

1933

IN THE
MATTER OF
UNION
INDIAN
SUGAR
MILLS, CO.,
LTD.

liquidator among the shareholders other than the shareholder who holds that particular charge upon the shares, provided the money owing to the company has not subsequently been paid by Lala Debi Datt. The mortgagees of these shares propose to apply to the court to have their names registered as the shareholders of the shares that are charged to them in place of Lala Debi Datt's name. When that is done and the court has ordered accordingly, the liquidator will pay to these shareholders their *pro rata* share of the surplus.

APPELLATE CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice
Rachpal Singh*

MOTI LAL (PLAINTIFF) *v.* RADHEY LAL AND OTHERS
(DEFENDANTS)*

1933
May, 2

Transfer of Property Act (IV of 1882), section 6(e)—Mere right to sue—Assignment of right to damages on breach of contract—Transfer of Property Act (IV of 1882), section 3—Actionable claim—Right to recover unliquidated damages is not an actionable claim—Limitation Act (IX of 1908), articles 62, 89.

An actionable claim means a claim to a debt, which, in its primary sense, is a liquidated money obligation, and it is an essential feature of an action for debt that it should be for a liquidated or a certain sum of money. According to the definition of an actionable claim, as contained in section 3 of the Transfer of Property Act, the right to recover an unascertained amount of damages resulting from a breach of contract is not an actionable claim but a mere right to sue, which cannot be transferred because of the provisions of section 6(e) of the Transfer of Property Act.

Article 62 of the Limitation Act can apply only to cases where a definite sum of money had been received by the defendant and which he was to hold for the use of the plaintiff. Article 89, and not article 62, applies to a suit for accounts

* First Appeal No. 126 of 1929, from a decree of Makhan Lal, Subordinate Judge of Moradabad, dated the 28th of January, 1929.

between a principal and his commission agent in respect of transactions conducted by the latter on behalf of the former.

1933

 MOTI LAL
 v.
 RADHEY
 LAL

Dr. K. N. Katju and Messrs. S. B. L. Gaur and R. K. S. Toshniwal, for the appellant.

Messrs. K. Varma and Ambika Prasad Dube, for the respondents.

RACHEPAL SINGH, J. :—This is a plaintiff's appeal arising out of a suit for rendition of accounts. The defendants 2nd party, a firm styled Mithu Lal Gopal Dass, purchased 1,153 bags of wheat, 9 bags of *arhar* and $\frac{1}{2}$ bags of gram on different dates between 14th June and 9th July, 1924, through the agency of the defendants 1st party, a firm styled Gobind Ram Brij Lal and carrying on business as commission agents. These goods were sold by the firm of Mithu Lal. The trial court has found that in respect of this transaction a sum of Rs.1,771-13-6 remained due to the firm of Mithu Lal Gopal Dass from the firm Gobind Ram Brij Lal. This finding of the learned Subordinate Judge has been accepted by both the parties in this Court.

Between the 5th of July and the 15th of September, 1924, the firm of Mithu Lal purchased 887 bags of wheat on various dates through the agency of the firm of Gobind Ram Brij Lal. The dispute between the parties is mainly confined to this second transaction.

Moti Lal, plaintiff in the case, is an assignee of the interest of the firm of Mithu Lal Gopal Dass under a deed of assignment dated the 1st of February, 1928. The plaintiff's case was that on the 19th of February, 1925, the firm of Mithu Lal Gopal Dass sent telegraphic instructions to the firm of Gobind Ram Brij Lal directing them to sell the 887 bags of wheat. These instructions were not complied with. On the other hand, the firm of Gobind Ram Brij Lal wrongly asserted that the goods had already been sent to Calcutta and sold there under the instructions of the firm of Mithu Lal. The plaintiff sued to recover the following items :—(1) Rs.1,800 on

1933

MOTI LAL
v.
RADEHEX
LAL

*Rachhpal
Singh, J.*

account of the first transaction; (2) Rs.2,100 on account of the second transaction, relating to 887 bags of wheat; the plaintiff calculated his profits with reference to the rate at which wheat was sold in Sambhal town on the 19th of February, 1925, the date on which the firm of Mithu Lal had given instructions for the sale of 887 bags to the firm of Gobind Ram by wire; (3) Rs.75 on account of the price of 9 bags of *arhar*; (4) Rs.40-10-0 on account of the price of 4 bags of gram; (5) Rs.1,075 by way of interest at 12 annas per cent. per mensem : Total Rs.5,090-10-0.

The claim was resisted by the firm of Gobind Ram Brij Lal. * * * * The contesting defendants asserted that accounts were explained to the firm of Mithu Lal and that only a sum of Rs.356-1-3 was due, that the plaintiff had purchased a mere right to sue which was not transferable under the provisions of section 6 of the Transfer of Property Act and so the plaintiff was not entitled to maintain the suit and that the suit was not within limitation.

[The judgment then dealt with the facts and came to the following conclusion.] So, the contesting defendants are liable to account to the plaintiff for the price of 28 bags of wheat in addition to the sum of Rs.356-1-3 admitted to be due.

The next question for consideration in this case is whether the plaintiff, an assignee of the firm of Mithu Lal Gopal Dass, has a right to sue. The contention raised by the contesting defendants is that the plaintiff has purchased a bare right to sue which could not be transferred in view of the provisions of section 6, clause (e) of the Transfer of Property Act and so he is not competent to maintain the suit. The plaintiff contended that what had been assigned to him by his assignors was a debt due to them from their agents on account of transactions of sales and purchases, and, as such, it was an actionable claim which could be transferred. The learned Subordinate Judge accepted the contention of the

defendants and dismissed the suit. Before dealing with the legal aspect of the question, it is necessary to look into the terms of the deed of assignment in order to see what the subject-matter of the assignment was. The deed of assignment recites that the assignors were assigning their right to the profits in the second transaction and in the accounts and advance of the first transaction. The claim of the assignors, as against the contesting defendants, is valued in the deed at Rs.5,100 and the sale of the claim is made in favour of the plaintiff for a sum of Rs.3,000. It is stated in the deed that the assignors several times asked the contesting defendants to render an account but this demand was not acceded to. After a perusal of the deed I am of opinion that so far as the assignment of the right of the assignors in respect of the first transaction is concerned the plaintiff is entitled to maintain the suit. The assignors had purchased some grain through the contesting defendants. They also deposited some cover money with the defendants. The grain was sold. The sale money was deposited with the defendants. The assignors were entitled to recover from the contesting defendants an ascertained amount. The assignors assigned to the plaintiff an actionable claim or in other words a debt, which they were quite competent to do.

As regards the assignment of the assignors' right in respect of the second transaction, the case stands on a different footing altogether. Some time after the first transaction, the firm of Mithu Lal Gopal Dass purchased more wheat (887 bags) through the agency of the contesting defendants. At the time of the assignment under which the plaintiff comes to court, the assignors asserted that the commission agents had wrongfully sold these bags without their authority. The assignors believed that on taking accounts a sum of money would be found due to them. In paragraph 16 of the plaint it is stated: "The defendants first party were repeatedly asked to render an account, and to pay the remaining

1933

MOTI LAL
v.
RADHIV
LAL

*Rachpal
Singh, J.*

1933

MOTI LAL
v.
RADHEX
LAL

*Rachhpal
Singh, J.*

amount due to the defendants second party, of which the plaintiff is the owner by virtue of the sale deed, after deducting the amount of commission expenses, etc. But they did not render the account at all . . . ” It appears that so far as the second transaction is concerned, what the plaintiff purchased was “a right to sue for damages after settlement of account”. It is true that in the sale deed the assignors have given an estimated value of their claim. But that fact, by itself, cannot convert a mere right to sue into an actionable claim. In substance the sale was of a right to sue for damages which might be found due in case the allegations of the plaintiff about the alleged breach of contract were true. Under the Transfer of Property Act an actionable claim can be transferred. An actionable claim means a claim to a debt. In its primary sense a debt is a liquidated money obligation, and it is an essential feature of an action for debt that it should be for a liquidated or a certain sum of money. I apprehend that a right to recover an uncertain amount cannot be said to be a debt. In the case before us, the deed of assignment and the frame of the suit go to show that what the plaintiff claims is, so far as the second transaction is concerned, damages, unascertained at the time of the institution of the suit, resulting from a breach of contract on the part of the contesting defendants. The question as to whether or no the plaintiff was entitled to recover any damages depended on his allegation that the contesting defendants had sold the goods without getting the instructions of the assignors. Till the establishment of that point in the plaintiff’s favour, it could not be known as to whether any damages were due to him at all. So, it cannot be said that what was sold to the plaintiff under the assignment was an actionable claim as defined in section 3 of the Transfer of Property Act.

The next point that arises for consideration is whether the transfer of a right to sue to recover unascertained damages for a breach of contract offends against

the provisions of section 6, clause (e) of the Transfer of Property Act. Clause (e) of section 6 of the Transfer of Property Act lays down that a mere right to sue cannot be transferred. The contention raised by the learned counsel for the appellant is that a right to recover damages arising out of a breach of contract is capable of a valid transfer and does not offend against the provisions of section 6, clause (e) of the Transfer of Property Act. In support of his contention the learned counsel for the appellant has cited some rulings. The first ruling relied upon by him is *Churamoni Mondal v. Rajendra Kumar* (1). It is a Calcutta case. It was laid down in it that "The right to recover money, which might be found due on taking accounts from an agent, is not a mere right to sue within the meaning of section 6, clause (e) of the Transfer of Property Act, but is an actionable claim which is capable of transfer; and the transferee can maintain a suit in his own name against the agent for the recovery of such amount as might be found due on taking accounts from him." There can be no doubt that the view taken in this ruling supports the contention of the learned counsel for the plaintiff appellant. The next case on which the appellant relies is *Nagappa Pandyappa v. Badridas Shrikishan* (2). A careful perusal of this case would show that as a matter of fact it does not support the contention of the appellant. Rather, it goes against him. At page 410 we find the following observations: "So, on the uncontradicted evidence before the Judge, I think, he was entitled to find that in fact the amounts were ascertained and a sum was arrived at between the parties. That being so, that to my mind would mean, apart from any authority, that there was here an ascertained sum due from the defendants to the plaintiff, in other words, a debt." Dealing with the view taken in a Calcutta case, *Abu Mahomed v. S. C. Chunder* (3), the learned Judge made the following

1933

MOTI LAL
&
RADHEE
LAL

*Rachpal
Singh, J.*

(1) (1917) 42 Indian Cases, 390.

(2) A.I.R., 1930 Bom., 409.

(3) (1909) I.L.R., 36 Cal., 345.

1933

MOTI LAL
v.
RADHEY
LAL

Rachhpal
Singh, J.

observations: "This was held to be merely a claim for unliquidated damages for breach of contract, and, therefore, not assignable. There, to prove the claim, the market price at the date of the breach would have to be ascertained and this might involve calling several witnesses." From these observations it would be clear that the learned Judge who decided that case was of opinion that a claim for unliquidated damages could not be assigned. Having regard to the facts of the particular case before him, he arrived at the conclusion that it was a case in which the plaintiff had assigned a debt already due. It must, therefore, be held that this ruling is no authority for the contention put forward on behalf of the appellant. Reliance was placed on *Jagat Chunder Roy v. Iswar Chunder Roy* (1). But, in my opinion, that case has no bearing on the point in issue. What was decided in that case was that the share of a partner in a partnership business was saleable property within the meaning of those words in section 266 of the Code of Civil Procedure, and could be attached and sold in execution of a decree against that partner. The next case relied upon by the learned counsel for the appellant is *Madho Das v. Ramji Patak* (2). In that case it was held that "Where money is due by an agent or vendee to his principal or vendor, the principal's or vendor's claim against his agent or vendee may be attached and sold in execution of a decree against the principal or vendor as a debt under section 266 of the Code of Civil Procedure, and it is not necessary that the exact amount due to the principal or vendor should be ascertained prior to attachment and sale." In the course of the judgment the learned Judges who decided that case made the following observations: "What was attached here was, in our opinion, a debt; although the amount of the debt was unascertained, it was capable of being ascertained, and as such debt it was attachable under section 266 of the Code of Civil Procedure; it was not a mere right to sue for

1) (1893) I.L.R., 20 Cal., 693.

(2) (1894) I.L.R., 16 All., 286.

damages which would have been excluded from attachment by the proviso to that section.' In my opinion, that ruling is not applicable to the case before us. That was not a case in which the claim was to recover unascertained damages on a breach of contract. It may also be pointed out that at the time when that case was decided, the law on the point was somewhat different. According to the repealed section 130 of the Transfer of Property Act, for which the present definition in section 3 was substituted by the Amendment Act No. II of 1900, section 2, any claim which could be recognized by the courts as affording grounds for relief was an actionable claim. It appears to me that according to the definition of an actionable claim, as given in section 3 of the Transfer of Property Act now, the right to damages accruing after the occurrence of a breach is not an actionable claim but a mere right to sue. Before the Amendment Act II of 1900, clause (e) of section 6 of the Transfer of Property Act laid down that a mere right to sue "for compensation for a fraud or for harm illegally caused" could not be transferred. After the amendment of 1900, clause (e) of section 6 of the Transfer of Property Act is differently worded. The clause, as it now stands, prohibits the transfer of a mere right to sue.

Now, let us turn to the rulings cited on behalf of the respondent. The leading case on the point, on which reliance has been placed, is *Abu Mahomed v. S. C. Chunder* (1) in which it was held that a claim for damages for breach of contract, after breach, was not an actionable claim within the meaning of section 3 of the Transfer of Property Act and therefore could not be transferred. The next case relied on is *Jewan Ram v. Ratan Chand Kishen Chand* (2). In this case, the learned Judges held that there was authority both English and Indian for the view that a claim to unliquidated damages for breach of contract was not assignable. At one place in the judgment at page 503, we find

1933

MOTI LAL
v.
RADHEX
LAL

*Rachpal
Singh, J.*

(1) (1909) I.L.R., 36 Cal., 345.

(2) (1921) 70 Indian Cases, 498.

1933

MOTI LAL
v.
RADHEY
LAL

Rachhpal
Singh, J.

the following observations: "Moreover, when an ordinary commercial contract for sale of goods has been broken and subsists only for the purpose of enforcing a claim to damages, it is to my mind difficult to say that the right to damages is, standing by itself, anything more than a mere right to sue, a right which is not incidental to property but is incidental to abstract right in respect of contracts comparable to the abstract rights to personal safety and immunity from fraud in the region of tort." The next case relied on is *Khetra Mohan Das v. Biswa Nath Bera* (1). A Bench of two learned Judges of the Calcutta High Court decided that a right to take accounts and to recover such sums as may be due was not assignable, being a mere right to sue within the meaning of section 6, clause (e) of the Transfer of Property Act. The same view was taken by the Bombay High Court in the case of *Hirachand Amichand v. Nemchand Fulchand* (2) and by the Punjab Chief Court in *Jangli Mal v. Pioneer Flour Mills* (3).

On a review of the authorities cited before us I am of opinion that the correct view is that a claim for unliquidated damages for breach of contract, after the breach, is not an "actionable claim" within the meaning of section 3 of the Transfer of Property Act and cannot be transferred because of the provisions of clause (e), section 6 of the Transfer of Property Act. For the reasons given above I hold that the deed of assignment, so far as it relates to the transfer of the assignors' right in respect of the first transaction, is good and valid. It is invalid in respect of the transfer of the assignors' right about the second transaction.

On behalf of the contesting defendants it was urged that the suit of the plaintiff was not within limitation as it was governed by article 62 of the Indian Limitation Act. It was said that the agency terminated on the 29th

(1) (1924) I.L.R., 51 Cal., 972.

(2) (1923) I.L.R., 47 Bom., 719.

(3) (1914) 27 Indian Cases, 115.

of January, 1925, when the plaintiff's assignors are said to have been informed of the sale of the last lot of wheat bags. In my opinion article 62 of the Indian Limitation Act is not applicable to the case. In *Subba Rao v. Rama Rao* (1) it was held that article 62 could only apply to cases where a definite sum of money had been received by the defendant and which he was to hold for the use of the plaintiff and that it was not applicable to cases where the defendant was asked to account for moneys and where the person collecting was entitled to just allowances. In my opinion the learned Subordinate Judge was right in holding that article 89 of the Indian Limitation Act applied to the case in suits for accounts between principal and agent. It has been found that the contesting defendants credited the plaintiff's assignors with the proceeds of sale of nine bags of *arhar* on the 26th of September, 1925. Thus it will be seen that till at least that date the agency did not terminate. The suit having been instituted within three years from that date is within limitation. Under article 89 the period begins to run from the date on which accounts are demanded and refused during the continuance of the agency, or from the date on which the agency terminates. The defendants contended that the agency terminated on the 29th of January, 1925, when the plaintiff's assignors were told about the sale of the last lot of the wheat bags. But this plea is not correct. The evidence of Ram Prasad, the munim of the defendants, is that several days after the sale of the bags in Calcutta Mithu Lal went to the defendants and when he was offered Rs.356 he did not take it, saying that he would transact further business with them. In view of this statement of Ram Prasad it is not correct to contend that the agency had terminated on the 29th of January, 1925. The contesting defendants have not given any evidence to prove the exact date on which, according to them, the agency terminated. So, it will be taken that the agency

1933

 MISHR LAL
 v.
 RADHEY
 LAL

*Rachpal
 Singh, J.*

1933

MOTI LAL
v.
RADHEY
LAL

Rachhpal
Singh, J.

continued till the demand for accounts made by the assignors of the plaintiff on the 2nd of March, 1925, was refused. The suit is, therefore, within limitation.

The learned Subordinate Judge has found that about the first transaction a sum of Rs.1,771-13-3 is due to the plaintiff. But the defendants have established that the wheat purchased by the assignors of the plaintiff at the time of the second transaction was sold at a loss. They are entitled to claim an equitable set off in respect of such loss. The plea of set off is a good ground for defence. If established it affords an answer to the plaintiff's claim wholly or *pro tanto*. In the case before us the contesting defendants have proved by their account books that on taking account in respect of both the transactions only a sum of Rs.356-1-3 is due to the plaintiff. The plaintiff is entitled to recover this sum from the contesting defendants, together with the price of 28 bags of wheat not accounted for by the defendants. The price of these 28 bags of wheat comes to Rs.553. Thus the total amount due to the plaintiff from the contesting defendants comes to Rs.909-1-3. The plaintiff is, in my opinion, entitled to a decree for this amount.

I, therefore, allow the appeal, modify the decree of the court below and grant the plaintiff a decree for Rs.909-1-3. The rest of his claim stands dismissed. The plaintiff and the contesting defendants will receive and pay costs in both courts according to their success and failure.

NIAMAT-ULLAH, J. :—I agree.