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Court : Allahabad

Decided On : Apr-09-1920

Reported in : 56Ind.Cas.192

Judge : P.C. Banerjee, J.

Appellant : Abdul Rashid

Respondent : The Sizing Material Co., Ltd.

Judgement :

1. The plaintiff in this case is a dealer in chemicals and scientific instruments at Cawnpore. He went to Bombay and ordered goods to be sent to him by the defendant. He alleges that he made an advance of Rs. 300. The invoice of the goods and the railway receipt were to be sent by the defendant to the Punjab National Bank at Cawnpore and the plaintiff was to pay the Bank and. take delivery. These facts are not disputed. The defendant sent three invoices to the Bank and duplicates to the plaintiff. The plaintiff took delivery, but he says that all the goods mentioned in the invoices were not in the parcel which contained the goods. The plaintiff thereupon asked the defendant for a refund of the price of such of the articles as he states had not been supplied. There was some correspondence between the parties. The defendant offered to make some payment, but as nothing was done the present suit was instituted for the price of the articles, which according to the plaintiff had not been supplied. The Court below has returned the plaint, holding that it had no jurisdiction to entertain it and

that the plaintiff's cause of action accrued in Bombay and he should have brought the suit in the Court in Bombay. The reason which the learned Judge of the Small Cause Court has assigned for holding that opinion does not commend itself to me. It is true that the charges were to be paid by the plaintiff for the despatch of the goods to Cawnpore, but the goods were agreed to be delivered to him at Cawnpore upon payment of the price to the Punjab National Bank at Cawnpore. The plaintiff could not get delivery unless he made that payment. As payment had to be made at Cawnpore, delivery of the goods was to be obtained at Cawnpore, and as all the goods, according to the plaintiff, were not delivered at Cawnpore, his cause of action for the present suit accrued within the jurisdiction of the Cawnpore Court. The Court below should, in my opinion, have entertained the suit and tried it on the merits. I accordingly allow the application, set aside the order of the Court below and remand the case to that Court with directions to re-admit it on its list of pending cases and dispose of it according to law. Costs of this application will be costs in the cause.

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