

## ORIGINAL CIVIL.

*Before Buckland J.*

1919

Nov. 25.

MULCHAND CHANDOLIA

v.

KUNDANMULL AND OTHERS.\*

*Contract—Sale of goods—“Ready goods,” meaning of—Contract Act (IX of 1872) s. 38—Amendment of plaint.*

A seller under a contract for sale of ‘ready goods,’ sued the buyer to recover damages for not taking delivery of the goods. The defence was that the seller had not the goods in his possession at the date of the contract and the buyer was not, therefore, bound to take delivery :—

*Held*, that if at the time of entering into the contract and during the period intervening between that date and the due date the seller was in a position, at any moment, when called upon by his buyer, to deliver the goods, he had sufficiently complied with the terms of the contract.

ON 15th August 1918, Mulchand Chandolia sold 15 bales of grey shirtings to the defendants. The defendants failing to take delivery on the due date, the plaintiff resold the goods, after notice to the defendants and on their account. The plaintiff claimed Rs. 11,806-14, as the difference between contract price and the resale price and filed this suit to recover the same.

The defence was that it was a contract for “ready goods” and the plaintiff had not the goods in their possession on or before the date of the contract, and they were entitled to repudiate the same. The defendants also allege that the plaintiff was not entitled to demand cash on delivery and, according to the custom in the piece-goods market, the buyers were

\* Ordinary Original Civil Suit No. 1374 of 1918.

entitled to 46 days' time for payment after the delivery of the goods.

At the hearing, the counsel for the plaintiff asked for leave to amend the plaint by putting an alternative prayer for damages, on the basis of the market rate.

*Mr. H. D. Bose* (with him *Mr. A. K. Ghose* and *Mr. K. C. Bose*), for the defendants. The *sowdah* (contract) was for 'ready goods' and the plaintiff had failed to show that the goods were in his possession at the date of the contract. It is not enough for the sellers to be in a position to deliver the goods. The goods should be either in the godown of the sellers or somebody on their behalf. According to the custom in the piece-goods trade, the defendants were entitled to 46 days' time for payment and the plaintiff could not demand cash against delivery.

*Mr. D. N. Basu* (with him *Mr. B. N. Ghose*) for the plaintiff. If the goods were anywhere in Calcutta and within the power of the seller to supply to the buyer, when he wanted, the condition was fulfilled. The seller was not bound to keep the goods for 46 days after the due date. The seller could re-sell the goods on notice to the buyer. The seller can insist on payment at delivery.

BUCKLAND J. On the 8th day of Sraban sudi, Sambat 1975, that is, 15th August, 1918, the parties to this suit entered into a contract for the sale by the plaintiff to the defendant firm of 15 bales of grey shirtings known as Kettlewell and Bullen's grey shirtings at the price of Rs. 29-13 per piece; delivery was to be given in 2 months from the date of the sale, that is to say, by the 13th October, 1918. The contract contains the following words: "ready goods bought by us from the market have been sold to you."

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The plaintiff's case is that he was ready to give delivery on the due date, but that the defendant failed to take it, and that on the 17th October these goods were resold on account of and at the risk of the defendant firm. Damages amounting to Rs. 11,806-14 are claimed, this sum being the difference between the contract price and the value of the goods realised on the sale, and alternatively Rs. 13,106-4, upon the usual basis, the plaint having been amended to include the latter claim.

The defendant firm's case is that on the due date the plaintiff was not in a position to deliver "ready goods", the meaning of which term has therefore to be considered. They also say that there is a custom in the market under which the buyer is entitled in every case to 46 days from the date of delivery within which to pay but that the plaintiff insisted on cash on delivery.

The following four issues were framed :—

(i) Was the plaintiff ready and willing to deliver on the due date goods in accordance with the contract?

(ii) Whether according to the custom of the market the defendants were not entitled to 46 days for payment after delivery of the goods.

(iii) Whether the plaintiff could insist on payment of cash before delivery of goods.

(iv) To what damages, if any, is the plaintiff entitled?

The first issue turns upon the meaning of the expression "ready goods". There was called on behalf of the plaintiff, his *gomastha* Melap Chand, and he says that the plaintiff had entered into three contracts on the 30th July, 2nd August and 5th August for 10, 25 and 10 bales respectively of these goods, that is to say, "ready goods" of this quality and description to be delivered respectively on the 28th September,

30th September and 1st October. He also says that after he had bought these goods, he bought other bales, and referring to his books he says that on the day of the contract in suit, there were in stock these 25 bales and also other goods. From the godown-book it also appears that the plaintiff had in stock in the godown actual bales to deliver in accordance with the contract, and this witness also said that from the moment this contract was entered into he could at all times have given delivery of these goods to the defendants. It is common ground that in a contract in this form, the buyer may ask for delivery at any time until the due date, but the contention of the defendant firm is that it is not enough for the seller to be in a position to deliver these goods, but in order to justify his position, he must actually show that at the time the contract was entered into, the goods had been removed from Messrs. Kettlewell and Bullen's godown and were in the godown of some other person from whom at the seller's order, they could be delivered to the buyer. This was Mr. Bose's argument, if I have understood it correctly, but Ramratan, the only witness called on behalf of his clients on this point, put a very much narrower construction on the meaning of the words "ready goods". He says "one understands in the market that the goods have been kept in one's own godown and sold after they had been stocked." He also said that the goods may be in Calcutta, but the "point is that the goods must be stored in the seller's godown at the date he entered into the contract." Again he says in answer to the question, "Supposing the seller had bought these goods from another man and they were in that man's godown, would the purchase be for ready goods"? A. "No, then such a contract would not be to this effect." I am not prepared to

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accept the defendant's interpretation of the meaning of the expression "ready goods" and in my opinion if at the time of entering into the contract and during the period intervening between that date and the due date, the seller is in a position at any moment, when called upon by his buyer to do so, to deliver goods of the quality and description contracted for, he has sufficiently complied with the terms of the contract, and I think to hold otherwise would be wholly unreasonable. In fact the contention of defendant's counsel is, as he was obliged to admit, inconsistent with section 88 of the Indian Contract Act. Kaluram, a witness called on behalf of the plaintiff said that the meaning of the expression "ready goods" was "goods lying either in the godown of the seller or anywhere in the Calcutta market which had been purchased beforehand and that ready goods were to be distinguished from shipment or forward goods". His evidence is supported by that of Harak Chand, an other independent witness, and this seems to be a much more reasonable interpretation, and I accept it. I decide the first issue in favour of the plaintiff and I find as a fact that the plaintiff was ready and willing to deliver on the due date goods in accordance with the contract.

The burden of proving the second issue is on the defendants and here the defendant firm, none of the members of which, I may incidentally observe, give evidence at all, rely solely on the evidence of the witness Ramratan. I am not prepared to accept Ramratan's evidence with regard to the alleged custom any more than I am prepared to accept it with regard to the meaning of the expression "ready goods". Indeed he would have to be an extremely reliable witness for me to hold on his evidence alone that in a trade of the extent of the piece-goods business

in Calcutta there is a universal custom to give 46 days' credit in every case. If there was such a custom, I should imagine that it could hardly be disputed, and I should certainly expect to find a volume of evidence in support of it. The plaintiff's witnesses deny the existence of such a custom. A good deal of evidence was given as to a custom regarding the deduction of interest at 8 per cent. from the price of the goods if the money was paid within 46 days of delivery, but with that I am not concerned. I find that the alleged custom under which the defendants claim to be entitled to 46 days for payment after delivery of the goods, has not been proved and I decide this issue against the defendants. Since the defendants have failed in this issue, it follows that the third issue must be decided against them, as it is the only alternative to the case which they make with regard to payment. I find that the plaintiff was entitled to insist on cash on delivery.

Damages are claimed upon the basis of the difference between the resale price and the contract price. In my judgment the plaintiff is not entitled to damages upon this basis. On the 8th October 1918, he appropriated 15 bales to the contract. This appears from a letter written by his legal adviser, J. Nahata, to the defendant firm on that date. To that letter there was no reply. On the 12th October further notice was given to the defendant firm calling upon them to take delivery and pay for the goods stating that in default the plaintiff would resell against them. On the 13th October, the defendant firm's pleader replies denying the plaintiff's right to require payment of the price before delivery and objecting that the goods were not "ready goods." Further correspondence took place to which I need not refer in detail, but there has been no assent

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to the appropriation as required by section 83 of the Contract Act. Section 84, to which plaintiff's counsel referred me, has not, in my opinion, any application to this case. There having been no assent to the appropriation, the plaintiff was not entitled to resell and therefore he is not entitled to damages upon that basis. The plaint originally contained no prayer for damages upon the usual basis or the necessary statements in support, and Mr. D. N. Basu, on behalf of the plaintiff, asked for leave to amend and for liberty to give evidence as to the market rate, since upon the trial of the other issues being concluded there was no evidence before me as to the market rate on the 13th October. An order for amendment was made upon the usual terms and the hearing was resumed to-day solely on the question of damages. On this issue, two witnesses have been called on behalf of the plaintiff, Bhomraj and Kessori Chand. It appears that there were very few dealings in the market in respect of these goods during the period in question. The former witness proved five purchases and one sale. Apparently, the market was rising and the nearest transaction proved was a sale on the 14th October of 5 bales of these goods at Rs. 15-4. The witness Kessori Chand proved a purchase on the 15th October of 10 bales at Rs. 15-5. No evidence on the issue of damages was called on behalf of the defendant firm and they relied exclusively upon the evidence of the witness Johurmull. I do not consider Johurmull's evidence reliable on this point. He produced no books but merely stated that there was a *purja* with the Marwari Chamber of Commerce which would support his evidence with regard to the price. The defendant firm has had ample opportunity, since the hearing of the case on the first three issues, to obtain production of this document, but they have not done

so. Moreover it would appear, taking this witness' evidence as a whole, that though money was paid at Rs. 22 on the 17th October, the settlement was effected on some previous date. I have to decide exclusively on the evidence given on behalf of the plaintiff. The nearest date upon which the market rate is proved is the 14th October, when it was Rs. 15-4 and I, therefore, give judgment for the plaintiff for Rs. 13,106-4 being the difference between the contract price and the market rate, taking the latter as Rs. 15-4. Costs on scale No. 2. Interest on decree at 6 per cent.

N. G.

Attorneys for the plaintiff: *B. N. Basu & Co.*

Attorney for the defendants: *N. C. Bose.*

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