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Court : Allahabad

Decided On : Apr-14-1921

Reported in : 64Ind.Cas.65

Judge : Gokul Prasad and ;Sturat, JJ.

Appellant : Sri Newas

Respondent : Ramdeo

Judgement :

1 The facts of the suit out of which this appeal has arisen are as follows:--Sri Niwas of Cawnpore. who alleges that he keeps a shop for the sale of sloth in Kaha Kothi, Cawnpore, instituted a suit against Ram Dao Agarwala, whom he alleges to be another cloth dealer in Dal-Mandi, Cawnpore, on the following allegations. He stated that on the 1st of July 1917 the parties had agreed that Sri Niwas should pay Ram Deo Rs. 250 which Ram Deo was to retain in any circumstances, that on the 15th of February 1918 Sri Niwas should be at liberty to purchase 250 thans of markin of specified quality from Ram Deo at Rs. 12-12 a piece or to sell to Ram Deo 250 piesea at the same price. The contract was a contract which appears to be not unusual in certain towns in India and is known as nazrana sauda. Under it, one party pays to the other party so much money out and out, the receiver of the money is safeguarded if the market fluctuates within certain limits, but if the market fluctuates outside those limits he loses money. The case for the plaintiff in the Court of the Subordinate Judge Was that on the 15th of February 1918 (the date

fixed for the purchase or sale of the cloth) the price of markin, which was fixed in the agreement at Rs. 12-12 a pieae, had risen to Rs. 1812 and that he had demanded delivery of 250 pieaes at that price and that, since the defendant had neither given delivery of the cloth nor paid damages, he sued him for Rs. 1,500 damages. The defendant denied that he entered into any transaction. He denied receipt of the Rs. 250, He further set up that such a transaction, even if proved, was bad as a wagering transaction. The learned Subordinate Judge found that the defendant had entered into the transaction as alleged by the plaintiff and had received Rs. 250 He found that the parties had never had any intention of buying and selling cloth and that their intention had simply been to receive or pay on differences according to the state of the market. He found that the plaintiff was not in a position to make delivery or take delivery on due date. He laid stress on the fact that the plaintiff had not produced his accounts to show whether he could take delivery Or make delivery on due date. He dismissed the suit, holding that the transaction was a wagering transaction, and permitted the defendant to retain the Rs. 250. In appeal the learned District Judge arrived at the following conclusion. He found that the defendant had entered into the contract with the plaintiff and had received Rs. 250. He found that the transaction was a wagering transaction and dismissed the appeal. He did not enter into the question as to whether the plaintiff was or was not in a position to make or take delivery. The decision of the case in the Courts below has not been satisfactory. Several points have been lost sight of. No attempt was made to discover the exact position of the parties in the cloth trade. It is not denied now that both parties are cloth merchants. If both parties are cloth merchants, the Court should have arrived at some decision as to the extent of their business, whether they were or were not in a position to buy or sell 250 pieces of markin, what were their financial resources, and how such a transaction as that suggested would affect them. Both Courts have, in our opinion, jumped to a conclusion that the transaction must be a wagering transaction without considering the conditions of the parties as throwing light upon the nature of their intentions. The law as to wagering contracts is discussed in many decisions. We need only refer to the decisions in *Universal stock Exchange v. Strachan* (1896) A.C. 166 : 65 L.J. Q.B. 429 : 74 L.T. 468 : 44 W.R. 497 : 60 J.P. 468, *Gieve, In re; Trustee, Ex parte* (1899) 1 Q.B. 791 : 68 L.J.Q.B. 500 80 L.T. 438 : 47 W.R. 441 :

6 (sic) 136 : 5 T.L.R. 251, Kong Yee Lone & Co. v. (sic) 29 C. 461 : 28 I.A. 239 : 5 C.W.N. (sic) Bom. L.R.476 : Sar P.C.J. (sic) P.C. and Bhagwandas Parasram v. Burori Ruttonji 44 Ind Cas 284 : 42 B. (sic) 23 M.L.T. 208 : 34 M.L.J. 305 4 P.L.W. 229. 6 A.L.J. 241 : 27 C.L.J. 368 : (1918) M.W.N. (sic) : 22 C.W.N 625 : 20 Bom L.R. 561, 7 L.W. (sic) 11 Bur. L.T. 211 : 45 I.A. 29 (P.C.). The law may be generally stated to be as follows. When persons, who are in a position to carry out a contract at the time of making the contract or can reasonably be executed to be in that position when the time of performance falls due, contract to receive or deliver goods at a future date, such contracts are not necessarily wagering contracts because an element of speculation enters into them, even if the contracts provide for the alternative of receiving or paying on differences instead of for actual delivery. The determination whether the parties intended to take delivery is of course important in arriving at a decision as to whether such contracts are or are not contracts of wager, and another important essential is whether the parties are dealing with actual commodities that they are handling or expecting to handle, or agreeing to settle an account according to fluctuation in prices of commodities on which they do not have and cannot expect to have any real title. We do not think that the learned District Judge approached the decision of the case from these points of view. We accordingly send the case back to his successor to decide the following remanded issues:

(1) Was (a) Sri Niwas (b) Ram Deo in a position to sell or purchase 250 thans of markin at prizes varying from Rs. 12 12 to Rs. 18 12 a than (i) on the 1st of July 1917, (ii) on the 15th of February 1918?

(2) Did Sri Niwas ask Ram Deo to deliver him 250 thans of markin on or about the 15th of February 1918?

3. The parties will be allowed to produce evidence on these points. The learned District Judge will, after hearing the evidence and the arguments and considering the evidence previously adduced, decide these issues and return the evidence and his findings to this Court within two months from the date of the receipt of this order. Ten days will then be allowed for objections.

