Datubhai Ebrahim Vs. Abubaker Moledina

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Court : Mumbai

Decided On : Sep-03-1887

Reported in : (1888)ILR12Bom242

Judge : Farran, J.

Appellant : Datubhai Ebrahim

Respondent : Abubaker Moledina

Judgement :

Farran, J.

1. In this case there is really no dispute about the facts. The defendant in December of last year agreed to borrow from the plaintiff a sum of Rs. 20,000 for three years at 7 1/2 per cent, per annum. The agreement was as follows: (His Lordship read the agreement.) It is clear that the plaintiff cannot get specific performance of that agreement. The only question is with respect to damages Now, the effect of the first and last clauses of that agreement would seem to be that the defendant stipulates to pay interest on the whole amount if he does not borrow the money; that is, that, in the event of a breach of the agreement the amount thus ascertained is to be paid by him to the plaintiff, The case is, therefore, one to which Section 74 of the Contract Act is to be applied. (His Lordship read the section.) By that section, then, the Court is bound to give to the plaintiff the damages which he can prove to have been sustained by him. I, therefore, have to

inquire what damages have been really sustained by the plaintiff in this case; and the principles by which we are to be guided in ascertaining those damages are laid down in Section 73(His Lordship read the section).

2. Now, this is not the case of a breach of a contract of sale. The contract is one of loan, or for the hire of money; and the question is, what damages are recoverable if the loan is not taken up on a particular day? It appears that the parties agreed that the money should be advanced on the 1st March, 1887.

3. The land of the defendant, which was to be mortgaged as security to the plaintiff, was already in mortgage to another person. It was to be reconveyed by the mortgagee to the defendant and again mortgaged to the plaintiff, and for this purpose the necessary deeds were prepared by the plaintiff's attorneys, and were ready for execution on the 1st March, 1887. The plaintiffs munim attended on that day at the office of the plaintiff's attorneys with the Rs. 20,000 ready to be handed over to the defendant. That money had been withdrawn by the plaintiff from his bankers, where it was bearing interest at 6 per cent. The defendant, however, did not attend to receive the money, and in fact the loan has never been advanced. The money was next day paid in again to the plaintiff's bankers, where it has ever since been bearing interest at the rate of 6 per cent.

4. Under these circumstances to what damages is the plaintiff entitled? He is clearly entitled to recover the expenses which he has incurred in preparing the necessary deeds. These expenses are proved to have amounted to Rs. 200. But he claims, in addition, one and a half per cent, per annum on the Rs. 20,000 for the period of three years for which the loan was to be made. That is the difference between the rate agreed upon in the contract and the rate which is allowed by his bankers, with whom the money lies deposited. I do not think he is entitled to interest for three years. I think he is. only entitled to interest for the time required to find another borrower of his Rs. 20,000 at the same rate which the defendant agreed to pay. There is some difficulty, of course, in fixing the time necessary for this. It must be to a certain extent a matter of conjecture. The amount to be lent must be taken into consideration; for it is clear that the larger the sum offered, the longer the time that would be required to find a borrower. It would, no doubt, be

easier to find a borrower of Rs. 20,000 than to find a borrower of two lakhs. The plaintiff appears to have lent Rs. 6,000 in April, Rs. 7,500 in July, and Rs. 20,000 yesterday. I think four months in this case would be a reasonable time. I have no doubt that the plaintiff with the assistance of a broker could within that period have found a person willing to take his Rs. 20,000 on loan at 7 1/2 per cent, interest. I think that, under Section 74 of the Contract Act, I have a discretion in awarding damages, and I accordingly award him Rs. 100, which is 1 1/2-per cent, on Rs. 20,000 for four months, together with the sum of Rs. 200, which is the amount of expenses which he has incurred.