

GENERAL SALES COMPANY LTD
V
SRI KRISHNA CORPORATION LTD

SUPREME COURT
BANDARANAYAKE, J.
DE SILVA, J. AND
JAYASINGHE, J
S. C. (CHC) APPEAL NO. 25/99
H. C. (CIVIL) NO. 47/96(1)
28th MARCH, 16th JUNE, 9th JULY AND 8th AUGUST, 2003

Landlord and Tenant - Landlord's action for damages on the ground of defects of the premises let - Defendant's counter claim.

The plaintiff took on rent a building from the defendant at a monthly rental of Rs. 248,000/- for storage of rice expected to arrive in the Port of Colombo. The plaintiff also paid a deposit of Rs. 1,488,000/- for the warehouse. The plaintiff caused his agent to inspect the premises and later made suggestions for alternations including for entry of lorries, carrying rice to enter the building, and for partitions and cubicles. The said alterations were effected in consequence by agreement between parties.

Rice was brought into the warehouse in 30 ton lorries. Allegedly as a result the floor cracked and at the defendant's suggestion lorries weighing 20 tons only were used thereafter although this was not a condition of the agreement between the parties. Next, the plaintiff requested the defendant to fill up and cover cracks on the floor which does not appear to have been done. In fact, the plaintiff had notified the defendant that in the event of transporting rice into the warehouse being interrupted plaintiff had to pay demurrage on the ship at US\$ 5000 a day.

The aforesaid dispute led to the plaintiff filing action for damages in a sum of Rs. 7,000,000/- and the deposit fo Rs. 1,488,000/-. The defendant alleged that the plaintiff vacated the premises on 31.03.1994; also that the defendant incurred expenses for making several alterations to the warehouse at the plaintiff's request.

The High Court took the view that since the plaintiff inspected the premises and satisfied himself that the premises were suitable for the storage of rice, he cannot now claim damages from the defendant.

Held :

1. The inspection of the premises by the plaintiff was only a visual inspection, but the evidence established that the premises were required for storage of rice to be brought in heavy lorries. This was the understanding of parties.
2. The plaintiff is entitled to have his appeal allowed subject to a direction to the High Court to assess the damages based on the plaintiff's claim as well as the defendant's counter claim of the rent and to enter decree accordingly.

APPEAL from the judgment of the High Court

Romesh de Silva, P. C. with Geethaka Goonawardane for plaintiff - appellant.

S. L. Gunasekera with Kushan de Alwis for defendant - respondent.

Cur.adv. vult

November 14, 2003

SHIRANI BANDARANAYAKE, J.

This is an appeal from the judgment of the High Court dated 12.05.1999. By that judgment the plaintiff-appellant's action (hereinafter referred to as the plaintiff) against the defendant-respondent (hereinafter referred to as defendant) was dismissed. The plaintiff preferred an appeal against that order to this Court.

The facts of this appeal, in brief, are as follows :

The plaintiff instituted action against the defendant, praying *inter alia* for the recovery of a sum of Rs. 8,488,000/- together with legal interest thereon from the plaint till date of decree and thereafter on the aggregate amount of the decree till payment in full. In his plaint, the plaintiff had pleaded the following ;

- (a) the defendant was the owner of a warehouse;
- (b) the defendant was aware that the plaintiff wanted to rent a warehouse for the sole purpose of storage of rice;
- (c) all negotiations between the parties were on the express knowledge and undertaking that the stores would be used for the purpose of storing rice;

- (d) the defendant held out to the plaintiff that the premises were suitable for the storage of rice;
- (e) the plaintiff on or about 01st November, 1993 took on rent from the defendant the said warehouse for the purpose of storing rice and paid a deposit of Rs. 1,488,000/-;
- (f) the plaintiff thereafter stored rice in the warehouse;
- (g) the said warehouse was not suitable for the storage of rice;
- (h) in the premises aforesaid, the plaintiff suffered loss and damage which the plaintiff estimated at Rs. 7,000,000/-;
- (i) the defendant has failed and neglected to pay the said sum of Rs. 7,000,000/- or any part thereof or return the deposit of Rs. 1,488,000/- though thereto obliged to and though thereto demanded.

The plaintiff based his claim on documents filed with the plaint and thereafter produced in evidence.

The defendant had admitted that he was the owner of the warehouse in question and the plaintiff stored rice in the said premises. He has also admitted that the plaintiff paid a sum of Rs. 1,488,000/- as a deposit at the commencement of the said tenancy.

The defendant in his answer took up the position that the plaintiff after inspecting a newly constructed warehouse of the defendant found it suitable for its purpose and took it on rent at a monthly rental of Rs. 248,000/- on the terms and conditions which were set out in the tenancy agreement dated 01st November, 1993 (P6). The defendant further submitted that at the request of the plaintiff, the defendant constructed office partitions/cubicles, security tower etc. at a cost of Rs. 205,700/- and installed additional lights at a cost of Rs. 28,000/-. The defendant also stated that the petitioner had vacated the premises in question on 31.03.1994 without notice to the defendant and/or without paying the defendant a month's rent *in lieu* of notice and that the plaintiff failed and neglected to pay the defendant rent for the months of December 1993 to March 1994.

Two questions were taken as main issues for determination by the learned District Judge as well as the learned Judge of the High Court, which were as follows :

- (a) Whether the defendant was well aware when the premises were taken on rent that the premises were used for the storage of rice ;
- (b) Whether the defendant was well aware that the plaintiff would drive lorries into the premises.

The defendant took up the view that he has never dealt in rice or stored rice and is ignorant of the practices of the trade in the storage of rice. His position is that he could have been held liable for the loss, if any, caused to the plaintiff by reason of the premises having been unsuitable for the storage of rice only if the defendant had represented to the plaintiff that the said premises were suitable for such purpose.

Be that as it may, on an examination of the correspondence between the plaintiff and the defendant it appears quite clearly that the defendant was aware from the outset that the plaintiff needed a warehouse for the purpose of storage of rice. A fax message sent by Bala Emmanuel, who was the Sales Manager of the plaintiff Company at the time material to this action, to Sri Kantha, the Business Development Manager of the defendant Company dated 09.10.1993, refers to the purpose of using the said warehouse by the plaintiff (P2). The relevant portion of that message reads as follows:-

“We refer to the discussions we had with you and the subsequent visit the undersigned made to your warehouse complex at Wattala. As advised to you on telecom yesterday we are pleased to confirm our interest to enter into an agreement with your Company for renting of 31,500 sq. ft. of warehousing located at your factory complex at No. 102, Sri Wickrama Mawatha, Wattala.

We wish to take occupancy of the warehouse by the 1st of October in order to store a shipment of rice expected to arrive in the Port of Colombo between 15/17 October 93.

(emphasis added)”.

The defendant on 01st November, 1993, wrote to the plaintiff informing him of the tenancy agreement and informed the plaintiff that,

“We are now pleased to inform you that we are prepared to lease the above premises on the under mentioned terms and conditions”

Clause II of the said agreement stated as follows :

“You shall use the said premises for your business and trade purposes including the storage of rice”.

On an examination of the contents of the aforementioned letters it is clear that the plaintiff's intention was to rent out storage space for storing of rice and the defendant was aware of the plaintiff's requirement. Learned Judge of the High Court, has taken the view that since the plaintiff inspected the premises and satisfied himself that the premises were suitable for the storage of rice, he cannot now claim damages from the defendant.

Notwithstanding the above, the following issue raised at the High Court on the contrary relate to the purpose of renting out the premises in question by the plaintiff, which clearly shows that such renting out was for the purpose of storing rice. All these have been answered by learned Judge of the High Court in the affirmative.

“Issue 1 (a) during the period material to the action did the defendant know that the plaintiff wanted to take the said premises on rent for the purpose of storage of rice ?

Answer : Yes

(b) were all the transactions between the defendant and the plaintiff conducted on the basis that the said premises would be used for the storage of rice ?

Answer : Yes.”

Sri Kantha, the Business Development Manager, of the defendant Company, giving evidence stated that, before the plaintiff came into occupation of the stores, the defendant was aware that the plaintiff's

intention was to store rice (pg. 314 of the brief) and that the said warehouse was rented out to the plaintiff with the clear knowledge that the plaintiff would be using the premises for storage of rice. Bala Emmanuel, the Sales Manager of the plaintiff Company, who had apparently inspected the premises stated in evidence that it was only a visual inspection and that the question whether the warehouse was not suitable for storing rice could not be decided on a visual inspection.

The documents placed before the High Court indicate quite clearly that the defendants were aware that the plaintiff intended to use the said warehouse for storage of bagged rice. This is further confirmed by the letter written by Sri Kantha as the Business Development Manager of the defendant Company to the Director General of Customs, which is as follows :-

"Ref. : SKC/G/282/93

4th October, 1993.

The Director General of Customs,

WAREHOUSE COMPLEX AT WATTALA

This is to confirm that the warehouse complex at Wattala 31,000 sq. ft. in extent has been leased to M/s. ITC Ltd., of 6-3-1110, Arumuthmall, Begumpet, Hyderabad 500 016, India through M/s. General Sales Co. Ltd., 7, Station Road, Colombo 03 to be used as a bonded warehouse under the Customs **Bonded scheme for storage and sale of bagged rice** for a period of 12 months, commencing from 01st November, 1993, as per the terms and conditions of the agreement (emphasis added)."

In such circumstances it is evident that the defendant was well aware that their warehouse was taken on rent for the storage of rice. However, this does not mean that the defendant is solely responsible for the damages caused to the stored rice.

The next question that has to be considered is as to whether the defendant knew that the plaintiff would drive into the premises. Learned Judge of the High Court, at the commencement of the conclusion of his judgment states that,

"It is my conclusion that at the very commencement of the

offer on P2 being made, the defendant was aware that trucks will be taken inside the warehouse.”

Having said that, the High Court had proceeded to examine whether the defendant was aware of the weight of the lorries. However the defendant's case was that they were not aware that vehicles were to be driven into the premises and what was necessary at the High Court was to examine the correctness of the position taken up by the defendant.

In one of their initial correspondence, dated 09.10.1993 (P2) Bala Emmanuel in his letter to Sri Kantha, informed their needs, which clearly indicated not only that the trucks would be driven into the warehouse, but also that certain modifications will have to be carried out in order to accommodate such requirements. These requests were in the following terms :

“We wish to take occupancy of the warehouse by the 15th of October in order to store a shipment of rice expected to arrive in the Port of Colombo between 15/17 October 93.

As discussed and agreed you will take steps to effect the following modifications to the warehouse prior to occupancy :

All six doors of the warehouse to be modified to permit access by truck for which purpose door heights will have to be raised accordingly.

Suitable ramps to be constructed for each doorway to permit trucks to be driven into the warehouse for unloading (emphasis added)”.

In response to this request Sri Kantha informed Bala Emmanuel on 14.10.1993 that the **“Modifications and additions referred to in Emmanuel’s communique of 09.10.1993 would be attended to”.**

In such circumstances it is abundantly clear that the defendant, from the very outset of entering into an agreement, was aware that there would be vehicles driven into the premises. As referred to earlier the warehouse was taken on rent for storage of rice and therefore the defendant

should have been aware that the vehicles which were to be driven in were to carry heavy weights. Accordingly it should have been the responsibility of the defendant, being aware of the type of vehicles that would be driving into their warehouse, to make such arrangements in order to accommodate the requirements of the plaintiff. In fact the Sales Manager of the plaintiff's Company had informed the defendant on 12.11.1993 a date prior to the commencement of cargo being brought into the warehouse, as to the deterioration of the floor of the warehouse, in the following terms (P11):

“The most serious problem however is the cracking up of the floor within the warehouse. The floor is deteriorating at a very fast rate and we feel that with operations ongoing this would develop into a very serious problem as the major portion of the warehouse floor area will become unuseable. Please discuss with your engineers an immediate solution to this problem as any disruption to smooth receipt of cargo into the warehouse will result in our incurring demurrage on the ship which is payable @ US \$ 5000 a day. We might be compelled to seek relief from you for any demurrage incurred on A/C of warehouse deficiencies”

The communications between the plaintiff and the defendant since 12.11.1993 show that the plaintiff was complaining of the defective floor and requesting the defendant to attend to the matter urgently.

It is apparent on a perusal of the documents before this Court, that the warehouse was not designed to sustain the weight of moving trucks with a heavy cargo. The letter of the Managing Director of Elemech Engineers (Pvt.) Ltd., of 6th November 1993 clearly reveals the said position. Elemech Engineers appears to be the construction engineers who had attended to the said warehouse. The said letter (P12) is in the following terms :

“Warehouse at 102, Sri Wickrama Mawatha, Wattala - Stage I

We write to confirm of having handed over to you the above completed premises in perfect condition and to the agreed specifications to you on 01st October, 1993.

Subsequently as per your request we had to increase the size of the doorways and replace the existing shutters with larger

shutters. This work is in hand and will be completed by end of this week. We have now been advised that your client's lorries each weighing around 30 tons have been plying within the premises as against our advice that it was designed only up to a moving load of forklift....."

As a result of this letter, the defendant informed the plaintiff to curtail the movement of lorries with a load in excess of 20 tons within the warehouse. Restrictions of load per truck, it is to be noted, was not a part of the agreement entered into between the plaintiff and the defendant (P13). By letter P14 dated 17.11.1993, Bala Emmanuel informed Sri Kantha that the plaintiff had reduced the load of rice per truck to 20 tons or less and requested the defendant to fill up and cover the crackings on the floor with 1/4" thick steel plates.

Considering the aforementioned circumstances, it is apparent that at the time the plaintiff and defendant entered into an agreement (P2), the defendant was fully aware that the warehouse would be used for the purpose of storage of rice and for this purpose vehicles carrying bags of rice would be moving through the warehouse. When the warehouse was given on rent for such purposes, later the defendant cannot be heard to say that he was not aware that lorries carrying heavy loads would be driven into the warehouse damaging his property. After all, when the chief purpose of renting out the premises was for storage of rice and when such rice were brought inside the warehouse in trucks, the defendant should have examined the capacity of the building's floor to see whether it would sustain the weight of such cargo, prior to entering into an agreement.

For the aforesaid reasons both questions which were taken as main issues are answered in the affirmative. This appeal is accordingly allowed and the judgement of the High Court dated 12.05.1999 is set aside.

The plaintiff also claimed that the defendant did not return the balance amount from the deposit he kept with the defendant amounting to Rs. 1,488,000/-. The defendant contended that the plaintiff did not pay him the rents for the month of December 1993 and January, February and March 1994. Moreover, he claims that the plaintiff did not give the defendant one

month's notice in writing of the termination of the agreement. Accordingly the defendant claims that he is entitled to retain 5 months rent, viz. a sum of Rs. 1,240,000/- out of the said deposit in respect of four months rent and as one month's rent in terms of notice.

No evidence was led in the High Court with regard to the damages claimed by the plaintiff as well as the claim made by the defendant on the rent for the warehouse. Therefore, the High Court is directed to assess the damages based on the plaintiff's claim as well as the defendant's counter claim on the rent and enter decree accordingly.

There will be no costs.

DE SILVA, J. - I agree.

JAYASINGHE, J. - I agree.

Appeal allowed with a direction to High Court to assess damages.
