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Court : Kolkata

Decided On : Jul-12-1954

Reported in : AIR1954Cal623

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : Indian Independence (Rights, Property and Liabilities) Order 1947 - Section 8(1)

Appeal No. : Civil Revn. Case No. 3602 of 1953

Appellant : Krishna Ranjan Basu Ray

Respondent : Union of India (Uoi) Representing Eastern Railway and ors.

Advocate for Def. : Bhabesh Narayan Basu, Adv.

Advocate for Pet/Ap. : Jitendra Nath Guha, Adv.

Judgement :

K.C. Das Gupta, J.

1. This Rule came up for hearing before Guha J. and he has referred it to a Division Bench. The suit was brought on the allegation that the plaintiff booked a

consignment of torch-lights and batteries with the Bengal and Assam Railway on 16-11-1946 and that these were not delivered. The plaintiff brought a suit in a Barisal Court against the Governor General in Council as representing the Bengal and Assam Railway and obtained a decree. That decree was hit by the provisions of Indian Independence (Pakistan Court) Act (Act 9 of 1952) and thereupon the plaintiff brought a fresh suit against the Union of India in the Court of Small Causes at Sealdah. The question was raised that in view of the provisions of S. 8, Indian Independence (Rights, Property and Liabilities) Order, 1947, the Government of Pakistan is wholly responsible for any liability that may arise for breach of contract and that the Government of India has no liability. The relevant provisions of Section 8 are in these words:

'(1). Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day-

(a) if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor General in Council; and

(b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor General in Council;

and all the rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Governor-General in Council, be rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be.'

The learned Court below held that in view of these provisions the liability for alleged breach of contract was a liability of the Dominion of Pakistan and the Dominion of India or later on the Union of India is in no way liable.

2. On behalf of the petitioner, Mr. Guha has argued that this conclusion is wrong. Mr. Guha's contention is two-fold. In the first place, he contends that the provisions of Section 8(1) only apply to a contract which has remained unbroken on the appointed day, that is, 15-8-1947. He has tried to persuade us that as the contract

in this case had been entered into on a date earlier than 15-8-1947 and had also been broken before that date, it could not properly be said that the contract is for a purpose which from that day is the purpose of the Dominion of Pakistan.

3. In my judgment, there is no substance in this contention. The fact that the contract had been broken before 15-8-1947 did not affect the importance of the question on whose behalf the contract had been made. When the question of liability as regards a contract is being provided for, it is reasonable to think that a broken contract was as much in the minds of the legislators as contracts which have not been broken.

4. It appears that in -- 'Union of India v. Loke Nath Saha', : AIR1952 Cal140 (A), there is an observation by Roxburgh J. which apparently supports Mr. Guha's contention. No reasons, however, have been given in that judgment except merely the statement:

'I am quite unable to see how it can be said that the contract for carriage of goods in March 1947 before the Dominion of Pakistan was ever thought of, can be held as from the 'appointed day' to be one that is for purposes which from that day are exclusively the purposes of the Dominion of Pakistan.'

With great respect to the learned Judge, I find it impossible to follow this decision.

5. Mr. Guha's next contention is that in any case the purpose of the contract could not be considered to be exclusively a purpose for the Dominion of Pakistan inasmuch as the purpose of the Bengal and Assam Railway was the earning of profit for the railway which cannot be said to be exclusively a purpose of the Dominion of Pakistan.

6. In my judgment, it is wrong to consider the earning of profit as the purpose of the contract. The purpose of the contract was the carriage of the goods and where the destination was some point in Pakistan it seems to be reasonable to hold that the purpose was the purpose of the Dominion of Pakistan. Where on the contrary the carriage was to a point which remained in the Indian Dominion it would be a purpose of the Dominion of India. The fact that the Bengal and Assam Railway

was actuated by the motive of earning profit and not by the question whether Pakistan would be benefited or not is not germane to the question of the purpose of the contract as used in S. 8.

7. It is interesting to notice in this connection that while the section speaks of the purpose of the Dominion of Pakistan and the purpose of the Dominion of India, it makes no reference to the purpose of the other contracting party. It seems to me that the profit earning motive of either party to the contract is not the criterion by which the 'purpose' within the meaning of S. 8 is to be judged.

8. My conclusion therefore is that the learned Court below has rightly decided that on the facts stated no cause of action is made out against the Union of India and has rightly dismissed the suit. The Rule is accordingly discharged with costs.

Debabrata Mookerjee, J.

9. I agree.

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