

IN THE COURT OF APPEAL OF SEYCHELLES

CIVIL APPEAL NO. 14 OF 1987

KIRKCOCK AND COMPANY (Pty) LTD. APPELLANT

versus

- 1. HAROLD JEAN LOUIS. 1st RESPONDENT
- 2. JONATHAN SCHICLASTIQUE. 2nd RESPONDENT

Georges for appellant
 1st respondent absent unrepresented
 2nd respondent in person

JUDGMENT OF MUSTAFA, P.

The appellant is a limited liability company and owned a number of shops. The 1st respondent was its employee and was manager of one of its retail shops. The 2nd respondent was alleged to have purchased a number of articles on credit from the retail shop managed by the 1st respondent.

The appellant filed an action ⁱⁿ the Supreme Court against both the respondents jointly for the recovery of Rs.63,818.60 being a sum allegedly due for goods sold and supplied by the 1st respondent to the 2nd respondent, and for which the 2nd respondent had not paid. As regards the claim against the 1st respondent the appellant had alleged that the 1st respondent had been negligent in selling goods for such a large sum on credit to the 2nd respondent, and he was being sued in negligence. The claim against the 2nd respondent was for the money due for goods sold and supplied to him by the 1st respondent.

The 1st respondent in his statement of defence denied liability for negligence and averred that he had sold goods to the 2nd respondent on credit for shs. 60,074.20 only. The 2nd respondent in his statement of defence denied liability and averred that he had purchased his goods for cash and had the receipts.

The suit came before Beaton, C.J. who found that the following issues were before the court:

As regards the 1st respondent

- (1) Did he in fact give credit
- (2) Did he have authority to give goods on credit
- (3) Was he acting with authority or negligently in giving credit at all, and in particular to the 2nd defendant.

As regards the 2nd respondent

- (1) Did he purchase goods on credit
- (2) If yes, was it an agreed term that he should pay for those goods.
- (3) If yes, did he pay for them.

At the trial, one Daniel Kim Koon, a director of the appellant, testified. He stated that the 1st respondent had strict instructions to sell the shop goods for cash, and if he wanted to sell anything on credit, he had to obtain express authorisation from a director to do so. Daniel said that no authorisation was sought by the 1st respondent to sell goods to the 2nd respondent on credit, and in any event, if it was sought, Daniel would have refused permission, owing to the past reputation of the 2nd respondent. The goods sold, amounting to Rs.63,818.60 were all entered on cash sale receipts, as reflected in the carbon copies of the receipt book, with no name of the buyer. The 1st respondent had told Daniel that those goods were sold to the 2nd respondent on credit, and the sum remained unpaid. Daniel was not cross-examined by the 1st respondent.

The 1st respondent testified. He said he never used to sell goods on credit in the shop. He alleged however that the 2nd respondent had persuaded him to sell 2nd respondent goods on credit and he did so, but he put down all those sales as cash sales as he believed that the 2nd respondent would carry out his promise to pay him cash. The 2nd respondent did not however pay. This happened on at least 18 occasions. He also said that in 1983 he had personally lent the 2nd respondent Rs.260,000 which despite repeated promises, the 2nd respondent had not paid back.

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The 2nd respondent gave evidence. He alleged that he always purchased goods from the 1st respondent's shop for cash. He produced 10 cash sale receipts for goods so purchased, and the total added up to Rs.35,500 odd. The items of goods so purchased tallied with a number of articles listed on the "cash sale receipts" allegedly sold to the 2nd respondent on credit by the 1st respondent.

In his judgment the learned Chief Justice stated that it was only the word of the 1st respondent which was relied on to saddle the 2nd respondent with liability. He was satisfied that the cash receipts produced by the 2nd respondent indicated that he had purchased goods for cash and not on credit. He did not rely on the word of the 1st respondent and preferred the evidence of the 2nd respondent. He made the following findings on the issues before him:

re 1st respondent

- (1) He did give goods on credit but not to the 2nd respondent as alleged in the plaint
- (2) He had no authority to give goods on credit
- (3) 3rd issue has become irrelevant.

re 2nd respondent

- (1) He purchased no goods on credit as alleged in the plaint.

The learned Chief Justice accordingly dismissed the suit against the defendants with costs to the 2nd defendant.

Mr. Georges for the appellant has submitted before us that since the 2nd respondent had admitted that he had purchased goods, then in terms of Article 1315 of the Civil Code, the onus was on him to establish that he had paid for them. The 2nd respondent had only produced cash receipts totalling Rs.35,500 odd; there was still a sum of Rs.24,500/- or so outstanding in respect of other items listed in the "cash sale receipts" prepared by the 1st respondent for which the 2nd respondent had not accounted.

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I think that was a distortion of the evidence of the 2nd respondent. He never said that he had bought all the goods listed on the "cash sale receipts" prepared by the 1st respondent. He said he did not buy goods on credit, only for cash, and paid for the goods he had purchased. Mr. George's submission is totally without merit.

Another submission by Mr. Georges was in respect of the 1st respondent. He said that since the Chief Justice had found that the 1st respondent had no authority to give goods on credit, he ought to have found against the 1st respondent. As to that the memorandum of appeal filed was directed at the Chief Justice for disbelieving the 1st respondent and for believing the 2nd respondent and for not holding that the 2nd respondent had purchased goods on credit. I do not think I can entertain Mr. Georges submission on the 1st respondent at this late stage, since it was not included as a ground of appeal.

I would dismiss the appeal with costs to the second respondent.

Dated at _____ this _____ day of _____ 1988.

A. Mutha

President.

Delivered in open court

Geordie

Done
22.7.88

Appeal is dismissed with costs, amounting to proportionate view of the justice of appeal, payable to both respondents

Geordie

Done
22.7.88