

APPELLATE CIVIL.

Before Mallik and Jack J J.

1934

Feb. 7, 8, 22.

MAKHANLAL BASAK

v.

BASHUDHARANJAN DAS GUPTA.*

Principal and Agent—Contract for undisclosed principal—Damages for breach—Indian Contract Act (IX of 1872), ss. 211, 231.

Section 231 of the Indian Contract Act gives the undisclosed principal the option to proceed against the other contracting party ; and, in the event of the former being able to bring his case within the purview of section 211 of the Act, section 231 does not debar him from seeking his remedy under the former section.

When the refusal of the other contracting party to perform the contract was due to the agent (of the undisclosed principal) failing to pay the former his dues under the agent's own separate contract with him, the proper section for the (undisclosed) principal to proceed under was section 231 of the Act.

SECOND APPEAL by the defendant.

The material facts of the case and the arguments in the appeal appear from the judgment.

Saratchandra Basak and Hemendrakumar Das for the defendant.

Jitendrakumar Sen Gupta and Surajitchandra Lahiri for the respondent.

Cur. adv. vult.

MALLIK J. This appeal arises out of a suit for recovery of Rs. 1,099 as damages. The facts, which gave rise to the present litigation, were these. The plaintiff and defendant No. 1 are both contractors

*Appeal from Appellate Decree, No. 290 of 1932, against the decree of Praphullakrishna Ghosh, Fifth Subordinate Judge of Dacca, dated July 8, 1931, affirming the decree of Babu Adityachandra Datta, Second Munsif of Dacca, dated March 17, 1931.

under the Dacca municipality and both got contracts for the supply of alum to that municipality. Defendant No. 1 went to Calcutta and entered into a contract with defendant No. 2 for the supply of alum, which defendant No. 1 had contracted with the municipality to supply. The plaintiff, on finding out that the defendant No. 2's rate was fair, asked defendant No. 1 to place an order with defendant No. 2 on his (plaintiff's) behalf. Defendant No. 1, however, instead of placing the order in the name of the plaintiff, took a contract in his own name, although the plaintiff paid in two instalments a sum of Rs. 500 which had to be paid in advance. Subsequently, when the plaintiff went to Calcutta to take delivery of the goods from defendant No. 2, defendant No. 2 refused to recognise him and refused to supply him the goods in question, with the result that the plaintiff had, in order to supply the goods contracted for to the Dacca municipality, to buy the same from another firm and incurred some loss in consequence thereof. On these facts, the plaintiff sued both defendant No. 1 and defendant No. 2, praying that he may be allowed a decree for money representing damages which he had suffered.

Both the defendants denied their liability. The courts below gave a decree against defendant No. 1 and dismissed the plaintiff's claim against defendant No. 2. Defendant No. 1 is the appellant before us.

On behalf of the appellant, our attention was drawn to the provisions of section 231 of the Indian Contract Act, and it was urged that, as it was a case of undisclosed principal, the plaintiff was entitled to proceed against defendant No. 2 alone. In answer to this contention, our attention was drawn to section 211 of the Contract Act, and it was contended, on behalf of the plaintiff, that, although section 231 gave to the plaintiff a right to proceed against defendant No. 2, it gave him an option to do so and if the plaintiff could bring his case within the

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purview of section 211, there was nothing in section 231, which could be said to debar him from seeking his remedy under section 211. This argument, so far as it goes, is perfectly sound. But the case, in my judgment, is not a case covered by section 211. Defendant No. 1, no doubt, by placing the order with defendant No. 2 in his own name, had acted against the instruction of his principal, the plaintiff. But the refusal of defendant No. 2 to supply the goods, which resulted in a loss to the plaintiff, was, as the facts found indicate, not so much for the reason that defendant No. 2 did not know the plaintiff, as for the reason that defendant No. 1 had failed to carry out the conditions of his own contract with defendant No. 2. It appears that defendant No. 1 had failed to pay for the second and third lots of goods sent to him by defendant No. 2, on the basis of the first contract entered into by defendant No. 1. The plaintiff, no doubt, suffered loss on account of defendant No. 2's refusal to supply the goods to him. But the inability of defendant No. 1 to pay for the two lots of goods supplied by defendant No. 2 was much more responsible for the refusal than the fact that the second contract had been entered into in the name of defendant No. 1, instead of in the name of the plaintiff. I am, therefore, of opinion that section 211 was not applicable to the present case and the proper section, under which the plaintiff could proceed, was section 231 and, under section 231, he was entitled to a decree against defendant No. 2 and not against defendant No. 1.

I would, accordingly, allow the appeal, set aside the decree of the lower appellate court and send the case back to the court of appeal below to give a decree to the plaintiff as against defendant No. 2, subject, of course, to the rights and obligations subsisting between defendant No. 1 and defendant No. 2, which will be determined after giving the parties an opportunity to adduce evidence on the point. In the event of the whole claim of the plaintiff being found

not to be realisable from defendant No. 2 owing to the liability of defendant No. 1 to defendant No. 2, the balance of the plaintiff's decree will be realised from defendant No. 1.

The appellant, defendant No. 1, will be entitled to his costs in this appeal to be realised one half from the plaintiff and the other half from defendant No. 2.

JACK J. I agree. It is necessary to send the case back, inasmuch as the plaintiff's case in the first place was not a case of undisclosed principal, though, as a matter of fact, it was subsequently found to be in fact a case of undisclosed principal. Therefore, defendant No. 2 had no opportunity of showing what the liabilities and obligations were between him and defendant No. 1.

Appeal allowed.

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