

Shri Sham Lal v. Shri Om Parkash and others  
 Harnam Singh, J.

Again, in numerous cases reported in books it has been said that when the subject-matter in dispute in an appeal is not different from the subject-matter in dispute in the suit in the trial court the appeal will be governed for purposes of court-fee by the same provisions as the suit. In case there is no difference in the nature of the relief in dispute the subject-matter need not be considered to be different and the appeal will be governed for purposes of court-fee by the same provision as is applicable to the suit though the amount of court-fee leviable in appeal may be different. In my judgment, there is no substance in the argument that the proviso to section 7 (iv) (c) of the Act added by Punjab Act XXXI of 1953 has no application to appeals.

For the foregoing reasons, I find that in Regular First Appeal No. 139 of 1953 court-fee leviable is under the proviso to clause (iv) of section 7 read with Schedule 1 of Article 1 of the Act.

Kapur, J.

KAPUR, J. I agree.

#### APPELLATE CIVIL

Before Kapur, J.

THE UNION OF INDIA,—Appellants

versus

SETH MUNNA LAL,—Plaintiff-Respondent.

Regular Second Appeal No. 860 of 1951

1954

Nov., 23rd

*Accounts—Suit for—Goods sold under the clause “as is and where is”—Purchaser refusing to take delivery as goods unsaleable—Purchaser’s suit for rendition of accounts whether maintainable on the plea that the goods could be resold at his risk if not taken delivery of—Sale of Goods Act (III of 1930)—Section 54(2).*

Held, that no suit for rendition of accounts lies between a seller and a buyer of goods and thus it was rightly dismissed by the trial Court.

*Second appeal from the preliminary decree of the Court of Shri S. L. Madhok, 1st Additional District Judge, Delhi, dated the 4th day of August, 1951, reversing that of Shri A. N. Bhanot, Subordinate Judge, 1st Class, Delhi, dated the*

18th December, 1950, and awarding the plaintiff a preliminary decree for rendition of accounts against the defendants.

I. D. DUA, for Appellant.

A. N. GROVER, for Respondent.

#### JUDGMENT

KAPUR, J. This is an appeal brought by the Union of India against an appellate decree of Additional District Judge S. L. Madhok reversing the decree of the trial Court and thus ordering rendition of accounts as between a seller and a purchaser of goods. Kapur, J.

On the 30th of January 1947 the plaintiff Munna Lal agreed to purchase 'cable wires' for a sum of Rs. 7,60,000. According to the conditions of sale the goods were to be sold under the clause 'as is and where is.' On the 25th February, 1947, the plaintiff objected to the issue of sale orders which were made by the defendant's officers as the goods they said were not in good order. On the 28th February 1947 the plaintiff refused to take the goods as being unsaleable. After the contract had been entered into on the 31st January, 1947, the plaintiff paid a sum of Rs. 30,000 by way of security for due performance of the contract. On the 16th of March, 1947, the plaintiff asked for refund of the security money. After giving notice under section 80 of the Civil Procedure Code the plaintiff brought a suit for rendition of accounts alleging *inter alia* that he had requested the Government Department for refund of the security money which had been refused on the ground that the plaintiff was bound to take delivery of the goods. He also alleged that he had been informed that if the goods were not taken delivery of they would be resold at the risk of the plaintiff. One of the issues which arose in the case was whether a suit for rendition of accounts is maintainable. The trial Court held that it is not maintainable and the first appellate Court has held that it is.

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Lal  
Kapur, J.

I called upon Mr. Grover for the plaintiff-respondent to support the judgment of the appellate Court and he relies on section 54(2) of the Indian Sale of Goods Act, but I find nothing in that section to support the prayer of the plaintiff for a suit for accounts. He then referred to the commentary in Mulla's book on the Indian Sale of Goods Act page 230 which deals with improper resale by the seller but as I read it all that it means is that if there is a profit in the case of an improper resale the buyer is entitled to get it from the seller and in every other case the right of the buyer and the seller is one for damages. Mr. Grover also referred to *Jamal v. Moolla Dawood Sons and Co.* (1), but that again in my opinion has no application to the facts of the present case. Nor does it support the proposition which is placed before me that a suit for accounts does lie between a seller and a buyer of goods.

As a matter of fact in the present case the finding of the trial Court was that the breach was by the plaintiff but there is no finding by the appellate Court on this point. When the defendant pleaded section 34 of the Indian Arbitration Act for the stay of proceedings the plaintiff denied that there was a valid agreement of sale and purchase between the parties.

In these circumstances I find no support for the proposition that such a suit as has been brought was competent. I would therefore allow this appeal, set aside the decree of the appellate Court and restore that of the trial Court. The appellant will have his costs in this Court and in the Courts below.

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(1) I.L.R. 43 Cal. 493 (P.C.)