

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Khan Bahadur Haji Sajan Lalji v. The Hyderabad (Deccan) Company, Limited, from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 2nd November 1906.*

Present at the Hearing :

LORD MACNAGHTEN.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[*Delivered by Lord Macnaghten.*]

This seems to be an idle Appeal.

By a contract contained in letters dated the 18th, 20th and 21st of June 1896 the Appellant, Haji Sajan Lalji, agreed to buy from the Hyderabad (Deccan) Company, Limited, large quantities of coal to be supplied by monthly deliveries extending over the period of five years from the 1st of January 1896. The conditions of payment were defined. Neither party adhered strictly to the terms of the contract. The Company was at times unable to supply the stipulated quantity. The Appellant at times was unable to take delivery of coal which the Company was ready to supply. Besides, the Appellant fell into arrear with his payments. Each party therefore had claims against the other. A long controversy arose between them which was ultimately settled by a compromise. All claims on both sides were withdrawn. The Company granted an extension of time for payment and the Appellant agreed to execute a mortgage to secure his indebtedness to the Company.

The agreement for a mortgage was dated the 28th of September 1900. It was signed by the Appellant. So far as material it was in the following terms:—

“Whereas I am indebted to the Hyderabad Deccan Company on account of coal supplied to me (as contractor) under contract and whereas it has been agreed that I should secure the said Company against loss by reason of that indebtedness. Now these presents witness that I bind myself . . . to execute in favour of the agent . . . of the . . . Company for and on behalf of the said Company a mortgage of all my immovable property . . . as per detailed list herewith attached and signed by me.”

The mortgage was to be subject to the liens existing in favour of the Bank of Bengal, Hyderabad, and the Commercial Bank of India, Madras. As further security the Appellant agreed to assign to the Company, subject to the aforesaid liens, two policies of assurance and also his claim on the Nizam's Government on account of the sale of rice during the last famine.

On various pretexts the Appellant afterwards refused to execute the agreed mortgage. And this suit was consequently brought to enforce specific performance of the contract.

The learned Judge of First Instance, the District Judge of Secunderabad, dismissed the suit with costs. His opinion was that inasmuch as the Appellant's indebtedness was not defined and had not been ascertained the mortgage contract was void for uncertainty. He also thought that the Appellant was relieved from the obligation of performing his contract because he had, as he alleged, mortgaged the property afterwards to another creditor. On appeal the Judicial Commissioner of Berar reversed the decree of the Lower Court, and ordered specific performance of the contract in question.

It is hardly necessary to say that on the appeal to this Board the two grounds of defence which found favour with the Judge of First

Instance were not put forward seriously. There was, however, another ground of defence urged in both the Courts below about which there was more to be said. The Appellant contended that there was a collateral contract under which more advantageous terms were to be conceded to him. Letters were read which showed that the Appellant did ask for more favourable terms, and that the Company's agent was prepared to agree to them, subject to the approval of the Board of Directors. The Board, however, refused further concessions, and these proposals consequently fell through. On this point there are the concurrent Judgments of the two Courts below, and their Lordships see no reason to differ from their conclusion.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal.

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