

UNION OF INDIA

v.

SITA RAM JAISWAL

October 28, 1976

[A. N. RAY, C. J., M. H. BEG AND P. N. SHINGHAL, JJ.]

Pleadings under-section 70 of the Contract Act (Act 9) 1872,—Ingredients necessary to be pleaded.

Practice—Non-suiting for want of proper pleadings at the appellate stage by the Supreme Court when parties went to trial and issues were raised and the litigation went through the course of trial and appeal is not desirable.

Civil Procedure Code (Act 5 of 1908) Order VI r/w Order XIV, rule 1(5)—Courts should not allow parties to go to trial in the absence of proper pleadings.

Words and phrases—"Restoration" in Section 70 of the Contract Act, meaning of.

In a suit for the recovery of price of "Mac Intyre Sleeves, "supplied to the appellant, but alleged to have been wrongfully rejected after a considerable time, the respondent/plaintiff sought to make the appellant/defendant liable to compensate by reasons of provisions containing in Section 70 of the Indian Contract Act. The trial Court found that the goods were accepted and it dismissed the suit on the reasoning that the appellant offered to restore the goods. But on appeal, the Division Bench decreed the suit, not on the principles of Section 70 of the Contract Act, but treating the case of the respondent to be "a claim for damages for wrongful rejection and for non-acceptance of goods on the footing of unenforceable contract for sale of goods".

Dismissing the appeal by certificate the Court,

HELD : (1) The three ingredients to support the cause of action under-section 70 of the Indian Contract Act are : First, the goods are to be delivered lawfully or anything has to be done for another person lawfully. Second, the thing done on the goods delivered is so done or delivered "not intending to do so gratuitously". Third, the person to whom the goods are delivered "enjoys the benefit thereof". It is only when the three ingredients are pleaded in the plaint that a cause of action is constituted under section 70 of the Indian Contract Act. If any plaintiff pleads three ingredients and proves the three features the defendant is then bound to make compensation in respect of or to restore the things so done or delivered. [1980 G-H, 981 A]

(2) Courts should not allow the parties to go to trial in the absence of proper pleadings. In the instant case, the Court should not have allowed the respondent to go to trial with a claim under-section 70 of the Indian Contract Act. [1981 B-C]

(3) When parties went to trial and issues were raised on claims and the litigation also went through the course of trial and appeal, non-suiting for want of proper pleadings at the appellate stage, by the Supreme Court is not desirable. [1981 C]

(4) Restoration under-section 70 of the Indian Contract Act does not mean restoration of "goods by actual delivery". Intimation to take back the goods rejected evinces intention of restoration. [1982 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1762 of 68.

(Appeal from the Judgment and Decree dated 18-5-1967 of the Calcutta High Court in Appeal from Original Decree No. 183/56).

A *G. L. Sanghi and Girish Chandra*, for the Appellant.

Purushottam Chatterjee and Sukumar Ghose, for the respondent.

The Judgment of the Court was delivered by

B RAY, C.J.—This appeal by certificate is from the judgment dated 11 April 1968 of the High Court at Calcutta.

The respondent filed this suit against the appellant in the High Court at Calcutta and claimed Rs. 76,691-2-0 with interest or in the alternative Rs. 78,204-8-4. The respondent's case in short is that the respondent delivered to the defendant appellant pursuant to several orders from time to time goods described as Mac Intyre Sleeves and other goods. The respondent alleged in the plaint that the appellant "wrongfully purported to reject the Mac Intyre Sleeves" supplied by the respondent. The respondent further alleged that the rejection was unlawful inasmuch as the rejection was after lapse of reasonable time. The respondent claimed the sum mentioned in the plaint as reasonable price of the goods. The alternative case of the respondent is that the plaintiff respondent was entitled to the sum for supply of Mac Intyre Sleeves because the same were not supplied gratuitously.

The appellant denied in the written statement that there was any enforceable contract, and, therefore, the respondent was not entitled to sue for price of the goods delivered. The appellant took the plea in bar of the suit that there was no contract in compliance with section **E** 175 of the Government of India Act, 1935. The appellant pleaded to the alternative case of the respondent by alleging that the goods were lawfully rejected because the goods were found not to be of the correct description and quality. The appellant further denied that the rejected goods were retained after lapse of reasonable time without intimating the rejection.

F At the trial the respondent found that the claim for the sum of money as price of goods could not be sustained because of lack of enforceability of contract. The respondent therefore sought to make the appellant liable to compensate the respondent by reason of provisions contained in section 70 of the Indian Contract Act.

G Counsel for the appellant raised the plea at the trial that there was no foundation in the plaint for any case under section 70 of the Indian Contract Act.

The three ingredients to support the cause of action under section 70 of the Indian Contract Act are these : First, the goods are to be delivered lawfully or anything has to be done for another person lawfully. Second, the thing done or the goods delivered is so done or delivered "not intending to do so gratuitously". Third, the person to whom the goods are delivered "enjoys the benefit thereof". It is only when the three ingredients are pleaded in the plaint that a cause of action is constituted under section 70 of the Indian Contract Act.

If any plaintiff pleads the three ingredients and proves the three features the defendant is then bound to make compensation in respect of or to restore the things so done or delivered.

A

The allegation in the plaint in the present case was as follows. "In any event the plaintiff is entitled to the said sum of Rs. 26,248-7-0, and Rs. 50,442-11-0 with interest for the said Mac Intyre Sleeves, Copper Strips and Stay Shackles for the same were not supplied gratuitously". The plaintiff lacked the two other essential features to constitute a cause of action under section 70 of the Indian Contract Act. These were that the respondent delivered the goods lawfully to the appellant and that the appellant enjoyed the benefits thereof. The Court should not have allowed the respondent to go to trial in the present case with a claim under section 70 of the Indian Contract Act in the absence of proper pleadings.

B

C

In view of the fact that parties went to trial and issues were raised on claims under section 70 of the Indian Contract Act and the litigation went through the course of trial and appeal we do not desire to non-suit the respondent at this stage.

The trial court held that the goods were not properly rejected. But the trial court also held that the wordings of the rejection memos negatived any case of enjoyment of benefit. The trial court said that the documents show that the goods were not utilised or used by the appellant and the appellant disclaimed interest in the goods. The trial court also found that the respondent accepted the goods. The findings are inconsistent. The trial court held that the appellant offered to restore the goods to the respondent but the respondent refused to take them back. The trial court dismissed the suit. When the trial court found that the goods were accepted there could be no question of restoration. The trial court should have decreed the suit.

D

E

The Division Bench on appeal held that the goods were accepted by the appellant. The Division Bench held that title to the goods passed and if title passed then the whole context of section 70 of the Indian Contract Act would be irrelevant. The judgment of the Division Bench is confused. The Division Bench treated the case of the respondent to be "a claim for damages for wrongful rejection". Under the Sale of Goods Act when there is any enforceable contract the seller may claim for price of goods sold or damages for non-acceptance. The present case could not be supported on the footing of any enforceable contract giving rise to damages for non-acceptance or wrongful rejection. The reasoning of the Division Bench in allowing the claim is erroneous.

F

G

The evidence in the present case as found by the trial court is that the signatures of Rodericks and Francis on the challans indicate acceptance of the goods, and, therefore, the rejection is wrongful. The finding of the trial court that there was acceptance of the goods obviously repels any plea of rejection of the goods.

H

The error of the trial court was that it found the goods were accepted and yet dismissed the suit on the reasoning that the appellant

- A** offered to restore the goods. The error of the Division Bench was in decreasing the suit not on the principles of section 70 of the Indian Contract Act but on damages for non acceptance of goods on the footing of unenforceable contract for sale of goods.

- B** In view of the fact that there was acceptance of the goods no question of restoration arises. Counsel for respondent argued that restoration under section 70 of the Indian Contract Act meant that the defendant would have to restore the goods to the plaintiff by delivering the same to the plaintiff. This contention of the plaintiff respondent is utterly unsound. As long as there is intimation by the defendant to the plaintiff that the plaintiff can take back the goods the defendant evinces intention of restoration. In the present case no question of restoration arises because of the acceptance of the goods.

- C** The respondent in view of the trial court and the Division Bench of the High Court allowing the respondent to go on with the claim under section 70 of the Indian Contract Act became entitled to compensation for the goods accepted. The High Court found that the respondent had received a sum of Rs. 7,602-0-0 out of the claim of the claim under section 70 of the Indian contract Act and the respondent has been given a decree for Rs. 69,069-1-0 we order that the parties will pay and bear their own costs in this appeal. We specify the period of two months for payment of the aforesaid sums of money Rs. 76,671-1-0. The High Court gave a decree for the sum of Rs. 69,069-1-0.

- E** For the foregoing reasons there will be a decree for Rs. 69,069-1-0.

The High Court awarded half costs of the trial and full costs of the appeal. We do not wish to disturb those two orders for costs. In view of the fact that there was no proper case pleaded to support

S.R.

Appeal dismissed.