Privy Council Appeal No. 178 of 1924.

Allahabad Appeal No. 2 *of* 1923.

Firm Jhabbu Lal Ranchor Das - - - - - - *Appellant*

v.

Firm Madho Prasad Ganesh Prasad - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH JULY, 1926.

Present at the Hearing:

LORD CARSON.
MR. AMEER ALI.
SIR JOHN WALLIS.

[*Delivered by* LORD CARSON.]

Their Lordships are of opinion that this appeal fails. As they have now heard the whole of the case and as they see no grounds whatever for differing from the conclusions arrived at by the High Court, they think it unnecessary to go into the question raised as a preliminary matter as to whether the lower Court had jurisdiction to grant the certificate. It must not, however, be taken that this judgment in any way affects the law as laid down in the authorities cited by Mr. Dubé with reference to the cases where an amount has been added by the Court of Appeal and the sole dispute is whether that amount is the correct amount, and thereby the sum in dispute on appeal is less than the original claim in the action, and in consequence the matter does not come within the section which provides that the sum in dispute must amount to the sum of Rs.10,000. In the present case both Courts have held that there was a contract, and, therefore. the only argument open to Dr. Majid is that there was no evidence

to support the contract. Their Lordships are of opinion that there was clearly sufficient evidence for the Subordinate Judge to come to the conclusion he did. Without going into the facts in detail, there is first the letter of the 3rd April, 1919, which was the basis of the agreement of sale of 775 bags of linseed to the plaintiff, and although it is said there was a letter written, by which a new term was attempted to be introduced, namely that the plaintiff would be willing to pay 2 per cent. if there was delay in the carrying out of the contract, this was a matter that was before the Subordinate Judge, and was dealt with by him. Afterwards, on the 13th April, 1919, the plaintiff supplied the bags for the purpose of the performance of the contract. The bags were kept by the defendant, and up to the 19th April, 1919, he had filled up a certain number of them, viz., 451 bags. On that date he sent a letter stating that he had filled 451 bags and stating the price under the contract, and saying that the remaining bags under the contract were still held. He also demanded a sum of Rs. 12,000 as part payment from the plaintiff. It is impossible under those circumstances to hold that there was no evidence on which the Subordinate Judge could come to the conclusion as to the existence of the contract which he did. Indeed, so far as their Lordships are concerned they do not think that any other conclusion could have been come to.

That being so there comes the question, was there a breach ? Nobody has contended that if there was a contract there was no breach. The only matter in dispute is as to whether the breach occurred on the 19th April, 1919, when the demand was made for this sum of Rs. 12,000 and there was a refusal of delivery, because the plaintiff refused to pay that sum. There was no ground for the demand; nothing in the contract entitled the defendant to be paid such a sum on account, and there was no justification for the refusal to go on with the contract because that sum had not been paid. But the plaintiff was not bound under the section of the Contract Act immediately to accept the repudiation of the contract. He was entitled to accept it if he had chosen. On the 19th April, 1919, he might have said, " As you refuse to hand this over to me I put an end to the contract and I will sue you for damages." But he did not do that. He was entitled to take the reasonable course of trying to have the contract fulfilled, and finding that nothing was done and the defendant was not carrying out the contract, he served a notice on him on the 17th June, 1919, demanding a performance of the contract and giving notice that within two days he would bring a suit to assert his rights.

Their Lordships are of opinion the High Court was right in holding that the real breach must be taken to have taken place on that date, the 17th June, 1919, on which the notice was served. Nobody quarrels with the amount on the facts. Their Lordships, therefore, have come to the conclusion that the High Court was right, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

FIRM JHABBU LAL RANCHOR DAS

v.

FIRM MADHO PRASAD GANESH PRASAD.

DELIVERED BY LORD CARSON.

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