

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Banarsi Das v. Bansi Lal, from the Chief
Court of the Punjab ; delivered the 16th July
1912.*

PRESENT AT THE HEARING :

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

This is an Appeal from a decree of the Chief Court of the Punjab, dated the 26th March 1909, which reversed a decree of the District Judge of Ambala, dated the 11th January 1908, dismissing the Plaintiff's suit.

The suit in which this Appeal has arisen relates to a contract which was alleged to have been made on the 23rd April 1907 between the Plaintiff, through one Babu Lal, a broker, and the Defendant for the sale of 4,000 bags, of 2½ maunds each, of flour at Rs. 3. 15 per maund ; 2,000 bags, of 2½ maunds each, of atta No. 1, at Rs. 3. 4 per maund ; and 500 bags of atta khas, of 2½ maunds each, at Rs. 3. 8 per maund, to be delivered by the Defendant to the Plaintiff between the months of June and September 1907, inclusive. According to the terms of the contract as alleged in the plaint the Defendant was to allow to the Plaintiff a rebate of Rs. 3. 2 per centum on the price of the flour and Rs. 2 per centum on the price of the atta, and the

Plaintiff was to deposit with the Defendant Rs. 3,000 as security for the fulfilment of the contract by the Plaintiff. The Plaintiff alleged that in compliance with the contract he deposited the sum of Rs. 3,000 with the Defendant, and gave notices to the Defendant requiring delivery of the flower and atta, but the Defendant failed to make any deliveries. The plaintiff claimed damages for the alleged breach of contract, and also claimed a return of the Rs. 3,000 so deposited with the Defendant. The defence was that no such contract had been made.

The suit was brought in the Court of the District Judge of Ambala. The District Judge found that no contract had been made and dismissed the suit. On Appeal the Chief Court of the Punjab found for the Plaintiff, and gave him a decree for Rs. 28,058. 8 with costs. From that decree of the Chief Court this Appeal has been brought by the Defendant. Assuming that it is found that the contract alleged by the Plaintiff was made the correctness of the amount decreed by the Chief Court is not disputed.

The evidence in the suit was partly oral and partly documentary. It is admitted that the Rs. 3,000 was paid through Babu Lal to the Defendant, and was entered by Babu Lal's direction by the Defendant to the credit of the Plaintiff in his trading name of Gutti Ram Kesho Ram. Babu Lal, who was a witness in the suit, proved, if his evidence is to be believed, the Plaintiff's case. On the 17th April 1907 Babu Lal, describing himself as a broker, wrote to the Defendant asking for a quotation for the delivery of 10,000 bags of flour and atta. On the 18th April 1907, the Defendant by his letter in reply sent Babu Lal a quotation of prices, and stated that a condition of a contract would be that Rs. 5,000 should be paid to him as security for the performance of the contract. According to

Babu Lal he, after receiving the Defendant's letter of the 18th April, called upon the Defendant at his place of business in Ambala, and they made the contract on which this suit is brought, and by which the 6,500 bags of flour and atta were to be supplied by the Defendant to the Plaintiff for whom Babu Lal was acting as broker. Babu Lal stated that the contract was entered in a book of the Defendant's by one Khem Chand, who was then admittedly in the Defendant's employment, and that he, Babu Lal, signed the entry. At the trial a book which was alleged to be the Defendant's sauda bahi, was produced; Babu Lal was unable to identify the book as that in which he alleged an entry of the contract had been made. The book which was produced contained no entry of the contract. Khem Chand, who was in Court was not called as a witness by either side. The Defendant in his evidence denied that he had made any contract, and also alleged that there was no entry of the alleged contract in his counterfoils or in his sauda bahi. Babu Lal produced a book kept by him in which he alleged that he on the 23rd April 1907 made an entry referring to the contract. The only other witness who was called was the Plaintiff, but he was not present at the interview between Babu Lal and the Defendant when it is alleged the contract was made. Babu Lal's evidence is corroborated by documentary evidence on the record. Of corroboration of the Defendant's evidence there is none.

It is proved that the Rs. 3,000 were deposited with the Defendant as security for the performance of the contract on the part of the Plaintiff, and were credited by the Defendant to the Plaintiff in his trading name of Gutti Ram Kesho Ram. On the 24th April Babu Lal wrote to the Defendant from Delhi enclosing

Government currency notes for Rs. 1,500 and said, "You have not sent a letter relating to the satta (contract) after writing the same. Please do this." Babu Lal required a contract note in the writing of the Defendant to show to his principal the Plaintiff. On the 26th April the Defendant wrote to Babu Lal acknowledging the receipt of the currency notes and stating "a letter will be sent to you on receipt from you of the full amount of Rs. 3,000." Babu Lal had proposed to the Defendant to act for the Defendant as his agent for the sale of flour and atta; in some of the subsequent correspondence between Babu Lal and the Defendant that proposal, which was a matter quite distinct from the contract which Babu Lal on behalf of the Plaintiff had made with the Defendant, is referred to. On the 4th and on the 8th May 1907, Babu Lal wrote letters to the Defendant in which the two distinct matters are referred to. In his letter of the 4th May, Babu Lal said: "Please inform me about the rates and also send me a letter in respect of this bargain, *i.e.*, the letter relating to the bargain struck by me on behalf of Gutti Ram Kesho Ram, so that I may be able to absolve myself from liability. I am in trouble because of the repeated demands made upon me." The price of flour and atta was then rising, and Babu Lal required a quotation of prices for the purpose of his acting as the Defendant's agent. In his letter of the 8th May Babu Lal asked the Defendant to inform him as to where he already had agencies, and said:

"It will be kind of you to send me a receipt for Rs. 3,000 paid to you as earnest-money for the purchase of 6,000 bags of atta and maida (flour) to Gutti Ram Kesho Ram. The Lala is pressing me hard."

By the 8th May 1907 the market prices of flour and atta had risen considerably, and it appears to their Lordships that the Defendant

had made up his mind to repudiate the contract if possible. On the 9th May 1907 the Defendant wrote to Babu Lal in reply to Babu Lal's letter of the 8th May :—

Dear Sir,

“ Received your letter. Your Rs. 3,000 on account of security are deposited with me. No matter has yet been settled. So you should come over here and reduce the matter into writing in clear words so that there may not occur any misunderstanding hereafter. Sometimes you write in Hindi, sometimes in Urdu, and sometimes in English, and your writings are conflicting. If you do not settle the matter within four days I shall return your money.”

On the receipt of that letter the Plaintiff consulted his lawyer and the lawyer in consequence wrote to the Defendant on the 13th May 1907 :—

“ Under instructions from Gutti Ram Kesho Ram I have to give you notice that they, through Babu Lal, contracted to purchase 6,500 bags of flour and atta as stated in the contract entered in your contract book. My clients sent you G. C. notes and cash, Rs. 3,000, as security, which are with you. The delivery time is coming shortly, but you have written to our agent Babu Lal, which throws some doubt as to whether you are giving delivery or not. I therefore give you notice that if you fail to give delivery at stipulated time you will be liable for damages.”

“ GIRDHARI LAL,

“ Pleader.”

The pleader's letter is of considerable importance. In it it is distinctly stated that the contract for the 6,500 bags of flour and atta was entered in the Defendant's contract book. That letter if it contained statements which were untrue called for a reply from the Defendant, who is a man of business, but the Defendant sent no reply to the pleader's letter. The Plaintiff subsequently made specific demands for deliveries under the contract, but no deliveries were made. In their Lordships' opinion the Plaintiff proved the contract alleged in his plaint and the breach of that contract by the Defendant. It is admitted, as their Lordships have already said,

that the amount awarded as damages by the Chief Court is a reasonable amount on the assumption that the contract and the breach were established.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed and the decree of the Chief Court be affirmed. The Appellant must pay the costs of the Appeal.

In the Privy Council.

BANARSI DAS

v.

BANSI LAL.

DELIVERED BY SIR JOHN EDGE.

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