

THE HON'BLE SMT. JUSTICE ANIS

APPEAL SUIT No. 774 OF 1998

JUDGMENT:

This appeal assails judgment and decree dated 13.10.1997 passed in O.S. No. 66 of 1988 by the learned Additional Subordinate Judge, Rajahmundry, whereby the suit filed by the plaintiff – appellant herein for recovery of a sum of Rs.41,156.20 Ps. was dismissed without costs and counter claim filed by the defendant/ respondent herein was decreed for a sum of Rs.15,852/- with proportionate costs and subsequent interest at 6% p.a. from the date of plaint till realisation.

2. The plaintiff/appellant filed the suit for recovery of Rs.41,156.20 with subsequent interest and costs against the defendant/ respondent herein.

3. Brief averments of the plaint are as follows:

The plaintiff is a Cooperative Society constituted and registered under the provisions of the A.P. Cooperative Societies Act. It is union of several societies generally known as Milk Producers Co-Operative Societies constituted in respect of an independent village or group of villages in East Godavari District. The village Milk Producers Co-Operative Societies are affiliated to plaintiff society. The objectives of the plaintiff society are to deal in procurement and sale of milk and manufacture of milk products through various milk chilling and cooling centres. The milk collected from milk producers is purchased

by the plaintiff society at a fixed rate depending upon the fat contents of milk. The nature of business activity of plaintiff society, requires transportation of milk collected every day to its various milk chilling/cooling centres without delay so as to prevent it from being damaged or spoiled. Therefore, plaintiff society has to arrange for transportation of milk in milk cans of standard specifications by road transport. For this purpose, plaintiff society had entrusted the job of transportation of milk on contract basis to persons owning transport vehicles.

4. It is further stated that the transport charges in respect of each of the contractors depending upon the route by which transportation work is to be done, is settled on the basis of the rate quoted by the transport contractors in pursuance of the invitation of tender published by plaintiff society. In that process, plaintiff society with an intention to entrust the milk transport job relating to Koyyalagudem route of Rajahmundry for the period from 1.10.1986 to 30.9.1987, invited transport contractors to quote the rate at which they are willing to transport the milk. Pursuant thereto, among others, the quotation offered by defendant at the rate of Rs.1.61 Ps. per KM was accepted by plaintiff society and transportation of milk was entrusted to defendant by agreement dated 17.10.1986. The defendant took over the job of contract from 1.10.1986 and he was entrusted with 25 aluminium cans, lids and plastic milk sachet tub. The defendant

committed omissions and commissions amounting to breach of contract viz.,

- a) defendant's failure to attend to the transport work throughout the agreed period ;
- b) defendant's failure to return all the aluminium milk cans, lids, plastic milk sachet tubs;
- c) defendant's failure to remit the sale proceeds of the milk;
- d) failure to deliver milk at the milk chilling/cooling centres at the stipulated time resulting in spoiling of milk;
- e) failure to life milk at the milk collection centre;
- f) failure to deliver the milk collected at the milk collection centre in its entirety at the milk chilling/cooling centres.

5. According to plaintiff society, defendant failed to attend to transport work from 16.6.1987 to 30.9.1987 and thus committed breach of several of terms and conditions of the contract. Therefore, the defendant is liable to pay a sum of Rs.44,327.70 Ps. and after giving credit to the amount due and payable by plaintiff society towards damages, the defendant is liable to pay a sum of Rs.35,975.90 Ps. as on 18.06.1987 with interest at 18% p.a. It is stated that since the defendant has committed breach of terms and conditions of the contract, plaintiff society is entitled to forfeit the security deposit of Rs.7,500/-. Inasmuch as the defendant failed to pay due amount even after receipt of notice dated 08.02.1988 got issued by the plaintiff society, the present suit is filed.

6. Brief averments made in the written statement and counter-claim made by the defendant are as follows:

7. The defendant while denying liability and suit claim, has categorically stated that plaintiff society has illegally withheld

payment of transportation charges amounting to Rs.16,000/- and also security deposit of Rs.7,500/-. Likewise, plaintiff society is also liable to pay an amount of Rs.2,700/- towards transportation charges from 01.03.1987 to 18.06.1987. The defendant has specifically pleaded that originally as per terms of the contract, the original route contemplated was to transport milk in between Jangareddigudem to Rajahmundry and the plaintiff society taking advantage of innocence of defendant, forced him to transport milk brought by another lorry from Kannapuram milk chilling centre by lifting the same from Gajjaram point, which was never contemplated under the contract. On the other hand, plaintiff society is liable to reimburse the amount claimed in the counter claim and ultimately prayed the court to allow the counter claim by dismissing the suit claim.

8. Basing on the pleadings, trial court framed the following nine issues:

- 1) Whether the defendant committed breach of contract?
- 2) Whether the plaintiff sustained loss of Rs.44,327.70 Ps. Due to the breach of contract?
- 3) Whether the plaintiff is entitled to forfeit the security deposit amount?
- 4) Whether the defendant redelivered aluminium cans, lids and plastic tubs?
- 5) Whether the defendant has to collect and remit the sale proceeds of the milk as per the terms of the contract?
- 6) Whether the defendant could not undertake transport work due to the circumstances stated in the written statement?
- 7) Whether the defendant is liable to pay the suit amount to the plaintiff?

8) Whether the defendant is entitled for Rs.28,200/- from the plaintiff towards transport charges and security deposit, as claimed in the counter claim?

9) To what relief?

9. On behalf of plaintiff society, PW-1 was examined and Exs. A-1 to A-18 were marked. On behalf of the defendant, DWs. 1 and 2 were examined. No documentary evidence was let in.

10. On an overall appreciation of both oral and documentary evidence, the trial court dismissed suit of the plaintiff and allowed counter claim filed by the defendant to the tune of Rs.15,852/- with proportionate costs and interest at 6% p.a. from the date of plaint till realisation.

11. Aggrieved by the judgement and decree, plaintiff society preferred the present appeal.

12. Learned counsel for the appellant/plaintiff contended that the defendant was entrusted with aluminium cans, lids and plastic milk sachet tubs for collecting milk but the defendant did not account for the same and, therefore, he is liable to make good the damage. It is also argued that the defendant failed to attend to transportation work though agreed to do so and he failed to remit sale proceeds of the milk and also failed to deliver milk at milk chilling and cooling centres forcing appellant to engage independent transportation resulting in additional expenditure and the plaintiff society is entitled to recover the said amount. It is finally argued that inspite of plaintiff society suffering from damages due to failure of the defendant to honour the

terms of contract, the trial court erred in dismissing the suit holding that plaintiff society is not entitled to recover additional expenditure and, therefore, prayed the court to set aside the judgment and decree dated 13.10.1997 passed in OS No. 66 of 1988 by the learned Additional Subordinate Judge, Rajahmundry, and dismiss the counter claim laid by defendant.

13. Though notices in the appeal were served on the respondent/ defendant, nobody is present.

14. Now the point that arises for consideration is whether there are any grounds to interfere with the judgment and decree passed by the trial court.

15. A perusal of the records shows that it is an admitted fact that plaintiff society engaged the defendant as transport contractor at the rate of Rs.1.61 Ps. per kilometre for one year. The defendant deposited Rs.7,500/- towards security deposit with the plaintiff and that the plaintiff engage a new contractor from 17.06.1987 and he has not paid transport charges to the defendant from 01.06.1987 to 17.06.1987. The plaintiff claimed that the defendant committed breach of contract whereas the defendant contended that the plaintiff committed breach of contract.

16. The specific case of plaintiff is that the defendant failed to do transport work from 17.06.1987 onwards without any prior permission and as the defendant has to return 25 aluminium cans, it filed present suit claiming the suit amount under six different head, as stated supra

in the preceding paragraphs. As the defendant failed to transport milk, they were constrained to engage another transporter for the remaining period from 17.06.1987 onwards and paid amount at the rate of Rs.2.61 Ps. per kilometre. As they paid excess amount to new contractor, that amount has to be reimbursed by the defendant. According to the plaintiff, an amount of Rs.44,327.70 Ps. is due and payable by the defendant towards damages and after giving credit to the amounts payable to the defendant, the plaintiff has claimed Rs.35,975.70 Ps. along with interest at 18% p.a.

17. The defendant contended that officials of the plaintiff did not allow him to run the vehicle from 17.06.1987 onwards. On 17.06.1987 itself they have called quotations to engage another contractor and the defendant never agreed to collect the sale amount from the sale centres and remit the same to the plaintiff. As per the evidence of PW-1, it is clearly established that the plaintiff without giving any notice to the defendant, terminated his contract and called for new quotations on 17.06.1987 itself. Admittedly, the defendant transported milk for the first trip on 17.06.1987. Exs. A-13 and A-14 clearly show that the plaintiff called for quotations on 17.06.1987 but not on 18.06.1987. That itself shows that the plaintiff terminated the contract of the defendant on 17.06.1987 and they did not allow the defendant to transport milk. Thus, the plaintiff alone has committed breach of contract by calling for new quotations. Ex.A-5, agreement does not show the rate, period and other particulars. Therefore, it is

the unilateral agreement and it also failed to show the route of transport. By engaging another new contractor, the plaintiff cannot blame the defendant that he failed to transport milk. The trial court after perusing evidence of PW-1, has rightly held that they have not placed any particulars or material about the amount paid to the new contractor. Admittedly, the plaintiff itself accepted quotations of the new contractor at the rate of Rs.2.61 Ps. per kilometre. Therefore, the plaintiff has to pay the said amount and there is no agreed contract that the defendant will pay the difference amount and the plaintiff can claim the said amount from the defendant. Thus, the trial court has rightly held that the plaintiff is not entitled to claim the difference of mileage charges.

18. The evidence of PW-1 shows that the defendant has returned six cans to the plaintiff and 19 cans to the milk societies. Therefore, the plaintiff is owner of six cans only whereas they are claiming the value of 25 cans. The plaintiff has not filed any Register to show that 25 cans were entrusted to the defendant. Though the Register is available with the plaintiff that 25 cans were given to the defendant, it failed to produce the same. Therefore, the oral evidence of PW-1 cannot be accepted and the plaintiff is not entitled to claim the value of 25 cans.

19. The plaintiff claimed an amount of Rs.3,814.62 Ps. towards value of spoiled milk. But PW-1's evidence shows that the said amount was already paid to the milk centres. It is not explained

whether there is any agreement between the plaintiff and the defendant to claim the said amount.

20. The plaintiff has claimed an amount of Rs.3,385/- towards internal transport charges from the defendant. Admittedly, there is neither any agreement between the plaintiff and the defendant for payment of internal transport charges nor any material document is placed on record to that effect. Therefore, the trial court has rightly denied the said claim of the plaintiff.

21. The plaintiff also claimed an amount of Rs.634.05 Ps. from the defendant towards value of leftover milk. But there is no evidence on record to show that the plaintiff paid the said amount to the milk producers and entitled to recover the same from the defendant. Therefore, the plaintiff failed to prove the same. So far as spoiled milk is concerned, Ex.A-7 is the crucial document, which is a bill for the period from 01.06.1987 to 15.06.1987. On the reverse of the bill, the particulars of spoiled milk and timings are noted. There is a Register maintained in respect of the spoiled milk by the plaintiff. But the same is not filed into the court. In the absence of documentary evidence, the plaintiff is not entitled to claim value of the spoiled milk.

22. Likewise, the plaintiff also failed to prove that an of Rs.5,696/-, which is alleged to be due from the defendant towards sale amount of the milk, collected from the sale centres. The specific case of the plaintiff is that the defendant collected the said amount at the sale points and failed to remit the same to the plaintiff. PW-1 also stated

that there is documentary evidence available to show that the defendant collected the sale amount from the sale points. The plaintiff failed to produce material documents into the court. The person who issued Ex. A-6 letter was not examined. Further there is no clause in the agreement that the defendant has to collect sale amount from the sale points and remit the same to the plaintiff. PW-1 admitted this fact in his evidence. In the absence of any clause in the agreement, the plaintiff cannot claim said amount from the defendant.

23. Admittedly, the defendant deposited Rs.7,500/- towards security deposit. The plaintiff forfeited the said amount on the ground that the defendant has committed breach of contract. As stated supra, the plaintiff itself has committed breach of the contract and, therefore, the plaintiff cannot forfeit earnest money deposited by the defendant. Further, there is no clause in the agreement enabling the party to forfeit the amount. Therefore, the plaintiff is liable to refund the security deposit of Rs.7,500/- to the defendant. Therefore, the finding of the trial court on this issue needs no interference.

24. Insofar as the transportation charge claimed by the defendant is concerned, PW-1 in his evidence admitted that the extra claim was not given to the defendant from 01.03.1987 onwards and it is not denied by PW-1 that Kannapuram transport was also entrusted to the defendant. As per Ex.A-12, the mileage certificate, Gajjaram point is also included in the mileage. The defendant in his evidence stated that at the instance of plaintiff, he transported milk in between Polavaram

– Kannappuram. The defendant, who was examined as DW-1 has not placed any material to show that he covered excess mileage in between Polavaram – Kannapuram and he has not filed any bill to that effect. Therefore, the oral evidence of DW-1 cannot be accepted. Therefore, the defendant is not entitled to claim Rs.2,700/- towards mileage charge.

25. The defendant made a counter claim of Rs.16,000/- towards transportation charges for the period from 16.05.1987 to 17.06.1987. But during the course of trial, the defendant has conceded that he has not placed any material to prove the above fact. Thus the trial court has rightly allowed counter claim of the defendant for Rs.8,352/- towards transportation charges and Rs.7,500/- towards security deposit and thus awarded Rs.15,852/- to the defendant against the plaintiff.

26. Basing on the oral and documentary evidence, the trial court has rightly dismissed the suit of the plaintiff and allowed counter claim of the defendant. The findings recorded by the trial court need no interference.

27. Consequently, the appeal suit fails and is accordingly dismissed without costs. As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

03.08.2017
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THE HON'BLE SMT. JUSTICE ANIS



Dated: 03.08.2017

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