

LIM YHI LUYA, PETITIONER, VS. COURT OF APPEALS AND HIND SUGAR COMPANY, RESPONDENTS.

G.R. No. L-40258. September 11, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a Petition for Review by way of certiorari of the Decision of the Court of Appeals in CA-G.R. No. 51546-R entitled "Lim Yhi Luya, Plaintiff-Appellee, versus Hind Sugar Company, Defendant-Appellant," which reversed and modified the decision of the Court of First Instance of Pangasinan in favor of the plaintiff-appellee, now the herein petitioner.

The antecedent facts may be stated as follows:

Petitioner Lim Yhi Luya is a businessman, resident of Lingayen, Pangasinan where he operates a grocery store, hardware store and gasoline station. Private respondent Hind Sugar Company is engaged in the manufacturing and marketing of sugar, its principal office located in Manaoag, Pangasinan. Vice President and General Manager of respondent company is Atty. Emiliano Abalos. His assistant is Generoso Bongato, while the cashier and accountant of the company is Teodoro Garcia.

Petitioner and private respondent since 1958 have had business dealings with each other, the company selling sugar to the petitioner and the latter has been supplying the company with diesoline, gasoline, muriatic acid, sul-furic acid, other supplies and materials ordered on credit.

On November 12, 1970, petitioner received a tele-gram from Manager Abalos in the following tenor: "Please come tomorrow morning without fail." (Exh. "B"). The following day, November 13, 1970, petitioner proceeded to the company and in the office of Manager Abalos, the latter offered to sell sugar at P37.00 per picul. The parties agreed to the purchase of 4,085 piculs of sugar at P35.00 per picul. The specific terms of the contract are shown in Exhibit "A" as follows:

"CONTRACT OF SALE OF SUGAR

Seller :

Hind Sugar Company

Manaoag, Pangasinan

Buyer :

Lim Yhi Luya

Lingayen, Pangasinan

Quantity :

Four Thousand Eighty-Five (4,085) piculs of Hind-2 sugar, 1969-70 crop

Price :

Thirty Five (P35.00) Pesos per picul, f.o.b. Manaoag

Terms :

Cash upon signing of this contract.

Manaoag, Pangasinan, Nov. 13, 1970."

On the same day, November 13, 1970, in compliance with the contract, four delivery orders (Nos. 3054, 3055, 3056, and 3057) were issued to petitioner by cashier Garcia upon instructions of Manager Abalos covering the total quantity of sugar sold, 4,085 piculs. Between November 13, 1970 to January 27, 1971, petitioner withdrew from the company ware-house in varying quantities a total amount of 3,735 piculs under substitute delivery orders, leaving a balance of 350 piculs undelivered.

On January 22, 1971, the question of payment cropped out between the parties. Petitioner claimed that he had paid P142,975.00 to the company officials, Cashier Garcia and Manager Abalos on November 13, 1970 and as proof of his payment, he referred to the contract Exhibit "A", particularly to the stipulation stating "Terms: Cash upon signing of this contract." Respondent company officials denied the claim of the petitioner, alleging that petitioner never paid for the sugar on November 13, 1970 or at any time thereafter. An audit report or examination of the books of the company made by External Auditor Victorino Daroya showed no payment by petitioner.

On May 17, 1971, petitioner, as plaintiff below, filed the complaint against the defendant Hind Sugar Company, now the herein respondent, in Civil Case No. 14873 before the Court of First Instance of Pangasinan on six (6) causes of action, alleging -

"On his First Cause of Action: That defendant-appellant has unreasonably, unlawfully and maliciously refused and failed to deliver to him 350 piculs of the sugar he bought from it under their contract (Exh. "A") with a value of P12,250.00, altho he has already paid the full price thereof;

On his Second Cause of Action: That defendant-appellant has unreasonably, unlawfully and maliciously refused and failed to deliver to him 1,000 piculs of export sugar altho he has deposited to the account of the defendant-appellant the price thereof in the amount of P55,000.00 which the latter has already withdrawn, the agreed period of delivery which was January 27, 1971 having expired.

On his Third Cause of Action: That defendant-appellant has refused, despite repeated demands, to release to him 160 piculs of Hind-3 sugar valued at P6,400.00, which he has already paid;

On his Fourth Cause of Action: That despite his demands that defendant-appellant liquidate and pay its indebtedness to him in the amount of P60,602.30 for supplies of diesoline, gasoline, muriatic acid, sulfuric acid and other materials needed by it, exclusive of interest and attorney's fees, which were payable within 30 days

from date of delivery, the defendant-appellant has refused to settle with him;

On his Fifth Cause of Action: That defendant-appellant's willful, unjust, unreasonable, malicious and fraudulent re-fusal to pay its just obligations has caused him mental anguish, serious anxiety, wounded feelings, moral shock, social humiliation and similar injuries, entitling him to P50,000 in moral, compensatory and exemplary damages, and on

The Sixth Cause of Action: That he be paid the sum of P50,000 for attorney's fees and expenses of litigation.

Answering the complaint, defendant-appellant alleges that -

On the First Cause of Action: The contract marked as Exhibit "A" was duly executed but it stopped delivery of the last 350 piculs of sugar under said contract when plaintiff-appellee who has not paid any amount not even for the sugar already withdrawn by him, refused, inspite of demands, to pay the consideration mentioned in the contract claiming that he had already paid the full price stipulated therein. For this, parties had agreed to suspend further delivery of sugar under the contract until plaintiff-appellee could prove payment;

On the Second Cause of Action: Altho plaintiff-appellee has deposited P55,000 on January 20, 1971 for export sugar, in view of the occurrence of a controversy between the parties regarding the implementation of the Contract Exhibit "A", both parties came to the understanding that no delivery would be made until the question of payment of the 4,085 piculs of sugar mentioned in said contract shall have been satisfactorily settled between them.

On the Third Cause of Action: The 160 piculs of Hind-3 sugar referred to here is the remaining portion of 1,313 piculs purchased by plaintiff-appellee on June 3, 1970, and the unclaimed sugar was always ready for delivery but plaintiff-appellee preferred withdrawing from the 4,085 piculs covered by the contract Exhibit "A" instead.

On the Fourth Cause of Action: Plaintiff-appellee has in truth delivered supplies to defendant-appellant but the invoices mentioned in the complaint are not the same as the original delivery receipts signed by defendant-appellant's employee when supplies were received, and the figures contained therein are inaccurate. Moreover, such supplies were never payable on a 30-day-from-delivery term, but the standing practice was to off-set their value against the costs of sugar purchased by plaintiff-appellee, and

On the Fifth and Sixth Causes of Action: Defendant-appellant denies the averments therein and alleges that the answers to such causes of action are fully covered by its answers to the first four causes of action.

By way of Counterclaim, defendant-appellant prays that from the unpaid cost of the 3,085 piculs of sugar contracted and practically all taken by plaintiff-appellee, amounting to P142,975.00, the value of the materials supplied amounting to P59,500.00, the P55,000.00 deposited to its account on January 20, 1971, and the amount of P6,080.00 representing the value of the 350 piculs of sugar unclaimed by plaintiff-appellee, after it was re-processed- or a total of P132,830.30 - be off-set, and the balance in the amount of P10,144.70 in its favor be paid to it, and that plaintiff-appellee be required to pay, in addition thereto, another sum of P10,000.00 for and as attorney's fees and costs of litigation."[1]

Answering the Counterclaim, plaintiff-appellee denied for being false and untrue the material allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the Counterclaim and as special defenses, he alleges: (1) that defendant's counterclaim states no cause of action; and (2) that the complaint was filed by plaintiff because defendant has acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim.

At the pre-trial conference, the parties submitted a partial stipulation of facts reproduced as follows:

"COMES NOW the parties in the above-entitled case, through counsel and respectfully submit the following Partial Stipulation of Facts and statement of the issues:

- Plaintiff is of legal age, with capacity to sue and be sued and is a resident of Lingayen, Pangasinan whereas defendant is a corporation duly organized and existing in accordance with the laws of the Philippines, likewise with capacity to sue and to be sued;
- Defendant admits having executed on November 13, 1970 a Contract of Sale for 4,085 piculs of Hind-2 sugar, a xerox copy of which is attached to this Partial Stipulation of Facts and marked as Annex "1". The signature appearing in Annex "1" hereof above the typewritten name Emiliano L. Abalos is that of the Vice President and General Manager of defendant Hind sugar Company, Mr. Emiliano L. Abalos and the signature appearing above the typewritten name Lim Yhi Luya appearing in Annex "1" hereof is that of the plaintiff herein;
- On November 13, 1970, upon execution of the Contract of Sale marked as Annex "1" hereof, defendant delivered and issued to plaintiff four (4) delivery orders Nos. 3054, 3055, 3056 and 3057 marked respectively as Annexes "1", "2", "3" and "4" of defendant's Answer and attached to this Partial Stipulation of Facts as Annexes "2", "3", "4" and "5" hereof;
- That on various occasions, the latest on January 23, 1971, the defendant delivered to the plaintiff on account of the contract, Annex "1" hereof and by virtue of the delivery orders issued by the defendant at the request of the plaintiff in substitution of the delivery orders marked as Annexes "2", "3", "4" and "5", the substitute delivery orders hereto attached and marked as Annexes "6" to "110" inclusive (summarized herein under Annexes "111" to "114" inclusive), showing a total of 3,735 piculs of sugar already delivered and leaving a balance still undelivered by the defendant to the plaintiff of 350 piculs of Hind-2 sugar, covered by Delivery Orders Nos. 3252, 3254, 3255, 3256, 3257, 3258, 3259, 3260, 3230, 3232, and 3233, marked as Annexes "115" to "125", inclusive;
- That the plaintiff deposited with the Consolidated Bank and Trust Corporation, Dagupan City Branch, in the name of the Hind Sugar Company, the sum of FIFTY FIVE THOUSAND PESOS (P55,000.00) on January 20, 1971;
- That defendant issued to plaintiff a provisional receipt dated January 27, 1971 for said amount of P55,000.00 (FIFTY FIVE THOUSAND PESOS), copy of which is hereto attached as Annex "126";
- That on June 3, 1970, the defendant sold to the plaintiff 1,313 piculs of sugar at the rate of P40.00 per picul of H-2 sugar and P38.00 per picul of H-3 sugar, which plaintiff has fully paid per cash debit hereto attached as Annex "127", of which 160 piculs of H-3 sugar remain undelivered by the defendant to plaintiff;
- That the plaintiff supplied the defendant with diesoline, gasoline, muriatic acid, sulphuric acid and other supplies and materials ordered by defendant from plaintiff on credit;
- The plaintiff delivered to defendant on credit for the month of January, 1971, supplies and materials in the amount of P13,988.20 under invoices Nos. 6327, 6329, 6330, 6331, 6332, 6333 and 6334, marked as Annexes "128" to "134" inclusive;
- The plaintiff delivered to defendant on credit for the month of February, 1971, supplies and materials in the amount of P23,455.10;
- That in the month of March, 1971, plaintiff delivered to the defendant on credit supplies and materials worth P18,051.00;
- That in the month of April, 1971, the plaintiff, delivered to defendant on credit, supplies and materials worth P5,098.00;
- The parties submit that the issues to be threshed out between the parties at the trial of this case are the following:
 - "(a) As to the first cause of action, the remaining issue is whether or not plaintiff has paid to defendant the sum

of P142,975.00 which is the purchase price of the 4,085 piculs of sugar subject to the contract of sale marked as Annex "1" hereof;

(b) On the second cause of action, the issue is whether or not the plaintiff is entitled to the delivery by the defendant of 1,000 piculs of export sugar by virtue of the deposit on January 20, 1971 of the amount of P55,000.00;

(c) On the third cause of action, issue is whether or not plaintiff is entitled to delivery by defendant of 160 piculs of Hind-3 sugar sold by defendant to plaintiff on June 3, 1970;

(d) On the fourth cause of action, the issue are (1) what business practice or practices if any were observed by the plaintiff and the defendant in their business dealings relative to the purchase of supplies and materials by the defendant from the plaintiff on credit; (2) what is the total amount due, if any, from the defendant to the plaintiff for supplies and materials delivered by plaintiff to defendant on credit; (3) whether the supplies and materials delivered by plaintiff to defendant were payable within thirty (30) days from date of delivery and overdue account to earn interests at the rate of 12% per annum an additional amount equivalent to 25% of the amount or value of the goods in litigation as attorney's fees;

(e) On the sixth cause of action, whether or not plaintiff is entitled to attorney's fees and expenses of litigation;

(g) Whether defendant is entitled or not to any set off;

(h) Whether defendant is entitled to attorney's fees."

- The parties hereby reserve the right to present evidence on all other matters not herein stipulated.'

The trial Court has correctly surmised that the principal issue in this case is whether or not the plaintiff-appellee has paid the sum of P142,975.00 which is the purchase price of the 4,085 piculs of sugar covered by the contract of sale (Exhibit "A") between the parties. This Contract reads as follows:

"CONTRACT OF SALE OF SUGAR

(HIND-2) 1969-70

Seller :

Hind Sugar Company

Manaoag, Pangasinan

Buyer :

Lim Yhi Luya

Lingayen, Pangasinan

Quantity :

Four Thousand Eighty-Five (4,085) piculs of HIND-2 sugar, 1969-70 Crop

Price :

Thirty Five (P35.00) Pesos per picul F.O.B., Manaoag

Terms :

Cash upon signing of this contract.

Manaoag, Pangasinan, Nov. 13, 1970.

HIND SUGAR COMPANY

By:

(SGD.) EMILIANO L. ABALOS

(SGD) LIM YHI LUYA

Vice President & Gen. Mgr.

(Buyer)

(Seller)

Plaintiff-appellee claimed during the trial that he has paid the said amount and when pressed to show his receipt of payment, he points to that portion of the contract which reads: "Terms: Cash upon signing of this Contract" as his re-ceipt and evidence of payment. On the other hand, defendant-appellant maintained that plaintiff-appellee has not paid anything on the contract and the contract does not prove payment but merely created plaintiff-appellee's obligation to pay."[2]

After trial, the Court of First Instance of Pangasinan rendered judgment, the dispositive portion of which reads:

"WHEREFORE, this Court renders judgment as follows:

(1) On the first cause of action, order-ing the defendant to immediately deliver to plaintiff the 350 piculs of H-2 sugar or to pay plaintiff the sum of P12,250.00 plus legal rate of interest from November 13, 1970, until fully paid, giving unto the plaintiff the option to choose whether to receive the sugar or to receive the payment corresponding to the same;

(2) On the second cause of action, order-ing the defendant to deliver immediately to the plaintiff the 1,000 piculs of export sugar or to pay the plaintiff the sum of P55,000.00 with legal rate of interest from January 20, 1971, but giving the option or choice to the plaintiff;

(3) With respect to the third cause of action, ordering the defendant to deliver to the plaintiff the 160 piculs of H-3 sugar or to pay to plaintiff the sum of P6,400.00 with legal rate of interest from June 3, 1970 but with the option again belonging to the plaintiff;

(4) On the fourth cause of action, ordering the defendant to pay to the plaintiff the sum of P60,592.30 with interest at 12% per annum from the filing of the complaint and to pay attorney's fees of 25% of the principal obligation, that is, the sum of P15,148.08;

(5) On the fifth and sixth causes of action, ordering the defendant to pay to the plaintiff the sum of P25,000.00

as damages and to pay another sum of P15,000.00 as attorney's fees, the said fees referring to the first, second and third causes of action; and

(6) Lastly, ordering the defendant to pay the costs of suit.

SO ORDERED."

Defendant Hind Sugar Company appealed to the Court of Appeals. The appellate court rendered the following judgment, thus -

WHEREFORE, judgment is hereby rendered -

(1) ordering plaintiff-appellee to pay defendant-appellant the sum of P130,725.00 which is the price of 3735 piculs of sugar, at P35 a picul, which plaintiff has with-drawn and received as a result of the contract of sale Exhibit "A", and cancelling the obligation of defendant-appellant to deliver the remaining 350 piculs called for in said contract for failure of plaintiff-appellee to pay for the same;

(2) finding the defendant-appellant liable to return to plaintiff-appellee the latter's deposit of P55,000.00;

(3) finding the defendant-appellant liable to pay plaintiff-appellee the sum of P6,040.00 which was realized from reprocessing the 160 piculs of sugar paid for but intentionally not claimed by plaintiff-appellee;

(4) finding the defendant-appellant liable to plaintiff-appellee for the sum of P60,592.30 for materials and supplies which the latter supplied to it for the months of January, February, March, and April, 1971.

Provided, however, that the plaintiff-appellee may deduct the said amounts of P55,000.00, P6,080.00 and P60,592.30, totalling P121,672.30 in all, from his total obligation of P130,725.00 to the defendant-appellant, paying the latter in cash only the remaining balance of P9,052.70; and

(5) ordering the plaintiff-appellee to pay defendant-appellant the further amount of P10,000.00 for and as attorney's fees.

With costs against plaintiff-appellee.

SO ORDERED."

Plaintiff-appellee, now the herein petitioner, having filed a Motion for Reconsideration but denied by the respondent Court of Appeals, he now comes before Us with the instant Petition for Review of the decision.

In reversing the judgment of the lower court on the first cause of action, the Court of Appeals said:

"Plaintiff-appellee claimed during the trial that he has paid the said amount and when pressed to show his receipt of payment, he points to that portion of the contract which reads: "Terms: Cash upon signing of this Contract" as his receipt and evidence of payment. On the other hand, defendant-appellant maintained that plaintiff-appellee has not paid anything on the contract and the contract does not prove payment but merely created plaintiff-appellee's obligation to pay.

We agree with defendant-appellant. The contract in its entirety proves no more than that there has been a meeting of the minds of the parties. The signing perfected the contract but did not ex proprio vigore consummate it. It gave the parties the right to demand reciprocally the performance of the obligations assumed by each. The vendor assumed to deliver the amount of sugar sold while the vendee which is the plaintiff-appellee was to pay the contracted price upon the signing of the contract. The questioned portion of the contract does not say, and is not therefore an evidence that plaintiff-appellee has paid or has performed his obligation to pay. Stated in another way, the provision of the Contract in question means that the payment of P142,975.00 IS TO FOLLOW or IS TO BE MADE (and NOT WAS MADE) upon the signing of said contract."

The appellate court further declared that it cannot believe as true facts the testimony of the petitioner that he paid the sum of P142,975.00 around 1:30 o'clock in the afternoon of November 13, 1970 to Emiliano Abalos and Teodoro Garcia, in cash because he was asked to pay in cash, and the evidence of his payment was the contract (Exhibit "A") itself because the respondent company did not want to issue a separate receipt for his payment as the sugar sold belonged not to it but to ARCA.

The court said that there is no reason for Emiliano Abalos to deny petitioner's claim of payment if that was really made, pointing to the evidence of close relation-ship between the parties which show that Emiliano Abalos went all the way to accommodate the petitioner by modifying the contract, changing the condition or mode of payment provided in Exhibit "A" even without changing the written contract itself. It would have been an affront on their friendship had Emiliano Abalos followed the suggestions of the trial court (that Abalos should have demanded that the contract be corrected in such a way that it does not appear that the 4,085 piculs of sugar was not really paid for or he should have put a note on the two copies of the contract that the 4,085 piculs of sugar were not then paid), the appellate court reasoned out.

And according to the court, the explanation of Abalos in allowing or agreeing to release the delivery orders covering the 4,085 piculs of sugar sold even without pay-ment by the petitioner (which explanation is not even pointed out or intimated in the decision) is a rational and very probable one.

After holding that the claim of petitioner that he paid the P142,975.00 wholly in cash is improbable; that it is simply not the way with businessmen because modern busi-ness moves on credit and checks; that it is unthinkable to a businessman to keep so much money in his possession when petitioner banks with several banking houses in Lingayen and Dagupan City and has always paid mostly in checks in previous and subsequent transactions, the court resolved, "We seriously doubt that as a successful businessman he will ever disregard sound business practice of keeping his cash in the bank, especially that, according to him it was not his money but one he has received in trust and for a certain A. Chan Trading in Makati."

Petitioner contends that the appellate court erred, first in holding that the contract of sale of sugar executed by and between petitioner and respondent is not evidence that payment of the sugar had been made by the petitioner to respondent upon the signing of said contract; the Court of Appeals likewise erred in holding that it was incumbent upon the petitioner to produce a receipt signed by respondent to prove that payment of the sugar covered by the contract of sale had in fact been made by petitioner to respondent; it erred in not holding that petitioner had already fully paid the respondent the sugar bought; and second, in reversing the decision of the trial court and in not affirming the same.

The first error may be resolved by the rules on the interpretation of contracts, and the second on the basis of whether the general rule that findings of the appellate tribunal are binding and must be respected by Us must govern the case at bar or the well-established exceptions to said rule.

At this juncture, it is well to lay down cardinal rules in the interpretation of contracts as provided in the New Civil Code, thus -

"Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Art. 1371. In order to judge the intention of the contracting parties, their con-temporaneous and subsequent acts shall be principally considered.

Art. 1375. Words which may have different significations shall be understood in that which is most in keeping

with the nature and object of the contract.

Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."

According to the trial court, "(t)here is no question that the contract was signed on November 13, 1970, in the office of the Hind Sugar Company at Manaoag, Pangasinan. The contract itself is so clear and explicit that it cast no doubt as to its meaning. "Cash upon signing of this contract," meaning to say, that once the contract was signed, the payment of the 4,085 piculs of sugar which is P142,975.00 was made. After the said contract was signed and as sustained by the plaintiff, he has already delivered the P142,975.00 in cash to the cashier of the defendant, the said plaintiff was given all the delivery orders covering the 4,085 piculs of sugar sold and by the giving of the delivery orders to the plaintiff, the latter was entitled to withdraw all the 4,085 piculs sugar from the company's warehouse." This is also the stand of the petitioner.

Contrari-wise, the appelllate court castigates the "ex cathedra pronouncement of the trial court that the words "Terms: Cash upon the signing of this contract' means that payment was made and the contract itself is the receipt evidencing payment", as not based on proven facts, adding further that the trial court "has taken the dubious, weak, unreliable and improbable statements of plaintiff-appellee for true, or for granted, and in so doing the trial court has fallen wittingly or unwittingly into the error of begging the question (petitio principii)." In other words, respondent company's interpretation of the contract was upheld.

Considering the admitted fact that the contract of sale (Exhibit "A") was prepared in the office of respondent company by Generoso Bongato, Assistant to the Manager of the company, upon instruction of General Manager Emiliano L. Abalos who is a lawyer, and We are now confronted with the varying or conflicting interpretations of the parties thereto, the respondent company contending that the stipulation "Terms: Cash upon signing of this contract" does not mean that the agreement was a cash transaction because no money was paid by the petitioner at the time of the signing thereof, whereas the petitioner insists that it was a cash transaction inasmuch as he paid cash amounting to P142,975.00 upon the signing of the contract, the payment having been made at around 1:30 in the afternoon of November 13, 1970 to the cashier, Teodoro Garcia, and Manager Abalos although the sale was agreed to in the morning of the same day, November 13, 1970, the conflicting interpretations have shrouded the stipulation with ambiguity or vagueness. Then, the cardinal rule should and must apply, which is that the interpretation shall not favor the party who caused the ambiguity (Art. 1377, New Civil Code). We rule that in the instant case, the interpretation to be taken shall not favor the respondent company since it is the party who caused the ambiguity in its preparation.

We do not agree with the meaning of the provision in the contract ascribed by the respondent court in its decision that: "Stated in another way, the provision of the Contract in question means that the payment of the P142,975.00 IS TO FOLLOW or IS TO BE MADE (and NOT WAS MADE) upon the signing of said contract." As already drafted or drawn up, complete and finalized with all the signatures thereon of the contracting parties and presented in court as Exhibit "A" without any change whatsoever in the mode of payment, such provision plainly and simply means that the payment was in CASH, and not on CREDIT. The ambiguity raised by the use of the words or phrases in the questioned provision must be resolved and interpreted against the respondent company.

In truth, the stipulation in the contract which reads: "Terms: Cash upon signing of this contract" is very clear and simple in its meaning, leaving no doubt in Our minds upon the intention of the contracting parties, hence, the first rule of contract interpretation that the literal meaning of its stipulation shall control, is the governing rule at hand. Resorting to Webster's Third New International Dictionary, p. 2515, for the definition of the word "upon" which literally means, among others, "10a (1): immediately following on; very soon after; x x b: on the occasion of; at the time of; x x," the clear import of the stipulation is that payment was made on the occasion of or at the time of

the signing of the contract and not that payment will follow the signing. We must adopt the former meaning because it is such an interpretation that would most adequately render the contract effectual, following Article 1373 of the New Civil Code which provides:

"Art. 1373. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual."

The evidence for the petitioner establishes that after paying the cash consideration to Cashier Garcia and Manager Abalos, the parties signed the contract and there-after a signed copy of said contract was given to petitioner and also the four (4) delivery orders covering the 4,085 piculs of sugar sold. The questioned stipulation recites exactly the act of payment which is the paying of the money on the occasion of or at the time of the signing. Respondent would have us believe that the stipulation does not mean what it conveys because petitioner has not paid cash after the signing of the contract nor at any time thereafter. We cannot agree with the respondent for otherwise the sanctity of the written contract can easily be violated and impugned, for otherwise oral testimony would prevail over a written document to vary, alter or modify the written terms, and most importantly, respondent's interpretation would render the stipulation ineffectual as a mere agreement.

Petitioner claims that Exh. "A" is the receipt of his payment of the P142,975.00 cash upon the signing of the contract. Respondent, on the other hand, insists that it is not a written acknowledgement or written admission of having received the sum of P142,975.00 and may not be considered a receipt for any purpose (Brief for the Respondent, p. 34), although he fully agrees with the proposition that any written acknowledgement or written admission of anything received is a receipt (same page 34). This is exactly what the trial court ruled that "It would be redundant to discuss what are the forms of receipts, but anything evidencing or admitting payment in compliance with an obligation is a receipt and AS THE CONTRACT, EXH. A AS WELL AS THE SIGNED COPY, IS AN EVIDENCE OF PAYMENT OF THE P142,975.00 IT MUST BE CONSIDERED A RECEIPT FOR ALL PURPOSES" (Decision, Record on Appeal, p. 60). We affirm the lower court's ruling.

One fact that weighs heavily in support of the lower court's ruling is that respondent cannot show nor produce any document or record whatsoever that petitioner did not pay the consideration demanded in cash. While Manager Abalos claims that the mode of payment was altered or changed, there is no showing or proof that the contract, Exh. "A", was accordingly changed or altered. And neither was such alteration or change noted or recorded in the books of the respondent company.

The trial court, justifying and supporting its judgment in favor of the petitioner, cites the following facts: (1) The liquidation sheet dated December 30, 1970, Exh. "O", prepared by the cashier of defendant company, more than a month after the transaction in question on November 13, 1970 does not charge the petitioner with any indebtedness to the respondent company of whatever amount, much less the amount of P142,975.00; instead, it appears from said Exhibit "O" that as of December 30, 1970, the company had two outstanding vales in favor of the petitioner: one for P18,000.00 obtained on December 1, 1970 and another for P8,800.00 taken on December 15, 1970; (2) that petitioner had always transacted with respondent company in cash and never on credit as admitted by Teodoro Garcia, cashier of the company; (3) that petitioner had been withdrawing sugar from the company at its warehouse after November 13, 1970 until January 23, 1971, totalling a quantity of 3,735 piculs of sugar by virtue of the contract Exhibit "A" without the company demanding from the petitioner either verbally or in writing the payment, even only partial, of such a big amount (P142,975.00).

The above facts show contemporaneous and subsequent acts of the parties in relation to the transaction between them as embodied in the Contract of Sale of Sugar (Exh. "A") from which the intention of the contracting parties may be judged correctly. The trial court was correct in judging and deciding the intention of the parties from their actuations contemporaneous with and subsequent to the agreement for the sale of the sugar in question, and We

sustain the trial court, applying Art. 1371, New Civil Code, *supra*.

The most telling, crucial and significant act contemporaneous with and subsequent to the signing of the agreement embodied in Exhibit "A", which needs emphasis, is the delivery to the petitioner of four (4) delivery orders (Nos. 3054, 3055, 3056 and 3057) covering all the 4,085 piculs of sugar subject of the contract on November 13, 1970, the very day that the contract was entered into and signed by the parties. The issuance of the delivery orders is admitted by the parties and included in the Partial Stipulation of Facts, paragraph 3 thereof. Viewed in the light of the established fact that all sugar transactions between petitioner and respondent are always in cash, as admitted by Teodoro Garcia who is the cashier of respondent company (Testimony of Teodoro Garcia, *t.s.n.*, Estrada, Hearing, April 22, 1972, pp. 18-19), the issuance of the four delivery orders is a clear confirmation of the fact that petitioner paid in cash the cost of the sugar in the amount of P142,975.00 on the very day that the contract was signed, November 13, 1970, which is also the day that the delivery orders were given to him by the cashier upon direct instruction from the manager.

Furthermore, the issuance of and delivery to the petitioner-buyer of the said four delivery orders covering all the 4,085 piculs of sugar placed the control and possession of the thing sold to the vendee, the herein petitioner, and pursuant to Article 1497 of the New Civil Code, the sugar sold is understood as delivered to the petitioner. The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee. Therefore, when the thing subject of the sale is placed in the control and possession of the vendee, delivery is complete. (*La Fuerza, Inc. vs. Court of Appeals*, 23 SCRA 1217)

In the case at bar, at the moment the delivery orders were issued and given to the petitioner-vendee, there was a symbolic or feigned tradition of the sugar sold since the delivery orders are documents of title to goods which, under Article 1636, New Civil Code, includes any bill of lading, dock, warrant, *quedan*, or warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document. And when the petitioner-buyer withdrew from the respondent's warehouse, hauled and took delivery on various dates and varying quantities of sugar piculs totalling 3,735 piculs, there was actual delivery thereof which consummated the sale. It is not correct, therefore, for the respondent court to hold that "the contract in its entirety proves no more than that there has been a meeting of the minds of the parties." It is more than that because the parties did not end the agreement by simply signing the contract, Exhibit "A". The minds of the parties did not only come to a meeting but they continued to implement and consummate the same.

It may be true, as the decision under review opined, that "the signing perfected the contract but did not *ex proprio vigore* consummate it," if the parties stopped or desisted thereafter, but the issuance and delivery of the delivery orders covering the total quantity of sugar sold was a consummation of the agreement, more so when petitioner-buyer was allowed by respondent company's officials to substitute the four delivery orders Nos. 3054, 3055, 3056, and 3057 marked Annexes "2", "3", "4" and "5" with substitute delivery orders marked Annexes "6" to "110" showing a total of 3,735 piculs of sugar already delivered to the petitioner, leaving a small amount of 350 piculs still unwithdrawn for which petitioner filed the original complaint in Civil Case No. 14873 against the company for delivery. These facts which are not disputed showing that petitioner was allowed to receive the delivery orders on November 13, 1970 immediately after the signing of the agreement on the same day and that he was further allowed on various dates between November 13, 1970 to January 23, 1971 to take delivery in varying amounts totalling 3,735 piculs of sugar, have not been properly appreciated by respondent court, which failure or omission in Our mind constitute grave and prejudicial abuse of discretion.

This brings Us to the consideration and resolution of the second assignment of error wherein petitioner contends

that the exception to the general rule, and not the general rule itself on the finality of the findings of fact by the Court of Appeals, is applicable and must govern in the instant case.

It is, of course, well-established that the general rule that the appellate court's findings of facts are binding and must be respected by Us, has recognized exceptions.

In *Ramos vs. Pepsi-Cola Bottling Co., et al.*, L-22533, February 9, 1967, 19 SCRA 289, We enumerated the following as exceptions to the general rule:

- Where there is a grave abuse of discretion (*Buyco vs. People*, 95 Phil. 453);
- When the finding is grounded entirely on speculation, surmises or conjectures (*Joaquin vs. Navarro*, 93 Phil. 257);
- When the inference made is manifestly mistaken, absurd or impossible (*Luna vs. Linatoc*, 74 Phil. 15);
- When the judgment of the Court of Appeals was based on a misapprehension of facts (*De la Cruz vs. Sosing*, 94 Phil. 26);
- When the factual findings are conflicting (*Casica vs. Villaseca*, 101 Phil. 1205); or
- When the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee (*Evangalista vs. Alto Surety & Insurance Co.*, L-1139, April 23, 1958).

In *Roque vs. Buan*, L-22459, October 31, 1967, 21 SCRA 642, We reversed the conclusion of the Court of Appeals, having found it to be: (1) contrary to the established facts; (2) an inference based on mere assumption; (3) contrary to the *res ipsa loquitur* rule, and (4) not in conformity with the physical law of nature. And in *Fortus vs. Novero*, L-22370, June 29, 1968, 23 SCRA 1330, We ruled that in extreme cases calling for the exercise of Our super-visory jurisdiction, this Tribunal may disturb or reverse any particular finding of fact of the Court of Appeals should We find it to be arbitrary or whimsical or entirely outside the issues raised by the parties in their respective pleadings. Again, in *Bunyi vs. Reyes*, L-28845, June 10, 1971, 39 SCRA 504, We reversed the factual findings of the appellate court based on an assumption unsupported by the evidence on record.

In *Sotto vs. Teves*, 86 SCRA 154, and *Alsua-Betts, et al. vs. Court of Appeals, et al.*, 92 SCRA 332, We rei-terated and listed the exceptions to the general rule.

And considering that in the case at bar the findings of the Court of Appeals are contrary to those of the trial court, a minute scrutiny by the Supreme Court is in order, and resort to duly proven evidence becomes necessary. (*Legaspi vs. Court of Appeals*, L-39877, Feb. 20, 1976, 69 SCRA 360, 364, citing *Tolentino vs. De Jesus, et al.*, L-32797, March 27, 1974, 56 SCRA 167).

There is merit to petitioner's contention that the appellate court misappreciated or misapprehended the import of the liquidation sheet marked Exhibit "O" which is a financial statement prepared by the cashier of the respondent company, Teodoro Garcia, barely two months after the contract under litigation was entered into, indicating the mutual obligations between the parties. Petitioner points out in said statement that he had no liability whatsoever to the company, much less the cost of the sugar he had bought on November 13, 1970. On the contrary, the statement contains outstanding "vales" of P18,000.00 and P8,800.00 taken by the company and due to petitioner. The Court of Appeals said it is a fallacy to believe that Exhibit "O" is a liquidation of the periodic accounts of the parties when in fact, it is no more than the itemization on how the amount of P97,960.51 representing cost of supplies and materials from the petitioner and two "vales" in the sum of P18,000.00 and P8,800.00 each, or a total of P124,760.51 had been set-off or deducted from two expected payments coming from the petitioner amounting

to P140,259.41. In any event, whether Exhibit "O" is a liquidation sheet or itemization of supplies and materials for set-off or deduction, it is a customary and normal business practice to indicate and include all outstanding accounts, whether payable or receivable, pertaining to a particular customer or client at the close of the business year. This is a custom or usage which respondent court failed to consider and appreciate in the case at bar.

We agree with the petitioner that the decision under review has overlooked matters of substance in the evaluation of the evidence. For one, it is an established fact that the transaction in question was not recorded in the books of the respondent company. This is the clear testimony of Victorino Daroya, External Auditor of the Hind Sugar Company (t.s.n., Vinluan, p. 32, Hearing on May 13, 1972). And another significant fact is that according to General Manager Emiliano Abalos, there was no document to show that the transaction was not cash upon signing of the contract, in his testimony at the hearing on May 22, 1972. (t.s.n., Estrada, pp. 35-36).

The logical implication of the ruling of the respondent court which upheld the position of the respondent company that the purchase of sugar was not a cash transaction, is that the purchase was on credit. However, since it appears that the transaction was not recorded in the company books and there was no document showing it was not cash, the inference arises that the respondent company allowed, tolerated, and/or sanctioned a credit transaction to be unrecorded in the company books which is simply irregular, unbusiness-like and anomalous. For a corporation or company like the respondent engaged in the big business of sugar central, in the production and marketing as well as export of sugar, and in the present case involving more than a hundred thousand pesos, to keep no record of the transaction in question is blatantly against ordinary business practice and procedure in bookkeeping or accounting. Whether the explanation of the respondent company's officials rests on close personal friendship or cordial attachment with a particular customer or client, the conclusion is inevitable that the appealed judgment is grounded on findings that are irrational, absurd and arbitrary because the court in effect sustained the version of the company officers who wantonly and recklessly violated a customary business rule of protecting first and above all the interest of the company they serve.

In the evaluation and appreciation of the evidence on record, We find that the respondent court gave credence to the unsupported testimony of General Manager Emiliano Abalos that the term or mode of payment stipulated in the written contract, Exh. "A", had been changed by him to "payment as withdrawals are made." This is clear as testified to by Manager Abalos in the hearing on May 22, 1972, t.s.n., pp. 38-39. The evidence, however, does not show nor is there proof that the contract, Exh. "A", was accordingly changed or altered from "cash upon signing of the contract" to "payment as withdrawals are made." In sustaining the oral testimony of Manager Abalos on the alleged change of payment, as against the written terms of the contract that it was cash payment, the respondent court held that "Emiliano Abalos went all the way to accommodate the plaintiff-appellee by modifying the contract, changing the condition or mode of payment provided in Exhibit "A" even without changing the written contract itself."

This ruling of the court upholding the oral testimony and claim of Manager Abalos as against the written contract itself is a grave and prejudicial error in the appreciation of the evidence because it is a clear and flagrant disregard of the parol evidence rule (Section 7, Rule 130, Rev. Rules of Court) providing that: "When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases: (a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings; (b) When there is an intrinsic ambiguity in the writing."

Petitioner faults and impeaches the conclusions of the appellate court as founded entirely on speculations, surmises or conjectures. Thus, he castigates the court's holding which ruled that "(t)he claim of plaintiff-appellee

that he paid the P142,975.00 wholly in cash is improbable. It is simply not the way with businessmen. Modern business moves on credits and debts x x x" and that "it is unthinkable to a businessman to keep cash all the time in his residence in Lingayen, even if he did not know when or how soon he would disburse it." The appealed decision questions: "Why would plaintiff-appellee be keep-ing so much cash in his possession and why should he pay P142,975.00 all in cash" and then concludes: "We cannot imagine plaintiff-appellee taking the risk of loss of this money by keeping it in his house."

The contention of the petitioner that the respondent court indulged in speculations and conjectures which are baseless, is impressed with merit. Truly, the very speci-fic term of the contract specified cash payment. The instruction of General Manager Abalos to his assistant, Generoso Bongato, was particularized to the mode of pay-ment which was "cash upon signing of this contract" and the instruction was duly obeyed and complied with. It is certainly whimsical and absurd for the Court of Appeals to speculate and surmise that petitioner ought not to have brought and produced the cash money and should not even have such cash money in his possession. A review of the appellate court's findings is, therefore, justified and warranted.

Respondent court is also taken to task for ignoring or suppressing the testimony of Manuel Chua Lim, son of petitioner and a 24-year old graduate of Bachelor of Science in Commerce, major in Accounting, who accompanied his father to the cashier's office of respondent company and witnessed the payment of the money in cash by his father to the cashier, Teodoro Garcia, in the presence of Generoso Bongato and Manager Abalos, saw the signing of the contract and that thereafter, the four (4) delivery orders were given to his father, including a signed copy of the contract, Exhibit "A". Admittedly, this piece of evidence which is clear, positive and convincing was never considered by the court which was its legal duty to evaluate and appreciate, considering that the presence of Manuel Chua Lim and his testimony was not directly denied nor disputed by any of the officials so named and their witnesses. Hence, We find petitioner's contention that the court's omission among other grave and serious prejudicial errors pointed by petitioner justify the reversal of the appealed judgment, to be tenable.

We affirm the decision of the trial court in ruling that petitioner has paid in cash the sum of P142,975.00 to respondent company for the purchase of 4,085 piculs of H-2 sugar and is entitled to the delivery of 350 piculs of H-2 sugar or to be paid the sum of P12,250.00 plus legal interest from November 13, 1970 until fully paid, at the option of petitioner.

On the second cause of action, the judgment of the appellate court is correct insofar as it orders the res-pondent company to return to the petitioner the latter's deposit of P55,000.00 but should be modified to include payment of legal interest from January 20, 1971 until fully paid and giving the option to petitioner either to receive the money or take delivery of 1,000 piculs of export sugar from respondent company.

On the third cause of action, the appealed judgment is also correct but the same is likewise modified to include payment of legal interest on the sum of P6,400.00 from June 3, 1970 until fully paid, or to take delivery from respondent the 160 piculs of H-3 sugar, at the option of the petitioner.

On the fourth cause of action, the judgment of the Court of Appeals finding respondent company liable to petitioner for the sum of P60,590.30 for materials and supplies which the latter supplied to it for the months of January, February, March and April, 1971 is also correct. The second portion under paragraph (4) of the judgment is set aside, as well as paragraph (5) thereof which ordered petitioner to pay attorney's fees.

In other words, the decision of the trial court being in accordance with the evidence established and the law applicable, the same is hereby reinstated in toto.

WHEREFORE, IN VIEW OF THE FOREGOING, We hereby reverse and set aside paragraph (1) and the second

portion of paragraph (4) of the appealed judgment, and modify the remaining portions of said judgment. Judgment is hereby rendered -

(1) On the first cause of action, ordering the respondent to immediately delivery to petitioner the 350 piculs of H-2 sugar or to pay petitioner the sum of P12,250.00 plus legal rate of interest from November 13, 1970, until fully paid, giving unto the petitioner the option to choose whether to receive the sugar or to receive the payment corresponding to the same;

(2) On the second cause of action, ordering the respondent to deliver immediately to the petitioner the 1,000 piculs of export sugar or to pay the petitioner the sum of P55,000.00 with legal rate of interest from January 20, 1971, but giving the option or choice to the petitioner;

(3) With respect to the third cause of action, ordering the respondent to deliver to the petitioner the 160 piculs of H-3 sugar or to pay to petitioner the sum of P6,400.00 with legal rate of interest from June 3, 1970, but the option again belonging to the petitioner;

(4) On the fourth cause of action, ordering the respondent to pay to the petitioner the sum of P60,592.30 with interest at 12% per annum from the filing of the complaint and to pay attorney's fees of P25% of the principal obligation, that is, the sum of P15,148.08;

(5) On the fifth and sixth causes of action, ordering the respondent to pay to the petitioner the sum of P25,000.00 as damages and to pay another sum of P15,000.00 as attorney's fees, the said fees referring to the first, second and third causes of action.

Costs against respondent.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and De Castro, JJ., concur.

Melencio-Herrera, J., I vote to affirm the judgment of the Court of Appeals.

[1] Decision, Court of Appeals, pp. 68-72, Records.

[2] Decision, Court of Appeals, pp. 72-77, Records.

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