

Kotta Penta Reddi and anr. Vs. Varithi Reddi Anki Reddi Alias Pichi Reddi

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Court : Chennai

Decided On : Jan-04-1892

Reported in : (1892)2MLJ34

Appellant : Kotta Penta Reddi and anr.

Respondent : Varithi Reddi Anki Reddi Alias Pichi Reddi

Judgement :

Subramania Aiyar, J.

1. The question argued before me is whether the dismissal of a suit for want of a certificate under Act VII of 1889, is right. The contention for the plaintiff is that the suit is one for the recovery of unliquidated damages for breach of contract. If this were correct, no certificate would be necessary, as even the amount of a verdict in an action for unliquidated damages was held not to be a debt until judgment, (Jones v. Thompson 27 L. J. (Q. B). 234.

2. The claim here however is for the refund of the price alleged to have been paid for goods sold but not delivered. To determine the amount of damages in these cases it is no doubt necessary to know what the contract price was, but the payment of the price has nothing to do with the matter, as the vendee would be entitled to recover damages from the vendor who has broken the contract, whether the price agreed has been paid by the vendee to the vendor or not. When property is sold and the vendor cannot perform his part of the contract the ground on which

the vendee is held entitled to recover the price paid is, that there has been a total failure of consideration (Want v. Stallibrass L.R. 8 Ex. 175 and Hanuman Kamut, v. Hanuman Mandar L.R. 18 I. A. 158). The payment of the price in such a case is decreed clearly by way of restitution, and not by way of compensation for the breach of contract, (see Section 65 of the Indian Contract Act, illus d). I cannot therefore accept the view that this is a claim for damages as alleged. To constitute such a sum in the hands of a person a debt, it is sufficient that in some way or other he can be compelled to pay it, (per Coleridge, G. J. in Booth v. Trail 12 Q. B. D. 8, see also the observation of Lindley, L. J. in Webb v. Steuton 11 Q.B.D. 518. The District Judge's decision is right and the petition must be dismissed with costs.

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