1968 KHC 130
Kerala High Court
V. R. Krishna Iyer, J.
LEKSHMI STARCH FACTORY LTD. v. MUHAMMED ISMAIL
C. R. P. No. 989 of 1967
2 August, 1968

Contract Act, 1872, S.74 - Compensation awarded should not exceed the penalty stipulated for, which shall be the ceiling -- Quantification of compensation, a matter for discretion of Court subject to the guidance of reasonableness in the award of compensation -- Legal injury if suffered by plaintiff, entitled to receive compensation -- Breach of contract and subsequent loss does not have to be established by plaintiff. (Para 1, 5)

AIR 1963 SC 1405; Referred to

T. K. Kurien; For Revision Petitioner
M. Krishnan Nair; For Counter Petitioner

ORDER

1 The plaintiff revision petitioner claims to be aggrieved by the decree of the lower court on one point although on the other point he has won. The suit was for recovery of Rs. 100/- advanced by the plaintiff to the defendant as per an agreement, Ext. P1. The plaintiff, a Starch Factory, regularly advances manure to ryots in the locality, among whom the 1st defendant is one, and this manure is to be used for raising tapioca crop on their lands. At the end of the cultivation season, tapioca grown on the land is to be supplied to the plaintiff for his Starch Factory. Interest at 6 per cent on Rs. 100/- which is the value of the manure supplied, is also to be paid. There is a further provision and this has led to the controversy in the revision petition that in the event of the ryot (in this case, the 1st defendant) failing to supply tapioca at the agreed price of Rs. 60/- per ton damages must be paid to the plaintiff on the basis of 3 tons of tapioca per acre at Rs. 30/- per ton. The defendant in this case committed a breach of his obligation to supply tapioca and so the plaintiff came with the suit for recovery of Rs. 100/- advanced by him together with interest and Rs. 90/- which is the value of 3 tons of tapioca at Rs. 30/- per ton stipulated in the agreement.

2 The 1st defendant urged that the crop had utterly failed and so he should be relieved of his obligations under the contract on the basis of vismajor. He further urged that the clause in the contract for payment of Rs. 90/-, the price of 3 tons of tapioca at Rs. 30/- per ton, was unconscionable and unenforceable.

3 Both the points were considered by the Trial Court. On the first, as to whether there had been failure of crops and that consequently the defendant had been absolved from the contract, the Court held against the defendant. On the second, as to whether the plaintiff was entitled to claim Rs. 90/- as provided in the contract the learned Munsiff observed:
"It is no doubt true that as per Clause.9 of Ext. P1 defendant had agreed to pay compensation at Rs. 90/- per acre irrespective of the loss sustained by the plaintiff on account of the breach of contract but such unconscionable clauses in an agreement will not normally be

allowed to be enforced by a Court of law. In the absence of any evidence about the loss sustained by the plaintiff I consider that all that would be required and necessary is for the Court to grant interest at 6 percent on the amount advanced by the plaintiff.'

4 It must be straightway said that even in the normal course when the ryot is to repay in the shape of tapioca grown by him with the manure supplied by the plaintiff there is a provision for payment of 6 percent interest on the advance of Rs. 100/-. The provision for damages in the shape of 3 tons of tapioca is ab extra. There is, therefore, no force in the contention that 6 percept interest must be treated as the reasonable compensation contemplated by S.74 of the Contract Act.

5 The provision of law with which we are concerned is S.74 of the Contract Act which has been the subject of consideration by the Supreme Court in the decision reported in Fateh Chand v. Balkishan Das (AIR 1963 SC 1405). Their Lordships have pointed out that the Indian law steers clear of the complications of the English law in distinguishing between liquidated damages and stipulations in the nature of penalty. Under the common law of England, a genuine pre estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and is binding between the parties: a stipulation in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian law cuts across "the web of rules and presumptions under the English common law" by laying down a uniform principle applicable to all situations, whether they be liquidated damages or stipulations in the nature of penalty. S.74 says that the compensation that dan be awarded should not exceed the penalty stipulated for, which shall be treated as the ceiling, as it were. As for the quantification of the compensation it is a matter entirely for the discretion of the Court subject to the built-in guidance of reasonableness in the award of compensation. The Supreme Court observes as follows:

"*The measure of damages in the case of breach of a stipulation by way of penalty is by S.74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages, the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of 'actual loss or damages'; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course. Of things, or which the parties knew when they made the contract, to be likely to result from the breach'.*

Thus, the question that first falls for consideration here is whether there has been no legal injury at all as contended for by the defendant or whether there has been such injury. If the plaintiff has sustained legal injury he is entitled to receive compensation whether or not actual damage or loss is proved to have been caused by the breach. The section dispenses with proof of actual loss or damage. In this case, I am satisfied that there has been a breach of contract which has resulted in legal injury. It is not a case where the plaintiff has closed up his factory and that the non-delivery of tapioca has been a matter of total indifference to him so that he could not claim to have suffered an injury. On the other hand, the factory of the plaintiff depends on the

continuous supply of tapioca by the ryots to whom manure is supplied by way of advance. Even now, the factory is working notwithstanding a few defaulters. Therefore, there has been a breach of contract and consequent injury, and loss or damage does not have to be established by the plaintiff.

6 What then is reasonable compensation on the facts of this case? Of course, Rs. 90/- for an advance of Rs. 100/- is obnoxious being unreasonably high. Reasonable return, in the circumstances of the case, is a matter for some amount of guess work and the defaulting defendant must know the likelihood of loss to the plaintiff. I would therefore fix 9 percent as reasonable compensation over and above the 6 percent interest that has been awarded by the Trial Court. The plaintiff would therefore be entitled to compensation of 9 percent over and above what has been allowed. In the circumstances of the case, no costs.
