, however, contended that the payments having been made in discharge of the liability under the U. P. Sales Tax Act, they were payments of tax and even though the terms of s. 72 of the Indian Contract Act applied to the facts of the present case no monies paid by way of tax could be recovered. We do not see any warrant for this proposition within the terms of s. 72 itself. Reliance was, however, placed on two decisions of the Madras High Court reported in (1) *Municipal Council, Tuticorin* v. *Balli Brcs.* (1) and (2) *Municipal Council, Rajahmundry* v. *Subba Rao* (2). It may be noted, however, that both these decisions proceeded on the basis that the payments of the taxes there were made under mistake of law which as understood then by the Madras High Court was not within the purview of s. 72 of the Indian Contract Act. The High Court then proceeded to consider whether they fell within the second part of s. 72, viz., whether the monies had been paid under coercion. The court held on the facts of those cases that the payments had been voluntarily made and the parties paying the same were therefore not entitled to recover the same. The voluntary payment was there considered in contradistinction to payment under coercion and the real ratio of the decisions was that there was no coercion or duress exercised by the authorities for

(1) A.I.R. 1934 Mad. 420. (2) A.I.R. 1937 Mad. 559.

exacting the said payments and therefore the payments having been voluntarily made, though under mistake of law, were not recoverable. The ratio of these decisions, therefore, does not help the appellants before us. The Privy Council decision in *Shiba Prasad Singh* v. *Srish Chandra Nandi* (1) has set the whole controversy at rest and if it is once established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law the party is entitled to recover the same and the party receiving the same is bound to repay or return it. No distinction can, therefore, be made in respect of a tax liability and any other liability on a plain reading of the terms of s. 72 of the Indian Contract Act, even though such a distinction has been made in America vide the passage from Willoughby on the Constitution of the United States, Vol. 1, p. 12 op cit. To hold that tax paid by mistake of law cannot be recoverd under s. 72 will be not to interpret the law but to make a law by adding some such words as "otherwise than by way of taxes" after the word "paid".

If this is the true position the fact that both the parties, viz., the respondent and the appellants were labouring under a mistake of law and the respondent made the payments voluntarily would not disentitle it from receiving the said amounts. The amounts paid by the respondent under the U. P. Sales Tax Act in respect of the forward transactions in silver, had already been deposited by the respondent in advance in accordance with the U. P. Sales Tax Rules and were appropriated by the State of U. P. towards the discharge of the liability for the sales tax on the respective assessment orders having been passed. Both the parties were then labouring under a mistake of law, the legal position as established later on by the decision of the Allahabad High Court in *Messrs. Budh Prakash Jai Prakash* v. *Sales Tax Officer, Kanpur* (2) subsequently confirmed by this Court in *Sales Tax Officer, Pilibhit* v. *Budh Prakash Jai Prakash* (3) not having been known to the parties at the relevant

(1) (1949) L. R. 76 I. A. 244. (2) (1952) A.L.J. 332.
(3) [1955] 1 S.C.R. 243.

1958

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

dates. This mistake of law became apparent only on May 3, 1954, when this Court confirmed the said decision of the Allahabad High Court and on that position being established the respondent became entitled to recover back the said amounts which had been paid by mistake of law. The state of mind of the respondent would be the only thing relevant to consider in this context and once the respondent established that the payments were made by it under a mistake of law, (and it may be noted here that the whole matter proceeded before the High Court on the basis that the respondent had committed a mistake of law in making the said payments), it was entitled to recover back the said amounts and the State of U. P. was bound to repay or return the same to the respondent irrespective of any other consideration. There was nothing in the circumstances of the case to raise any estoppel against the respondent nor would the fact that the payments were made in discharge of a tax liability come within the dictum of the Privy Council above referred to. Voluntary payment of such tax liability was not by itself enough to preclude the respondent from recovering the said amounts, once it was established that the payments were made under a mistake of law. On a true interpretation of s. 72 of the Indian Contract Act the only two circumstances there indicated as entitling the party to recover the money back are that the monies must have been paid by mistake or under coercion. If mistake either of law or of fact is established, he is entitled to recover the monies and the party receiving the same is bound to repay or return them irrespective of any consideration whether the monies had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. If once that circumstance is established the party is entitled to the relief claimed. If, on the other hand, neither mistake of law nor of fact is established, the party may rely upon the fact of the monies having been paid under coercion in order to entitle him to the relief claimed and it is in that position that it becomes relevant to consider whether the payment has been a voluntary payment or a payment under coercion. The

latter position has been elaborated in English Law in the manner following in *Twyford* v. *Manchester Corporation* (1) where Romer J. observed:

"Even so, however, I respectfully agree with the rest of Walton J.'s judgment, particularly with his statement that a general rule applies, namely, the rule that, if money is paid voluntarily, without compulsion, extortion, or undue influence, without fraud by the person to whom it is paid and with full knowledge of all the facts, it cannot be recovered, although paid without consideration, or in discharge of a claim which was not due or which might have been successfully resisted."

The principle of estoppel which has been adverted to by the Privy Council in *Shiba Prasad Singh* v. *Srish Chandra Nandi* (2) as disentitling the plaintiff to recover the monies paid under mistake can best be illustrated by the decision of the Appeal Court in England reported in *Holt* v. *Markham* (3) where it was held that as the defendant had been led by the plaintiffs' conduct to believe that he might treat the money as his own, and in that belief had altered his position by spending it, the plaintiffs were estopped from alleging that it was paid under a mistake; and this brings us to a consideration of point No. 2 above stated.

Re: (ii): Whether the principle of estoppel applies or there are circumstances attendant upon the transaction which disentitle the respondent to recover back the monies, depends upon the facts and circumstances of each case. No question of estoppel can ever arise where both the parties, as in the present case, are labouring under the mistake of law and one party is not more to blame than the other. Estoppel arises only when the plaintiff by his acts or conduct makes a representation to the defendant of a certain state of facts which is acted upon by the defendant to his detriment; it is only then that the plaintiff is estopped from setting up a different state of facts. Even if this position can be availed of where the representation is in regard to a position in law, no

(1) [1946] 1 Ch. 236, 241. (2) [1949] L. R. 76 I. A. 244.
(3) [1923] 1 K.B. 504.

1959

Sales Tax Officer v. Mukundlal Saraf

Bhagwati J.

such occasion arises when the mistake of law is common to both the parties. The other circumstances would be such as would entitle a court of equity to refuse the relief claimed by the plaintiff because on the facts and circumstances of the case it would be inequitable for the court to award the relief to the plaintiff. These are, however, equitable considerations and could scarcely be imported when there is a clear and unambiguous provision of law which entitles the plaintiff to the relief claimed by him.

Such equitable considerations were imported by the Nagpur High Court in *Nagorao* v. *G. G.-in-Council* (1) where Kaushalendra Rao J. observed:

"The circumstances in a particular case, disentitle the pltf. to recover what was paid under mistake."

"If the reason for the rule that a person paying money under mistake is entitled to recover it is that it is against conscience for the receiver to retain it, then when the receiver has no longer the money with him or cannot be considered as still having it as in a case when he has spent it on his own purposes—which is not the case here—different considerations must necessarily arise."

We do not agree with these observations of the Nagpur High Court. No such equitable considerations can be imported when the terms of s. 72 of the Indian Contract Act are clear and unambiguous. We may, in this context, refer to the observations of their Lordships of the Privy Council in *Mohori Bibee* v. *Dhurmodas Ghose* (2) at p. 125. In dealing with the argument which was urged there in regard to the minor's contracts which were declared void, viz., that one who seeks equity must do equity and that the minor against whom the contract was declared void must refund the advantage which he had got out of the same, their Lordships observed that this argument did not require further notice except by referring to a recent decision of the Court of Appeal in *Thurstan* v. *Nottingham Permanent Benefit Building Society* (3)

(1) A.I.R. 1951 Nag. 372, 374. (2) [1902] L. R. 30 I. A. 114.
(3) [1902] 1 Ch. 1.

since affirmed by the House of Lords and they quoted with approval the following passage from the judgment of Romer L. J., at p. 13 of the earlier report:

"The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay moneys in respect of a transaction which as against that person the Legislature has declared to be void."

That ratio was applied by their Lordships to the facts of the case before them and the contention was negatived. Merely because the State of U. P. had not retained the monies paid by the respondent but had spent them away in the ordinary course of the business of the State would not make any difference to the position and under the plain terms of s. 72 of the Indian Contract Act the respondent would be entitled to recover back the monies paid by it to the State of U. P. under mistake of law.

The result, therefore, is that none of the contentions urged before us on behalf of the appellants in regard to the non-applicability of s. 72 of the Indian Contract Act to the facts of the present case avail them and the appeal is accordingly dismissed with costs.

Appeal dismissed.

STATE OF MADHYA PRADESH

v.

REVASHANKAR

1958

September 24.

(JAFER IMAM, S. K. DAS and J. L. KAPUR JJ.)

Contempt of Court—Ouster of High Court's jurisdiction—Test—Contempt of Courts Act, 1952 (XXXII of 1952), s. 3(2)—Indian Penal Code, 1860 (XLV of 1860), s. 228.

The respondent, who had filed a complaint in respect of an alleged offence under s. 500 of the Indian Penal Code in the Court of the Additional District Magistrate of Indore, made a number of aspersions against the Magistrate in an application