

State of Madhya Pradesh Vs. Mulamchand

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Court : Madhya Pradesh

Decided On : Aug-30-1972

Reported in : AIR1973MP293; 1973MPLJ832

Judge : Shiv Dayal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; [Constitution of India](#) - Articles 141 and 299(1)

Appeal No. : Civil Revn. No. 722 of 1971

Appellant : State of Madhya Pradesh

Respondent : Mulamchand

Advocate for Def. : J.S. Verma and ;P.P. Naolekar, Adv.

Advocate for Pet/Ap. : R.P. Sinha, Adv.

Judgement :
ORDER

Shiv Dayal, J.

1. In this revision, the defendant-State has challenged the decision of the trial Court on the question of res judicata.

2. On October 6, 1951, the Deputy Commissioner, Balaghat, sold by public auction to the plaintiff the right to propagate and collect lac in some of the forests of Balaghat district. The plaintiff purchased the said right in different Patwari circles. The total amount payable by the plaintiff was Rs. 69,500/-. The plaintiff merely paid Rs. 500/- on October 6, 1951, and another sum of Rs. 5000/- on October 6, 1951 and another sum of Rs. 5000/- on November 29, 1951. For the balance of Rs. 59,000/- the Tahsildar Balaghat, started recovery proceedings. In the course of those proceedings, the plaintiff paid a sum of Rs. 1,000/-. Thus, the balance outstanding against the plaintiff was Rs. 58,000/-.

3. The plaintiff challenged those recovery proceedings by a petition under Article 226 of the Constitution. That petition was dismissed by a learned Judge sitting singly (Misc. Petn. No. 197 of 1956). The petitioner (now plaintiff) preferred a Letters Patent Appeal (No. 117 of 1956) which was decided by a Division Bench on May 6, 1959. That decision is reported in 1960 MPLJ 195 = (AIR 1960 Madh Pra 152). Two points were raised before the Division Bench-

(1) The recovery proceeding under Section 225 (c) of the Central Provinces Land Revenue Act was without authority of law; and

(2) The indentures were not executed by proper authority as required by Article 299 of the Constitution, so that the contracts were not legally enforceable.

On the first question, the Division Bench held that Section 82 of the Indian Forests Act was applicable to the case and consequently the revenue authorities were entitled to realise the amount due as arrears of land revenue under Section 225 (c) of the C. P. Land Revenue Act.

4. On the second question, the Division Bench held that in the execution of the indentures, there was no breach of Article 299(1) of the Constitution. Secondly, as the contracts had been ratified by the State Government and the appellant had been allowed to exploit the forests according to the terms of the sale, there was no bar to the right of the State Government or its servants to realise the dues from him.

5. In the meanwhile, during the pendency of the recovery proceedings (supra), and before the decision of the said Letters Patent Appeal, the plaintiff instituted a Civil Suit (No. 24-B of 1954) for the recovery of damages (Mulamchand v. State of M. P.). In that suit, the plaintiff's case was that he had purchased from the proprietors of different malguzari jungles, the right to pluck, collect and remove the forest produce, like lac, tendu leaves, etc. for the years 1951, 1952 and 1953. This right he had acquired before the proprietary rights in these forests came to vest in the State on the coming into force of the M. P. Abolition of Proprietary Rights Act, 1950 (No. 1 of 1951). His claim was that the Deputy Commissioner, Balaghat, under Section 7 of the Abolition Act took charge of the entire malguzari jungles on April 1, 1951, and prohibited him from enjoying the right he had already acquired. However, when the Deputy Commissioner auctioned the forest produce of the village covered under the purchases of the plaintiff he purchased the right to collect lac from those forests and paid the State Rs. 10,000/-. He claimed a refund of the amount so paid, on the basis that there was no valid contract between him and the State of M. P. as the provisions of Article 299 of the Constitution were not complied with and the contract was void. The trial Court, relying on *Firm Chhotabhai Jethabhai Patel v. The State of M. P.*, 1953 SCR 476 = (AIR 1953 SC 108) held that the plaintiff was entitled to enforce the contract against the State of M. P. and accordingly passed a decree in favour of the plaintiff to the extent of Rs. 57,281/- and dismissed the rest of his claim. Both the parties came up in appeal to this Court. The appeal preferred by the State was allowed and the entire suit was dismissed, taking the view that the decision in *Firm Chhotabhai Jethabhai's* case (supra) was overruled in a later decision in *Mahadeo v. State of Bombay*, 1959 Supp (2) SCR 339 = (AIR 1959 SC 735). The plaintiff preferred an appeal to the Supreme Court. Their Lordships held that the provisions of Article 299(1) of the Constitution are mandatory and the plea of estoppel or ratification cannot be permitted in such a case. Since it was not disputed by the learned counsel for the State that the agreement in this case did not comply with the requirements of Article 299, their Lordships did not examine whether that was so. Their Lordships then laid down that if money is deposited and goods are supplied or services are rendered in terms of a void contract, the provisions of Section 70 of the Contract Act may be applicable for which three conditions were to be fulfilled. Since those

conditions were not proved by the plaintiff, the appeal was dismissed by the Supreme Court. In the result the suit stood dismissed.

6. In the present suit, which the plaintiff instituted in 1961 (Civil Suit No. 3-B of 1961), the plaintiff averred that the earlier proceedings for the recovery of Rs. 58,500/- had been stayed after the decision of the L. P. A., and later on the S. D. O., Balaghat registered a fresh case for the recovery of the above amount and sent the case to the Tahsildar, Balaghat. The Tahsildar, Balaghat, proclaimed the sale to be held on July 31, 1961. He further contended that the contracts being unenforceable because of non-compliance with the provisions of Article 299(1) of the Constitution, the proceedings for the recovery of the balance amount of Rs. 58,500/-, were illegal and 'constitute an invasion on the plaintiff's property'.

7. The defendant-State, while resisting the suit, contended that the decision of this Court in the above said L. P. A. (1960) MP LJ 195) = (AIR 1960 Madh Pra 152) operated as res judicata.

8. The learned trial Judge, by his order dated July 21, 1971, decided the issue of res judicata in favour of the plaintiff. He says:

'The decision in L. P. A. No. 117/1956 reported in 1960 MPLJ 195 = (AIR 1960 Madh Pra 152) and the decision in AIR 1968 SC 1218 are apparently conflicting on the point of legality and validity of the contracts In the face of L. P. A. No. 117/1956; 1960 MPLJ 195 = (AIR 1960 Madh Pra 152), the later judgment of the Supreme Court (AIR 1968 SC 1218) would have operated as res judicata but for the fact that the finding went against the defendant who was wholly successful..... In my humble opinion, the decision in L. P. A. No. 117/1956 regarding the validity of the contract, involved in this suit, is superseded by the decision of the Supreme Court on the same point whose decision is later in point of time and which is the highest Court of the land.'

9. The petitioner's contention in this revision is that the decision in the Letters Patent Appeal operates as res judicata. Shri Sinha has relied on the observations in Paragraph 10 of the judgment in the Letters Patent Appeal, where it was pointed out:--

(i) In exercise of the powers conferred by Sub-section (3) of Section 175 of the Government of India Act, 1935, the Governor of the Central Provinces and Berar was pleased to make rules prescribing the classes of contracts and assurances of property made in the exercise of the executive authority of the Province and the authorities entitled to exercise them. These rules were notified in the Central Provinces and Berar Gazette dated May 14, 1937.

(ii) In Clause E, Item 2, the Deputy Commissioners of districts were authorised to execute contracts relating to any matter falling within their ordinary jurisdiction,

(iii) The management and disposal of the forests that vested in the State under Section 7 of the M, P. Abolition of Proprietary Rights Act, 1950 (No. 1 of 1951) fell within the ordinary jurisdiction of the Deputy Commissioners of the respective districts.

(iv) These rules were kept alive under Article 372(1), read with Clause (10) of Article 366 of the Constitution.

And, on the above basis, it was held that the indentures having been executed by the Deputy Commissioner, Balaghat, 'there was no breach of Article 299(1) of the Constitution.'

10. Alternatively, the Division Bench relied on the following observations of their Lordships of the Supreme Court in *Chaturbhuj Vithaldas v. Moreshwar Parashram*, 1954 SCR 817 = AIR 1954 SC 236:

'It would, in our opinion, be disastrous to hold that the hundreds of Government Officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected by a ponderous legal document couched in a particular form. It may be that Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and of no effect. It only means that the principal cannot be sued; but we take it there would be nothing to prevent ratification, especially if that was for the benefit of Government.'

It held that the contracts had been ratified by the State Government which had authorised the Deputy Commissioners to dispose of the forest produce and also allowed the appellant (viz. Mulamchand, now plaintiff) to exploit the forests according to the terms of the lease. In the result, the Division Bench held, that 'there is no bar to the right of the State Government or its servants to realise the dues from (Mulamchand and other contractors) as arrears of land revenue.'

11. Shri Sinha strenuously contends that the observations of the Supreme Court in *Mulamchand v. State of Madh. Pra.*, AIR 1968 SC 1218, have, for their basis, the concession made on behalf of the State respondent before their Lordships. He relies on the following passage in paragraph 5:--

'The contention put forward on behalf of the appellant is that the contracts were not in conformity with Article 299 of the Constitution and were consequently void and had no effect. It was claimed that the appellant was entitled to compensation under Section 70 of the Indian Contract Act which is applicable to the case. It is not disputed on behalf of the respondent that there was no formal compliance of the provisions of Article 299 of the Constitution but it was said that the bids were accepted by the Deputy Commissioner, Balaghat, and were communicated to the appellant who worked the contracts and actually collected lac in the forests in question.'

(Underlined by me)

Shri Sinha's argument is that the learned counsel, who appeared for the State before the Supreme Court, should have brought to their Lordships' notice that as was held in the Letters Patent Appeal, there was no breach of Article 299(1) of the Constitution, inasmuch as the Governor had framed rules, which rules were kept alive, and under which rules the Deputy Commissioner was authorised by the Governor to enter into contracts.

12. Shri J. S. Verma, learned counsel for the plaintiff-respondent, relying on Article 141 of the Constitution maintains that that decision of the Supreme Court is a law and it must prevail over every decision of the High Court or any Court subordinate to it. On that basis, he urges that the decision in *L. P. A.* is no more good law. He

further contends that the decision in 1954 SCR 817 = (AIR 1954 SC 236) (supra) has been held to have been regarded either as not laying down the law correctly, or as being confined to the facts of that case (per State of U. P. v. Murari Lal, AIR 1971 SC 2210). Shri Verma further emphasised that it cannot now be seen whether the concession made on behalf of the defendant-State before the Supreme Court in the earlier suit in AIR 1968 SC 1218, was right or wrong.

13. Shri Sinha points out that the decision in Chaturbhuj Vithaldas's case, 1954 SCR 817 = (AIR 1954 SC 236) (supra) was followed in several decisions, for instance, in Bhikraj v. Union of India, AIR 1962 SC 113 and Abdul Rahiman v. Sadasiva, AIR 1969 SC 302. Learned Counsel relies on D. G. Factory v. State of Rajasthan, AIR 1971 SC 141, where their Lordships have said:--

'In the absence of any properly framed rule requiring the specific mention of the words 'on behalf of the Governor' at the place where the authority authorised by the Governor to enter into the contract has to append his signature it is not possible to hold that the agreements in the present case did not fully comply with the requirement of Article 299(1) of the Constitution.'

14. Shri Sinha strenuously endeavoured to contend that the decision of the L. P. A., 1960 MPLJ 195 = (AIR 1960 Madh Pra 152), was not in conflict with the decision in AIR 1968 SC 1218, inasmuch as in the latter case all that was held was that a contract could not be enforced against the Government, if it does not comply with the requirements of Article 299(1) and this was their Lordships' decision in several other cases as well. In answer to the last point, Shri Verma relies on the decision in K. P. Chowdhry v. State of M. P., AIR 1967 SC 203, where their Lordships have observed that if a contract between the Government and another person is not in compliance with Article 299(1), it would be not contract at all and could not be enforced either by the Government or by the other person as a contract.

15. I have given anxious consideration to the above debate. In my view, the decision in Letters Patent Appeal (1960) MP LJ 195 = (AIR 1960 Madh Pra 152) operates as res judicata. The question in the present suit is whether the defendant-State can recover the outstanding balance of Rs. 58,500/- from the

plaintiff on the basis of the Indentures executed by the Deputy Commissioner. In the Letters Patent Appeal it was held that the indentures were executed by the Deputy Commissioner in exercise of the authority vested in him by the rules made by the Governor and, therefore, there was no breach of Article 299(1) of the Constitution. It was further held that 'if however there be any lacuna in the form of these documents', since the contracts were ratified by the State Government, which had authorised the Deputy Commissioner to dispose of the forest produce and also allowed the plaintiff to exploit the forests according to the terms of the sales, there was no bar to the right of the State Government to realise due from the plaintiff. It was, also, held that the dues could be recovered as arrears of land revenue. When, in the present suit, the plaintiff again contends that the outstanding balance of Rs. 58,500/- could not be recovered on the ground that the indentures were not executed in compliance with the provisions of Article 299(1) of the Constitution, it must be said that the matter directly and substantially in issue in the present (subsequent) suit is the same which was directly and substantially in issue in the former writ proceeding. The question was heard and finally decided between the same parties by this Court in the Letters Patent Appeal.

16. The issue in the present suit as also in the writ proceeding was the same. A decision on a question of law is *res judicata* in a subsequent proceeding between the same parties, where the cause of action is the same. The words 'matter in issue' as employed in Section 11, Civil P. C., mean the right litigated between the parties. It has reference not only to the facts on which the right is claimed or denied, but also to the applicability or non-applicability of a rule of law to the given set of circumstances.

17. Where a decision on a question of law in relation to a given set of facts attains finality, it operates as *res judicata* in a later suit or proceeding between the same parties. This will be so even if it was erroneous. In *Bindeswari v. Bageshwari*, AIR 1936 PC 46 it was held that 'where the decision of the Court in a previous suit determined that the section had never applied to a transaction, a Court in a new suit between the same parties with regard to the same transaction cannot try anew the issue as to its applicability in face of the express prohibition in Section 11 of the Code.' In *Mohanlal v. Benoy Kishna*, AIR 1953 SC 65 their Lordships have laid

down thus :--

'There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata.' (Para 23)

It follows from this that even if in the earlier case an issue of law was wrongly interpreted in ignorance of a binding precedent, or if in a subsequent binding precedent the law has been interpreted otherwise, the earlier decision on the question of law, which has attained finality, will operate as res judicata between the parties in a subsequent suit or proceeding.

This rule admits of certain exceptions. One is that where the decision relates to the jurisdiction of the Court to try the earlier proceeding, it will not operate as res judicata, if in the subsequent case it is found to be erroneous because the question of jurisdiction of the Court is unrelated to the rights claimed by one party and denied by the other. Another exception is where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties. Here, it is nobody's case that there has been a subsequent legislation by which the law has been altered. Shri Verma's contention in this regard is that since every decision of the Supreme Court is 'law' by virtue of Article 141 of the Constitution, it should be said that when the Supreme Court decided AIR 1968 SC 1218, it tantamounted to alteration in the law, since the earlier decision which was rendered by this Court in L. P. A. (1960 MPLJ 195) = (AIR 1960 Madh Pra 152). This argument is not well-founded. Article 141 of the Constitution enacts that the law declared by the Supreme Court 'shall be binding on all Courts' within the territory of India. This means that when the Supreme Court expresses its view on any particular point of law, such expression of view shall be considered as overriding a contrary view expressed on the point in an earlier decision of any Court, Even obiter dicta of the Supreme Court if deliberately made upon a question with the intention of settling the law, are binding on all Courts. However, Article 141 does not confer on the Supreme Court any legislative function. The Supreme Court only interprets the law as it stands, but does not

amend the law. Their Lordships' decision declared the existing law but did not purport to enact any fresh law.

18. The third exception is that decision of a Court sanctioning something which is illegal, does not operate as *res judicata* and a party affected by the decision is not precluded from challenging its validity. See *Mathura Prasad v. Dossibai*, (1970) 1 SCC 613 = (AIR 1971 SC 2355). 'Illegality' here means an act which is prohibited by law. A contract may be void, though it may not be illegal, voidness and illegality are not synonymous. It is stated in *Chitty on Contract*, (22nd Edn.) paragraph 849:--

'A contract may, by statute, be void without being illegal, the only penalty being that a contract made in contravention' of the statute is entirely ineffective to create rights, as in the case of a contract made in contravention of the Gaming Acts, 1845 and 1892.' (See also paragraphs 845 and 847). Where a contract does not comply with the rules prescribed by law, such as registration, stamp, etc. it may be unenforceable as void, but it is not necessarily illegal. Illegality refers to the acts of the parties to the contract, or its object or purpose.

19. Shri Verma then contends that the cause of action in the present recovery proceeding, which is pending, is different from that of the earlier proceeding, from which the Letters Patent Appeal arose. This argument is constructed upon the mere fact that the number of the revenue case relating to the recovery of the balance amount of Rs. 55,500/- was 60/XXXIII/7 of 1951-52, while the number of the revenue case of the present proceeding for the recovery of the balance of Rs. 58,500/- is 22/XXXIII/7 of 1955-56. And, it was in these proceedings that two passenger buses were attached by the Tahsildar Bajaghat on April 16, 1971, and June 1, 1971, respectively. I cannot accent this contention. The proceeding is the same; the cause of action is the same. If a new number is given to the same proceeding, the cause of action is not altered. Cause of action in the earlier proceeding as also in the present proceeding is that the plaintiff purchased the right to propagate lac in different forests, he was liable to pay Rs. 68,000/- out of which he paid Rs. 11,000/- only and he is liable to pay the outstanding balance of Rs. 58,500/-.

20. A decision in a writ petition operates as res judicata in a subsequent civil suit, if the cause of action is the same. See *Gulabchand v. State of Gujarat*, AIR 1965 SC 1153.

21. There is now high authority for the proposition that even where Section 11, Civil P. C., does not apply, the principle of res judicata is applied for the purpose of achieving finality in litigation. The principle of res judicata is based on public policy and giving finality to a judicial decision. Once a res judicata, it shall not be adjudged again. Where a question whether of fact or of law has been decided between the parties in one suit or proceeding and the decision has attained finality (whether because no appeal was taken to a higher Court or because the appeal was dismissed, or because no appeal lay), neither party is allowed in a future suit or proceeding between the same parties to canvass the matter again. See *Narayanan Chettiar v. Annamalai Chettiar*, AIR 1959 SC 275; *Satyadhyan Ghosal v. Smt. Deoranjini Debi*, AIR 1960 SC 941 and *Sri B. Temple v. V. V. Bhavanarayanacharvulu*, (1970) 1 SCC 673. In the last cited case Mr. Justice Hegde has, speaking for the Court laid down thus :

'The doctrine of res judicata is not confined to the limits prescribed in Section 11, Civil P. C. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter.' (p. 677)

22. In the earlier suit, which was finally decided by the Supreme Court (AIR 1968 SC 1218), no doubt, it was observed that the contracts were void and unenforceable for want of compliance with the requirements of Article 299(1) of the Constitution. The fact, however, remains that in that case, the High Court had dismissed the plaintiff's suit and the Supreme Court dismissed the plaintiff's appeal. Thus, in the final result, the plaintiff's suit was dismissed in its entirety. It is undoubted law that where a suit is dismissed in its entirety, no finding either on question of law or on question of fact, recorded against the defendant binds him. (*Mid. Zamindari Co. v. Naresh Narayan*. 48 Ind App 49 -- (AIR 1922 PC 241) and *Firm Kanhaiyalal Somani v. Paramsukh*, AIR 1956 Nag 273. This renders it unnecessary to enter into Shri Sinha's argument that the concession made on

behalf of the State before the Supreme Court was wrong and that a wrong concession on question of law does not bind the party making it. Nor it is necessary to enter into his argument that a pronouncement made on concessions of counsel is not a precedent, *Smt. Bimla Devi v. Chaturvedi*, ILR (1953) 2 All 735 = AIR 1953 All 613 at pp. 615, 616. Nor is it necessary to dwell upon the question whether the issue in the earlier suit instituted by Mulamchand (Civil Suit No. 24-B of 1954) was directly and substantially the same as in the present suit.

23. The decision in AIR 1968 SC 1218 has a binding effect as a precedent of the highest judicial authority; but it does not operate as *res judicata*. The trial Court rightly held so.

24-25. Moreover, what is to be seen is the result, not the reasons. (See *Mysore State Electricity Board v. Bangalore W. C. & S. Mills*, 1963 Supp (2) SCR 127 = AIR 1963 SC 1128. As between a decision which operates as *res judicata* and a decision which is binding as a precedent but not *res judicata*, the former must prevail. It is here that the learned trial Judge erred. Moreover, the L. P. A. decision can be supported by the decision in *Union of India v. N. K. Pvt. Ltd.*, (Civil Appeal No. 1967/1971, decided on 11-2-1972=(reported in AIR 1972 SC 915)).

26. The above discussion leads to the following conclusions :--

(1) The bar of *res judicata* operates also as between two stages in the same litigation.

(2) A decision in a writ proceeding operates as *res judicata* in a subsequent suit based on the same cause of action between the same parties.

(3) The principle of *res judicata* is based on the need of giving finality to a judicial decision. Once a *res judicata*, it shall not be adjudged again. The underlying principle is that the parties should not be vexed twice over.

(4) Even where Section 11, Civil P. C., does not apply, the principle of *res judicata* may apply for the purposes of achieving finality in litigation.

(5) A question of law is as much in issue as a question of fact. The expression 'matter in issue' is not confined to issues of fact; it includes issues of law as well.

(6) But, for the purpose of the rule of res judicata, the issue of law must not be an abstract question of law, it must be one relating to its applicability or non-applicability to the facts and circumstances of the particular case.

(7) Even an erroneous decision on an issue of law operates as res judicata. Exceptions to this rule are (i) where by a subsequent legislation, the law, as applied in the earlier decision, is altered. However, a different interpretation of the law as given in a subsequent binding precedent is not the same thing as altering the law. (ii) Where the question of law is one purely relating to the jurisdiction of the Court, (iii) Where the decision of the Court sanctions something which is illegal. 'Illegality' in this context refers to an act prohibited by law.

(8) As between a decision which operates as res judicata and another which is a binding precedent, though not res judicata. the former prevails.

(9) A decision of the Supreme Court is binding on all Courts by virtue of Article 141 of the Constitution, but it is not the same thing as to say that a decision of the Supreme Court alters the law. Article 141 does not confer on the Supreme Court any legislative function. The Supreme Court declares the law; it does not alter the existing law, or make a new law.

27. This brings me to Shri Verma's contention that the plaintiff's claim in respect of Rs. 2,500/- is not barred because there was no decision on that claim in the Letters Patent Appeal. It is abundantly clear from the plaint averments that a decree for refund of Rs. 2,500/- was claimed on the ground that the plaintiff paid Rs. 1,100/- to the defendant, while the plaintiff, from the 23 villages extracted lac of the Sibari crop in 1951 and of the Unhari crop in the months of May and June 1952, to the extent of 401 maunds 5 seers of lac, which after shrinkage came to 397 maunds 11 seers and 12 chhataks of the value of Rs. 8,320/-/6 (after deducting expenses). The plaintiff gave up Rs. 189/15/6 and in this way claimed a decree for Rupees 2,500/- (see paragraph 11 of the plaint). The claim is, therefore, based on the allegation that the defendant-State was not entitled to the amount of

Rs. 1,100/- paid by the plaintiff and this was because the contracts were unenforceable for non-compliance with the requirements of Article 299(1) of the Constitution. Therefore, the cause of action for this part of the suit is also the same.

28. In the result, this revision is allowed with costs. The decision of the trial Court on the issue of res judicata is set aside. It is held that the decision in L. P. A. 1960 MPLJ 195 = (AIR 1960 Madh Pra 152) operates as res judicata in the present suit (No. 3-B of 1961) instituted by Mulamchand respondent against the petitioner State of M. P. Counsel's fee Rs. 100/-. The case shall now go back to the trial Court to decide, according to law, such other issue as may survive.

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