

1964

*Present : Basnayake, C.J., and Sirimane, J.*

G. A. SOMAPALA, Appellant, and R. F. DE MEL and another,  
Respondents

*S. C. 356/61—D. C. Colombo, 49541/M*

*Lotteries Ordinance—Section 14 (c) (ii)—Postponement of horse-race—Validity of lottery ticket already bought.*

When a racing club sells a horse-race lottery ticket which is subject to the provisions of section 14 (c) (ii) of the Lotteries Ordinance and which bears on it the words " If races are postponed this ticket will be valid for the postponed date ", the ticket cannot be invalidated by unilateral action on the part of the club if the races are postponed. In such a case, the postponement of the races does not constitute a breach of the condition imposed by section 14 (c) (ii).

**A**PPPEAL from a judgment of the District Court, Colombo.

*H. W. Jayewardene, Q.C., with S. S. Basnayake and D. S. Wijewardene,*  
for Plaintiff-Appellant.

*G. T. Samerawickreme,* for Defendants-Respondents.

May 7, 1964. BASNAYAKE, C.J.—

The plaintiff-appellant (hereinafter referred to as the plaintiff) has instituted this action against the President and the Secretary as representatives of a voluntary association known as the Ceylon Turf Club (hereinafter referred to as the Club) for the recovery of a sum of Rs. 8,106

which he claims he is entitled to as the holder of the winning ticket in a lottery conducted by the Club. The Club resisted the claim successfully.

The material facts are as follows :—On 4th September 1959 the plaintiff purchased a ticket 01 O No. 00616 in a lottery on a horse-race to be run on 5th September. The Club is a racing club to whom a horse-race lottery licence has been issued. Under the provisions of section 14 (c) (ii) of the Lotteries Ordinance a horse-race lottery licence holder is prohibited from selling a lottery ticket except during the period of forty-eight hours immediately preceding the time fixed by the Racing Club for the start of a horse-race on which the lottery is to be held. The plaintiff asserts that his ticket was purchased within 48 hours of the time fixed for the running of the race on which the lottery was to be held. But owing to a strike of the employees of the Club the race could not be run. In consequence, all the races which were scheduled to run on 5th September were run on 12th September. An official race-book is issued and sold by the Club for each race day. Among other information, it gives a list of all the races to be run on the day for which the book is issued and the names and full particulars of the horses running in each race. The official race-book issued for 5th September was adopted as the official race-book of 12th September by merely pasting on the figure and letters "5th" on the cover the figures and letters "12th", and the races of 5th September were regarded as having been postponed to 12th September. A notice signed by the Secretary of the Club dated 9th September 1959 goes on to say—"The Race Card already published will hold good in every respect for Saturday, 12th September, but fresh starting declarations will have to be made." The appropriate body of the Club also decided that the races scheduled for 19th September should be held on 26th September.

The ticket which the plaintiff claims as the winning ticket has these words—"If races are postponed this ticket will be valid for the postponed date". But, despite the course already taken by them, the Secretary of the Club on 11th September published notices in the newspapers requesting the holders of tickets in respect of the lottery which was to have been drawn on 5th September to return their tickets either to their agents or to the Club Office and obtain a refund of their value. Thereafter they proceeded to issue lottery tickets in respect of the lottery to be held in connection with a horse-race to be run on 12th September. The winning ticket of that issue, which bore the same number as the ticket held by the plaintiff, was drawn by a person other than the plaintiff, and that person claimed the price and was paid the money.

When the plaintiff went to the office of the defendant on 16th September, produced his ticket and claimed the first prize, his claim was disputed; and this action is the result of that dispute. The defendant pleads that the ticket issued to the plaintiff was in respect of a race to be run on 5th September and that it was not valid in respect of a race to be run on a subsequent date, and that the plaintiff was not entitled to claim the prize in the lottery drawn on 12th September. The plaintiff relies

on the words printed on the ticket—" If races are postponed this ticket will be valid for the postponed date"—and contends that the race was postponed and that his ticket is valid and cannot be invalidated by unilateral action on the part of the defendant.

The learned District Judge has dismissed the plaintiff's action on the ground that a ticket sold more than 48 hours before the time fixed for the race held on 12th September is invalid according to section 14 (c) (ii) of the Lotteries Ordinance. The learned District Judge does not appear to have paid due attention to the words of section 14. That section lays down the further conditions to which a horse-race lottery licence shall be subject in addition to the conditions specified in section 13 or imposed thereunder. The relevant further condition reads—

"(c) where any such lottery is in connection with a horse-race at a race-meeting in Ceylon which is held by such society or racing club, no ticket or chance in the lottery shall be issued, distributed, sold or offered for sale—

- (i) by any person other than an employee of such society or racing club who is authorized in writing in that behalf by such society or racing club, or
- (ii) except during the period of forty-eight hours immediately preceding the time fixed by such society or racing club for the start of such horse-race."

In the instant case it is not disputed that the ticket in question was sold within forty-eight hours immediately preceding the time fixed by the Club for the start of the horse-race on which the lottery was to be drawn. The postponement of the race to 12th September does not constitute a breach of the condition (c) (ii). Even where there is a breach of condition (c) (ii), the Club is not entitled to avoid its contractual obligations by pleading their own wrongful act. The same principle is expressed in different words in the maxim "*in jure civili receptum est, quotiens per eum, cuius interest, condicionem non impleri, fiat quominus impleatur perinde haberi, ac si impleta condicio fuisset*—(Dig.L, 17, 161) so often as non-fulfilment of a condition is brought about by him who has an interest in its not being fulfilled, the condition is treated as though it had been fulfilled."

It was also argued that the plaintiff acquiesced in the cancellation of his ticket as he was well aware of the cancellation of the sweep on 5th September and that tickets were issued for the races on 12th September. Mere knowledge on the part of the plaintiff of the defendant's wrongful act is not sufficient. It must be proved that the plaintiff consented to the variation of the terms of his contract. There is no such proof.

We therefore set aside the order of the dismissal of the plaintiff's action and direct that judgment be entered for the plaintiff with costs both here and in the court below.

SIRIMANE, J.—I agree.

*Appeal allowed.*