

Article 20(3) of the Constitution and was a complete substitute for the prohibition enjoined by Article 20(3).

M/s. Allen
Berry and Co.,
Private, Ltd.
and another
v.

Vivian Bose
and others

Grover, J.

In view of all the discussion above, it must be held that Article 20(3) can be invoked in the proceedings before the Commission by witnesses who appear before it if and when the occasion arises. As that occasion has not been shown to have arisen so far as the present petitioners are concerned, no order or direction is necessary at this stage in this behalf.

As a result of the decision given on the various points raised, this petition is dismissed. Considering the nature of the contentions canvassed the parties are left to bear their own costs.

CHOPRA, J.—I agree.

Chopra J.

B.R.T.

APPELLATE CIVIL.

Before Shamsheer Bahadur, J.

CHIRANJI LAL,—Appellant.

versus

HANS RAJ,—Respondent.

Regular Second Appeal No: 322-P of 1955.

Indian Contract Act (IX of 1872 -Section 65—Price paid for goods not delivered—Whether can be recovered—Legal maxim—Loss lies where it falls—Whether applicable.

1959

Oct., 8th

Plaintiff purchased seven pipes in two lots. The entire purchase price was paid but delivery of only three pipes was made, the other being in the stage of transit

On allegations being made that the pipes were stolen articles the police took into possession three pipes from the plaintiff and four pipes from the railway station. The defendant was arrayed as one of the accused persons in the criminal proceedings but was ultimately discharged. The criminal court held that the pipes were not proved to be stolen property and at the same time ordered the pipes to be handed over to the Public Works Department. The plaintiff did not take any steps to recover the pipes. His suit for recovery of purchase price was resisted on the ground that the pipes not having been proved to be stolen property, he ought to have taken steps to recover the same and that no decree could be passed in his favour.

Held, that the plaintiff is entitled to recover back the purchase money paid by him as there has been a total failure of consideration. The restitution is to be made on the principles which have been embodied in section 65 of the Indian Contract Act. The plaintiff has been deprived of the goods for which he had paid the full price through no fault of his own and he is clearly entitled to recover the price paid by him.

Held, that in the circumstances of the instant case it is not correct to say that the transaction being complete, in all respects, the plaintiff could console himself only with the maxim that "the loss lies where it falls." This is not the proper perspective in which this case ought to be viewed. The civil court is not concerned with the findings of the criminal court and it has not been disputed that the pipes are still lying in the custody of the Public Works Department. It is not the business of the plaintiff to take steps for the recovery of these pipes, four of which he had never received at all and had been taken possession of by the police while they were in transit and three of the pipes which the plaintiff had received, were also taken away by the police. The defendant may, however, claim the pipes and recover their possession if he is found entitled to them.

Second Appeal from the decree of the Court of Shri Kul Bhushan, District Judge, Bhatinda, dated the 12th day of November, 1955 modifying that of Shri Udham Singh, Sub-Judge, 2nd Class, Mansa; dated the 13th June, 1955 (dismissing the plaintiff's suit) to the extent of granting the

plaintiff a decree for the recovery of Rs. 870-7-3 only with proportionate costs throughout.

J. V. GUPTA, for Appellant.

PURAN CHAND, for Respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—This appeal arises out of a suit instituted by Hans Raj, plaintiff-respondent for recovery of Rs. 1175 from the defendant appellant Chiranji Lal.

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In all, seven water pipes, in two different lots, were sold to the plaintiff; two for Rs. 266-11-0 and five for Rs. 603-12-0 by the defendant. The purchase price of Rs. 266-11-0 for two pipes and Rs. 603-12-0 for five pipes was paid to the defendant and receipts Exhibits P.A. and P.B. obtained, therefor. Four of these pipes were in transit to Mansa while three were in the custody of the plaintiff in Mansa, when on or about 15th of September, 1951, they were taken possession of by the police as an allegation was made that these were stolen from the Bhakra Canal. Charanji Lal defendant was one of the persons who were prosecuted though he was ultimately discharged by the Magistrate of Mansa. The three pipes which had been recovered from the possession of the plaintiff and four from the Railway Station Mansa were directed to be handed over to the P.W.D. authorities. As the consideration had failed altogether, the plaintiff brought a suit to recover Rs. 870-7-3 and Rs. 304-9-0 as interest from the defendant.

Although the trial Judge held that the plaintiff had purchased seven pipes from the defendant for Rs. 807-7-3, he came to the conclusion

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that the pipes recovered from the possession of the plaintiff were not the same as were sold to him by the defendant. In this view of the matter, the suit was dismissed. The District Judge, in appeal however observed and, in my opinion, rightly that the trial Judge had not applied his mind at all to the facts which had been presented to him. I need not dwell here on the reasons which have been given by the lower appellate Court in coming to the conclusion that the goods which had been sold to the plaintiff by the defendant were the same as were actually recovered as stolen property by the police. This finding of fact I readily accept.

The District Judge further came to the conclusion that the plaintiff who had been deprived of the pipes bought from the defendant is entitled to recover the amount which he claimed in the suit. He, however, disallowed the interest claimed and gave a decree for recovery of Rs. 870-7-3 in favour of the plaintiff.

Chiranji Lal, defendant, has come in second appeal to this Court, and it has been contended by his counsel, Mr. Gupta, that the goods not having been proved to be stolen property, a decree could not have been passed in favour of the plaintiff. It has been urged by him that the plaintiff should have taken steps to recover the pipes which had not been proved to be stolen property. In other words, the defendant had sold the pipes to the plaintiff and the transaction being complete in all respects, the plaintiff could console himself only with the maxim that "the loss lies where it falls". I am afraid this is not the proper perspective in which this case ought to be viewed. This court is not concerned with the findings of the Criminal Court. Indeed, it has not been disputed that the pipes are still lying in the custody of the Public Works Department. It is not the business of the

plaintiff to take steps for the recovery of these pipes, four of which he had never received at all and had been taken possession of by the police from the Railway Station Mansa while they were still in the course of transit. Three of the pipes which the plaintiff had received were taken away by the police. In my opinion, the plaintiff is entitled to recover back the purchase money paid by him as there has been a total failure of consideration. The restitution is to be made on the principles which have been embodied in section 65 of the Indian Contract Act under which "When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it." Through no fault of his own, the plaintiff has been deprived of the goods for which he had paid the full price and on the principle which has been enunciated in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour, Limited* (1), the plaintiff is clearly entitled to recovery. In this House of Lords' case it was held that "where a contract on its true construction stipulates that a particular result shall follow, if frustration should afterwards occur, that stipulation governs the matter..... But, in the absence of a term of the contract dealing with the matter.....the claim of a party who has paid money under a contract, to recover it on the ground that the consideration for which he paid it has wholly failed is not based on any provision in the contract, but arises because in the circumstances the law gives a remedy in quasi-contract to the party who has not got what he bargained for". As observed by Lord Wright at page 61 in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour, Limited* (1), case every

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civilised system of law is bound to provide remedies for what has been called unjust enrichment or unjust benefit, and according to the English law which has been incorporated in India, a remedy is provided for restitution under section 65 of the Indian Contract Act in such transactions styled as quasi-contracts.

In this view of the matter. I would uphold the decision of the lower appellate Court and dismiss this appeal with costs. This judgment would not stand in the way of the appellant Charanji Lal from claiming the pipes should he be found entitled to recover their possession.

B.R.T.

APPELLATE CIVIL.

Before Shamsher Bahadur, J.

CHAUDHRY AND ANOTHER,—Appellants.

...
versus

DUNI CHAND AND ANOTHER,—Respondents.

Regular Second Appeal No. 378 of 1959.

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Oct., 13th

Punjab Tenancy Act (XVI of 1887)—Sections 50, 50-A and 77—Tenant ejected without consent filing suit for recovery of possession within one year of ejection—Whether exclusively triable by a Revenue Court—Decision arrived at by Revenue Court in such suit—Whether operates as res judicata.

Held, that a suit by a tenant, who has been dispossessed without his consent of his tenancy, for recovery of possession or occupancy, filed within one year of his dispossession, is exclusively triable by a Revenue Court under the provisions of sections 50, 50-A and 77 of the Punjab Tenancy Act. Any decision arrived at by a revenue court in such a suit is binding on the parties and would operate as *res judicata*.

Note.—L.P.A. No. 440 and 441 of 1959 filed against this Judgment was dismissed on 22nd January, 1960 by Mehar Singh and Gosain, JJ.— [Editor].