D.E. Kasisah Vs. N.T. Engineer and anr.

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Court : Chennai

Decided On : Apr-02-1964

Reported in : AIR1965Mad257

Judge : S. Ramachandra Iyer, C.J. and ;Venkatadri, J.

Appeal No. : Appeal No. 78 of 1961

Appellant : D.E. Kasisah

Respondent : N.T. Engineer and anr.

Judgement :

(1) This appeal is preferred by the plaintiff against the dismissal of his suit for recovery of Rs. 50,000 as damages against the defendants.

(2) The plaintiff was originally running a cinema business as an exhibitor of talkie pictures under the name and style of "Kannan Talkies" at No. 62/1 Lake View Road, Old Mambalam, Madras. He took the premises on lease for a period of 7 years on a monthly rental or Rs. 450, after paying an advance of Rs. 7000 to the landlord. He also equipped the picture house with furniture and machinery purchased at a cost of Rs. 40,000. It was in the course of purchasing new equipment that he contacted the first defendant, first respondent herein, who is the manager of the International Talkie Equipment Co., Ltd., the second defendant, who is dealing in talkie equipment. As the plaintiff had not sufficient funds to purchase the equipment, it was arranged that he should purchase the equipment

required from the said international Talkie Equipment Co., by entering into a hire purchase agreement with the Commercial Credit Corporation. The plaintiff did not fare well in the business and he was also in arrears to the land lord in respect of the rent payable for the premises. He was also committing default in the payment of the instalment to the Commercial Credit Corporation.

He alleges that the first defendant took advantage of his financial embarrassment and acting for himself and on behalf of the 2nd defendant suggested to him to hand over the entire cinema business with all the equipment to him, undertaking to improve the business and pay the amounts-due to the Commercial Credit Corporation from and out of the income of the business and further undertaking to pay also the arrears of rent payable to the landlord. The plaintiff accordingly entrusted the business as a running cinema concern to the care and management of the first defendant. Contrary to the assurances given by the first defendant he defaulted in paying the instalments due to the Commercial Credit Corporation and allowed the said Corporation to seize the machinery on the pretext that the plaintiff was in arrears and then sold the same to the 2nd defendant-company and the 2nd defendant ultimately sold the machinery to a third party for book value. The plaintiff alleges that on account of this conduct of the defendants his business was ruined and he lost the talkie equipment and incurred heavy loss thereby. He estimated the loss at Rs. 50,000. It is to recover this amount the plaintiff filed the present suit in forma paupers against the defendants 1 and 2.

(3) The first defendant denied all the allegations made against him and stated that he was only a sales manager of the 2nd defendant company and when the plaintiff purchased the equipment, he (first defendant) in his capacity as engineer of the company erected the same in the plaintiff's picture house. He however admits that the plaintiff was badly in need of talkie equipment and that he recommended to the plaintiff to purchase the equipment from the 2nd defendant company by entering into a hire-purchase agreement with the Commercial Credit Corporation. But he denied that the plaintiff entrusted the business to him, and stated that he had nothing to do with the business of the company.

(4) The second defendant company also filed a written statement to the effect that it never involved itself in the business run by the plaintiff. It denied that the plaintiff entrusted the business to the defendants for the purpose of running it and paying the amounts due to the Commercial Credit Corporation from and out of the income of the business. It did not sell the talkie equipment directly to the plaintiff. When the plaintiff committed default in payment of the amounts due to the Commercial Credit Corporation under the hire purchase agreement, the said Corporation seized the machinery and some time later sold the same to the 2nd defendant. The 2nd defendant admitted that it paid Rs. 2100 to the landlord for payment of taxes due to the Corporation of Madras, as the landlord agreed to reimburse the said amount. It is on these pleadings the parties went to trial. The learned IV the Assistant Judge framed the following issue: "Is the plaintiff entitled to claim any damages from the defendants jointly or severally?"

The plaintiff let in evidence to prove that he purchased machinery from the 2nd defendant from and out of the amount advanced by the Commercial Credit Corporation on a hire-purchase basis, that since he found it difficult to run the business owing to financial difficulties, he entrusted the business to the defendants to enable then to run the same and pay the monies payable under the hire-purchase agreement to the Commercial Credit Corporation and also the moneys payable to other creditors and ultimately restore it to the plaintiff. The learned Judge found that the ;plaintiff entrusted the business to the custody and care of the second defendant company on 8-3-1952, that the Commercial Credit Corporation had, under the hire purchase agreement, every right to seize the machinery and sell away the same for recovery of the amount due to it and instead of selling the machinery to a third party, it sold the same to the 2nd defendant, who was the original owner, as the plaintiff failed to secure any purchaser, even though an opportunity was given to him for the purpose. In the end the suit was dismissed. It is against this dismissal of the suit that the plaintiff preferred this appeal.

When the appeal was heard the respondents were not represented by counsel and even though opportunities were given to them to appear and defend this appeal, they did not choose to appear. This is a case which raises some interesting points and may perhaps be said to illustrate the complexities caused in modern days by the practice of obtaining property on hire-purchase. Admittedly, the second defendant is a dealer in talkie equipment. The first defendant is the sales manager of the second defendant-company. When the plaintiff was not in a position to purchase the equipment required for carrying on the business, it was arranged that Commercial Credit Corporation should finance this deal on a hire-purchase basis. This arrangement must have been entered into at the instance of the defendants and it may be pointed out in this connection that both the second defendant company and the Commercial Credit Corporation are situated in the same premises namely, in the Bharat Buildings, Mount Road, Madras. The first defendant himself admitted that he was directed by the second defendant-company to act as per the directions of Mr. U. R. Rao of the Commercial Credit Corporation. The second defendant company, who is a dealer in talkie equipment, would have been anxious to sell its goods and the Commercial Credit Corporation would have easily agreed to finance any person intending to purchase machinery from the 2nd defendant company.

The Commercial Credit Corporation would also have known that the second defendant company was having dealings with the plaintiff. It is also admitted fact that the plaintiff was not able to run the business efficiently, as he was in financial difficulties. He did not pay the rent for the premises to the landlord and also committed default in the payment of instalments as per the agreement with the Commercial Credit Corporation. It is likely that the Commercial Credit Corporation would have asked the defendants to take effective steps to protect its interests. It was at this stage the plaintiff took the advice of the first defendant in the matter and the first defendant suggested to the plaintiff to hand over the entire business to the second defendant-company so that the business could be run efficiently and the liabilities of the plaintiff in respect of the business including the payment of the amount payable to the Commercial Credit Corporation could be discharged from and out of the income of the business. Ex. A.2 dated 8-3-1952, is the letter of the plaintiff to the first defendant at the time of handing over the business to the defendants. This letter shows that the plaintiff handed over the management of the business to the first defendant, as manager of the second defendant-company on 8-3-1952.

From that date the business was conducted by the defendants for a period of 11/2 months. In order to prove that the defendants actually took charge of the business and were running the cinema business, the plaintiff filed documentary evidence such as Ex. A. 36, the register showing daily statement of tickets sold in Kanna Talkies, Mambalam, Exs. A. 20, A. 21 and A. 24 leave letters from three employees, addressed to the manager, wherein the first defendant has admittedly initialled and Exs. A. 22, A. 25 and A. 27 copies of weekly statements from 3-8-1952 to 23-3-1952. These weekly statements are signed by Viswanathan, an accountant of the second defendant company. There is another document, Ex. A. 38, a counter affidavit filed by the first defendant when the plaintiff made and application, Appn. No. 4448 of 1954, for leave to file the present audit in forma pauperis. In that affidavit first defendant states that when the Commercial Credit Corporation sought to exercise its powers of seizure vested in it under the hire-purchase agreement, he interfered on behalf of the plaintiff and requested the said Corporation to postpone taking action and accordingly the Corporation suspended taking action. he also states that at that time the plaintiff requested him to supervise the plaintiff's business so that the first defendant "could have an eye over his income and expenditure and ensure that payments due to the said Corporation are made regularly". The plaintiff also handed over to the first defendant all the account books in respect of his business on 8-3-1952. After taking over the business, the second defendant paid a sum of Rs. 2100 to the landlord for payment of taxes due to the Corporation. There is ample evidence to prove the case of the plaintiff that he handed over the premised where the cinema business was carried on, the talkie equipment, furniture and all other moveable to the defendants in order to enable them to run the business and to discharge the plaintiff's liabilities from and out of the income of the cinema business. Taking all the evidence together along with the other circumstances the plaintiff was in difficulties on or about 8-3-1952, and owed large sums of money to the landlord and to the Commercial Credit Corporation, we think that the learned Judge was right in taking the view that the Commercial Credit Corporation, which is closely connected with the second defendant company must have asked the second defendant company to take charge of the plaintiff's business. There is abundant documentary evidence to show that the defendants took charge of the cinema business and the talkie equipment from the plaintiff on 8-3-1952.

(6) But within a short period, the talkie equipment was attached at the instance of one V. Parthasarathi Rao who had filed a suit against the plaintiff, viz, O. S. 440 of 1952 on the file of the City Civil Court, Madras. At that stage the Commercial Credit Corporation appeared on the scene, filed a claim petition, released the equipment from the attachment. and seized the talkie equipment on the ground that the plaintiff had committed a breach of one of the terms of the hire-purchase agreement. We have now to consider whether the seizure of the talkie equipment by the Commercial Credit Corporation is in consonance with the law relating to hire-purchase agreements and whether the second defendant, who was acting in a fiduciary capacity to the plaintiff, abused the confidence by allowing the Commercial Credit Corporation to see the machinery and purchasing it subsequently.

(7) Mr. R. M. Goode, in his book Hire-Purchase Law and Practice, 1962 Edn., at page 255, writes:

"The cardinal fact to be borne in mind is that after a hire-purchase agreement has been entered into the owner and the hirer each possesses two distinct and independent sets of rights. In the owner is vested not only his contractual rights under the agreement but also a reversionary interest in the goods the subject of the agreement. Each of these two interests is capable of separate assignment, so that the owner can dispose of his contractual rights whilst retaining his property in the goods and vice verso, or he may assign his two interests to two different persons. Similarly, the agreement confers two distinct sets of rights on the hirer, namely, the benefit of the hiring--which constitutes the bailment part of the contract--and the option to purchase, which it is now established constitutes a separate and proprietary right capable of independent assignment."

A hirer can thus transfer the benefit of hiring alone while retaining the option to purchase, or he can assign the option alone, remaining in possession of the goods until the hire purchase has been paid, or he can assign his entire rights under the agreement. There cannot be restriction on the transfer of the option, from making a lawful assignment of the benefit of hiring, that is of the right to use the goods. A hirer may be prohibited from selling away the goods during the hire-purchase agreement, but the agreement does not prohibit the hirer from assigning the right to the use of the goods. In a lawful assignment the benefit of the hiring alone is conferred on the assignee to use the goods, while the hirer retains the option to purchase. In the instant case, the second defendant having taken charge of the business including the use of the machinery which is the subject matter of the hire-purchase agreement, constituted itself as if it were a trustee for the plaintiff for his goods, namely the benefit of the hire-purchase agreement. The constitution of such a fiduciary relationship need not be in writing. An oral declaration may be enough for creating such relationship. It is not even essential that there should be an express declaration at all since the court is entitled to infer from the conduct of the parties that the second defendant took upon itself the position as if it were a trustee for the plaintiff.

It is the duty of the second defendant to protect the plaintiff's goods, namely, the talkie equipment. It cannot sell away the goods to third parties, or allow the Commercial Credit Corporation to seize the machinery. If it sells the goods, it is acceptable to the plaintiff. Even if a third party purchases the goods without notice o the trust, still the plaintiff has got a right to trace the proceeds of the sale. Admittedly, the Commercial Credit Corporation was aware of the arrangement entered into between the plaintiff and the defendants with regard to the management of the business. The finding of the lower court is that the Commercial Credit Corporation colluded with the second defendant only for the purpose of safe-guarding the interests of the Corporation by putting the second defendant in charge of the business to realise the hire amounts due to the Corporation under the hire purchase agreement. The second defendant was mainly responsible for allowing the Commercial Credit Corporation to seize the equipment and subsequently to sell it back to the second defendant. the second defendant company having purchased the equipment should not have taken advantage of tits position to make a personal profit of itself.

It has put the plaintiff to considerable loss by allowing the commercial Credit Corporation to seize the talkie equipment and manoeuvring to purchase it from the said Corporation subsequently. In the circumstances, the plaintiff is certainly entitled to call upon the second defendant to account for the loss sustained by him by reason of the closing of the business and the sale of the talkie equipment. It has been proved that the second defendant managed the business only for a short period and there is nothing on the record to show that it became impossible for the second defendant to manage the business and therefore the second defendant was compelled to close the business.

The Commercial Credit Corporation after obtaining an order raising the attachment should have allowed the second defendant to use the talkie equipment to enable it to rum the business. On the other hand, it appears as if the Commercial Credit Corporation was only waiting for an opportunity to seize the machinery. the learned Judge in our opinion was not right in coming to the conclusion that the Commercial Credit Corporation had a right to seize the machinery when there was a breach of the terms of the hire purchase agreement, namely, when one Parthasarathi Rao, a creditor of the plaintiff, filed O. S. 440 of 1952, against him and attached the talkie equipment. It is not the case of the second defendant that the plaintiff was in arrears in respect of the hire amounts payable under the hire purchase agreement and it became impossible for it to run the business or that it found itself helpless and was unable to prevent the Commercial Credit Corporation from seizing the machinery.

(8) It was represented to us that the plaintiff paid in all about Rs. 14000 to the Commercial Credit Corporation towards the price of the talkie equipment and there is a balance of Rs. 14800 payable by him. the conduct of the Commercial Credit Corporation in selling away the machinery to the second defendant-company, who originally sold it to the plaintiff, for book value is highly objectionable. Equally, for the second defendant-company, while it was acting as a trustee for the plaintiff, had no business to purchase the talkie equipment without disclaiming the trust. Even assuming it had a right to purchase the equipment, it should have sold the equipment to third parties with the knowledge of the plaintiff or with his permission or consent, and after giving credit to the amount to be paid to the Commercial Credit Corporation handed over the surplus money to the plaintiff. The conduct of both the commercial Credit Corporation and the second defendant seems to be highly suspicious and it appears as if the Commercial Credit Corporation wanted

to seize the machinery on some pretext and the second defendant was equally anxious to see that the money payable to the Commercial Credit Corporation was paid off without caring for the interests of the plaintiff towards whom it assumed the responsibility as a trustee.

In the circumstances, we feel it will be proper to direct the second defendant to pay the plaintiff the Moines he had paid to the Commercial Credit Corporation towards the purchase of the equipment. Counsel for the plaintiff represented to us that the plaintiff has in all paid Rs. 14000 to the commercial Credit Corporation. the value of the machinery taken is much higher but counsel for the appellant intimated that he would be content if this amount is paid. there will be a decree against the second defendant for payment of this sum to the plaintiff. As the first defendant only acted on behalf of the second defendant and under the directions of U. R. Rao of the Commercial Credit Corporation, he cannot be made liable to account to the plaintiff and the suit is accordingly dismissed as against him.

(9) With regard to the damages claimed by the plaintiff for closure of the business, the plaintiff has not adduced sufficient evidence to prove the extent of the damages sustained by him. It is true that when he handed over the business to the second defendant it was running in a normal condition. But for the wrongful seizure of the equipment by the Commercial Credit Corporation, the second defendant might have discharged the liabilities of the plaintiff and might have discharged the liabilities to the Commercial Credit Corporation from and out of the income of the business. After the second defendant purchased the machinery from the Commercial Credit Corporation, it could have run the business itself, or it could have given notice to the plaintiff that it disclaimed its position and they would not run the business. But the second defendant company did not adopt either of these courses. In the circumstances, we feel that the plaintiff would be entitled to nominal damages of Rupees 1000. We direct the second defendant to pay this sum of Rs. 1000 to the plaintiff as damages. The second defendant will also pay the costs of the suit. The appeal is allowed with costs payable by the second defendant. The court fee payable in the Memo of appeal and the suit will be paid by the second defendant.

(10) Appeal allowed.