

SOORAJMULL NAGARMULL, PLAINTIFF AND APPELLEE, VS. BINALBAGAN-ISABELA SUGAR COMPANY, INC., DEFENDANT AND APPELLANT.

G.R. No. L-22470. May 28, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Binalbagan-Isabela Sugar Company, Inc. from the decision of the Court of First Instance of Manila in Civil Case No. 41103 entitled "Soorajmull Nagarmull vs. Binalbagan-Isabela Sugar Company, Inc." of the following tenor:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff, Soo-rajmull Nagarmull, ordering the defendant, Binal-bagan-Isabela Sugar Co., Inc., to pay said plain-tiff the sum of 18,562 rupees and 8 annas, with reservation for the plaintiff to prove its equiv-alent in Philippine pesos on the date of the fil-ing of the complaint, plus the costs of suit."

The parties submitted to the trial court the following stipulation of facts:

"1. Under Contract G/4370 dated May 6, 1949, plaintiff, a foreign corporation with offices at No. 8 Dalhousie Square (East), Cal-cutta, India, agreed to sell to defendant, a domestic corporation with offices at the Chro-nicle Building, Aduana Street, Manila, 1,700,000 pieces of Hessian bags at \$26.20 per 100 bags, C.I.F. Iloilo. Shipment of these bags was to be made in equal installments of 425,000 pcs or 425 bales (1,000 pcs to a bale) during each of the months of July, August, September and October, 1949. A copy of this contract marked Annex 'A' and the Calcutta Jute Fabrics Shippers Association Form 1935 which was made a part of the contract and marked as Annex '1-A' are hereto attached.

"2. This agreement was confirmed in a letter by the plaintiff to the defendant on May 7, 1949, copy of which is attached here-to and made a part hereof as Annex 'B';

"3. On September 8, 1949, plaintiff advised defendant that of the 850 bales scheduled for shipment in July and August, the former was able to ship only 310 bales owing to the alleged failure of the Adamjee Jute Mills to supply the goods in due time. Copy of plaintiff's letter is attached here-to as Annex 'C' and made an integral part hereof;

"4. In a letter dated September 29, 1949, defendant requested plaintiff to ship 100 bales of the 540 bales defaulted from the July and August shipments. A copy of this letter marked Annex 'D' is hereto at-tached. In this connection, it may also be mentioned that of the 425 bales scheduled for shipment in September, 54 bales were likewise defaulted resulting in a total of 154 bales which is now the object of the con-troversy.

"5. Defendant requested plaintiff to pay 5% of the value of the 154 bales default-ed as penalty which plaintiff did.

"6. Meanwhile, on October 1, 1949, the Government of India increased the export duty of jute bags from 80 to 350 rupees per ton, and on October 5, 1949, plaintiff requested defendant to increase its letter of credit to cover

the enhanced rate of export duty imposed upon the goods that were to be shipped in October, reminding the latter that under their agreement, any alteration in export duty was to be for the buyer's account. Copy of plaintiff's letter is attached hereto as Annex 'E';

"7. On October 25, 1949, defendant, in compliance with plaintiff's request, increased the amount of its letter of credit by \$10,986.25 to cover the increase in export duty on 425 bales scheduled under the contract for shipment in October, 1949. A copy of defendant's letter marked Annex 'F' is hereto attached;

"8. On October 27, 1949, plaintiff wrote to defendant for a further increase of \$4,000.00 in its letter of credit to cover the shipment of 154 bales which under the contract should have been included in the July, August and September shipments. A copy of said letter is attached hereto as Annex 'G';

"9. On November 17, 1949, plaintiff wrote defendant a letter reiterating its claim for \$4,000.00 corresponding to the increased export taxes on the 154 bales delivered to defendant from the defaulted shipments for the months of July, August and September, 1949. A copy of said letter is attached hereto as Annex 'H';

"10. On February 6, 1951, defendant received notification from the Bengal Chamber of Commerce, Tribunal of Arbitration in Calcutta, India, advising it that on December 28, 1950, plaintiff applied to said Tribunal for arbitration regarding their claim. The Tribunal requested the defendant to send them its version of the case. This, defendant did on March 1, 1951, thru the then Government Corporate Counsel, former Justice Pompeyo Diaz. A copy of the letter of authority is attached as Annex 'I';

"11. The case was heard by the Tribunal of Arbitration on July 5, 1951. Having previously requested the Secretary of Foreign Affairs for assistance, defendant was represented at the hearing by the Philippine Consulate General in Calcutta, India, by Consul Jose Moreno. A copy of the authority, consisting of the letter of Government Corporate Counsel Pompeyo Diaz, dated March 1, 1951, and 1st Indorsement thereon, dated March 2, 1951, are attached hereto as Annexes 'J' and 'J-1';

"12. As presented to the Tribunal of Arbitration, the whole case revolved on the question of whether or not defendant is liable to the plaintiff for the payment of increased export taxes imposed by the Indian Government on the shipments of jute sacks. Defendant contended that if the jute sacks in question were delivered by plaintiff in the months of July, August, and September, 1949, pursuant to the terms of the contract, then there would have been no increased export taxes to pay because said increased taxes became effective only on October 1, 1949, while on the other hand, plaintiff argued that the contract between the parties and all papers and documents made parts thereto should prevail, including defendant's letter of September 29, 1949;

"13. The Bengal Chamber of Commerce, Tribunal of Arbitration, refused to sustain defendant's contention and decided in favor of the plaintiff, ordering the defendant to pay to the plaintiff the sum of 18,562 rupees and 8 annas. This award was thereafter referred to the Calcutta High Court which issued a decree affirming the award;

"14. For about two years, the plaintiff attempted to enforce the said award through the Philippine Charge d'Affaires in Calcutta, the Indian Legation here in the Philippines, and the Department of Foreign Affairs. On September 22, 1952, plaintiff, thru the Department of Foreign Affairs, sought to enforce its claim to which letter defendant replied on August 11, 1952, saying that they are not bound by the decision of the Bengal Chamber of Commerce and consequently are not obligated to pay the claim in question. Copies of said letters are attached hereto as Annexes 'K' and 'L', respectively;

"15. For more than three years thereafter, no communication was received by defendant from the plaintiff regarding their claim until January 26, 1956, when Atty. S. Emiliano Calma wrote the defendant a letter of demand, copy of which is attached hereto as Annex 'M';

"16. On February 3, 1956, defendant's counsel replied informing Atty. S. Emiliano Calma that it refuses to pay

plaintiff's claim because the same has no foundation in law and in fact. A copy of this letter is attached hereto as Annex 'N';

"17. Thereafter, no communication was received by defendant from plaintiff or its lawyers regarding their claim until June, 1959, when the present complaint was filed.

"FINALLY, parties thru their respective counsel, state that much as they have endeavoured to agree on all matters of fact, they have failed to do so on certain points. It is, therefore, respectfully prayed of this Honorable Court that parties be allowed to present evidence on the disputed facts."

Thereafter the parties submitted additional evidence pursuant to the reservation they made in the above stipulation.

The appeal was elevated to the Court of Appeals but the latter, by its resolution of January 27, 1964, elevated it to this Court because the additional documents and oral evidence presented by the parties did not raise any factual issue, and said court further found that "the three assigned errors quoted above all pose questions of law".

As may be gathered from the pleadings and the facts stipulated, the action below was for the enforcement of a foreign judgment: the decision rendered by the Tribunal of Arbitration of the Bengal Chamber of Commerce in Calcutta, India, as affirmed by the High Court of Judicature of Calcutta. The appealed decision provides for its enforcement subject to the right reserved to appellee to present evidence on the equivalent in Philippine currency of the amount adjudged in Indian currency. The record does not disclose any evidence presented for that purpose subsequent to the rendition of judgment.

To secure a reversal of the appealed decision appellant claims that the lower court committed the following errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF-APPELLEE, A FOREIGN CORPORATION NOT LICENSED TO TRANSACT BUSINESS IN THE PHILIPPINES, HAS THE RIGHT TO SUE IN PHILIPPINE COURTS.

II

THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER PLAINTIFF-APPELLEE'S DEFAULT, AND INSTEAD RELIED SOLELY ON THE AWARD OF THE BENGAL CHAMBER OF COMMERCE TRIBUNAL OF ARBITRATION.

III

THE LOWER COURT ERRED WHEN IT HELD THAT PLAINTIFF-APPELLEE WAS NOT GUILTY OF LACHES."

The main issue to be resolved is whether or not the decision of the Tribunal of Arbitration of the Bengal Chamber of Commerce, as affirmed by the High Court of Judicature of Calcutta, is enforceable in the Philippines.

For the purpose of this decision We shall assume that appellee - contrary to appellant's contention - has the right to sue in Philippine courts and that, as far as the instant case is concerned, it is not guilty of laches. This notwithstanding, We are constrained to reverse the appealed decision upon the ground that it is based upon a clear mistake of law and its enforcement will give rise to a patent injustice.

It is true that under the provisions of Section 50 of Rule 39, Rules of Court, a judgment for a sum of money

rendered by a foreign court "is presumptive evidence of a right as between, the parties and their successors in interest by a subsequent title", but when suit for its enforcement is brought in a Philippine court, said judgment "may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact" (Underline supplied).

Upon the facts of record, We are constrained to hold that the decision sought to be enforced was rendered upon a "clear mistake of law" and because of that it makes appellant - an innocent party - suffer the consequences of the default or breach of contract committed by appellee.

There is no question at all that appellee was guilty of a breach of contract when it failed to deliver one-hundred fifty-four Hessian bales which, according to the contract entered into with appellant, should have been delivered to the latter in the months of July, August and September, all of the year 1949. It is equally clear beyond doubt that had these one-hundred fifty-four bales been delivered in accordance with the contract aforesaid, the increase in the export tax due upon them would not have been imposed because said increased export tax became effective only on October 1, 1949.

To avoid its liability for the aforesaid increase in the export tax, appellee claims that appellant should be held liable therefor on the strength of its letter of September 29, 1949 asking appellee to ship the shortage. This argument is unavailing because it is not only illogical but contrary to known principles of fairness and justice. When appellant demanded that appellee deliver the shortage of 154 bales, it did nothing more than to demand that to which it was entitled as a matter of right. The breach of contract committed by appellee gave appellant, under the law and even under general principles of fairness, the right to rescind the contract or to ask for its specific performance, in either case with right to demand damages. Part of the damages appellant was clearly entitled to recover from appellee growing out of the latter's breach of the contract consists precisely of the amount of the increase decreed in the export tax due on the shortage - which, because of appellee's fault, had to be delivered after the effectivity of the increased export tax.

To the extent, therefore, that the decisions of the Tribunal of Arbitration of the Bengal Chamber of Commerce and of the High Court of Judicature of Calcutta fail to apply to the facts of this case fundamental principles of contract, the same may be impeached, as they have been sufficiently impeached by appellant, on the ground of "clear mistake of law". We agree in this regard with the majority opinion in *Ingenohl vs. Walter E. Olsen & Co.* (47 Phil. 189), although its view was reversed by the Supreme Court of the United States (273 U.S. 541, 71 L.ed. 762) which at that time had jurisdiction to review by certiorari decisions of this Court. We can not sanction a clear mistake of law that would work an obvious injustice upon appellant.

WHEREFORE, the appealed judgment is reversed and set aside, with costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Castro, J., on official leave.

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