

Toolsidas Tejpal - - - - - *Appellant*

v.

M. P. Venkatachalapathy Aiyar and another - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 3RD MAY, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT FINLAY.

LORD MOULTON.

LORD SUMNER.

LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

Their Lordships do not think it necessary to call on Counsel for the respondents.

On the view which the Board takes of this appeal the question which arises is simply one of the construction of three letters, and it is therefore unnecessary for them to delay making a recommendation to the Sovereign.

The controversy arises with reference to a contract made for the sale of alizarine, a coal tar dye. The contract is one made between parties in India, who, so far as appears, contracted as principals, and it relates altogether to matters which took place and were to take place within India. The Courts below disposed of a number of points, but the only one which remains, and which has been discussed on this appeal, is the question of construction, which goes to the root of the litigation.

The contract to be construed will be found in three letters; the first of the 21st April, 1914, the second of the 14th May in the same year, and the third of the 18th June of that year. By the first letter, after stating that the purchasers agreed to buy all their alizarine for a year from the date of the first delivery, and would not purchase from other dealers, the purchasers stipulate for a certain rebate and then proceed as follows :—

“ The goods are to be invoiced as usual at Rs. 321 4s. which will be paid within 15 days of delivery without interest. If the payment is delayed after that time an interest of 9 per cent. per annum will be paid by us

If there should be any fluctuation in the syndicate rates the conditions laid down in this letter regarding the price and/or bonus will be void and they will be fixed at such a time of fluctuation by mutual agreement. If this offer is not accepted within 15 days from the date hereof it will stand cancelled."

The letter was not accepted within the date fixed, but the next letter from the purchasers renews the offer, saying that they agree by way of fixing a quantity to take from the sellers "the delivery of two casks of 4 cwt. 40 per cent. alizarine every month for 11 months and three casks for the 12th month." Then there is a letter of acceptance, the third letter above referred to, written by the sellers.

The question which arises is of this nature. The War broke out, and affected the position which is now to be described. There was a syndicate composed of an important German firm of alizarine producers and an English member or members, and that syndicate appears to have been in the practice of regulating the supply and fixing the prices as regards India and elsewhere, and the "syndicate rates" referred to in the first of the three letters are the rates the syndicate fixed. There is no other description of the syndicate in the letters nor reference to the syndicate excepting so far as contained in the term "syndicate rates." It has been argued that the letters show that the continuance of the syndicate, which may or may not have been put an end to by the War, was vital to the continuance of this contract, and that when deliveries ceased to be made the contract was at an end. There was a considerable stock of alizarine in India when the War broke out, and deliveries continued for some time.

The purchasers brought the present action in which they recovered Rs. 15,000 damages, for breach of the contract to continue the deliveries. The question is whether the War frustrated that contract, either generally or by destroying the syndicate. As their Lordships have pointed out, the matter is purely an Indian one, and there is nothing in the contract which in terms makes any modification of the obligation of the sellers depend upon the continuance of the syndicate. The reference is to "syndicate rates" and these may well be rates publicly announced by the syndicate. If so, the only question is what happens if these rates are no longer issued. In the opinion of their Lordships the meaning of the words used, the only words that can be taken into consideration, is this, that, as there was no fluctuation or alteration in the syndicate rates, by reason of the syndicate not having been operative, or for some other reason, the condition avoiding the contract if there was such fluctuation, never came into operation and the result was that the contract continued on the footing of the rates specified in the part of the letter set out above, and that as the contract was broken the buyers properly recovered damages for breach in the Courts below.

Their Lordships will humbly advise His Majesty that this appeal ought to be dismissed with costs.

In the Privy Council.

TOOLSIDAS TEJPAL

vs.

M. P. VENKATACHALAPATHY AIYAR AND
ANOTHER.

DELIVERED BY VISCOUNT HALDANE.

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