(13)

IN THE SEYCHELLES COURT OF APPEAL

DIDIER DUBIGNON APPELLANT

versus

HUSSEIN AFIF RESPONDENT

Civil Appeal No: 12 of 1999

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

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Mr. P. Pardiwalla for the Appellant
Mr. F. Bonte for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, J.)

This is an appeal against a decision of the Supreme Court which dismissed a claim by the appellant, then plaintiff, for SR49,378.29 for loss and damages caused as a result of the breach of an agreement for the order of medical goods on behalf of the defendant, now respondent, and ordered the payment of only SR2,000/- as contended by the respondent as well as the duty paid on the medical goods.

The decision of the learned Judge is being challenged essentially on the ground that it is not borne out by the evidence that was before him.

The case for the appellant in the Court below was that following an agreement between the appellant, a businessman engaged in the importation of goods, and the respondent, a medical practitioner, the appellant ordered a certain quantity of medical goods from South Africa for the respondent. When the goods arrived in Seychelles, the respondent refused to take delivery of them allegedly on the ground that he had agreed to buy medical goods for a value of SR2,000/- only and not SR23,907.29 as claimed.

The appellant led evidence to show that, upon such refusal by the respondent, he took the goods back to South Africa but was unable to dispose of them as by that time they had become outdated there. He therefore claimed for the costs of the consignment as well as the costs incurred in importing the goods and subsequently trying to dispose of them in South Africa as well as for moral damages.

It was the case for the respondent that he was informed by the appellant that the imported goods would amount to SR2,000/- only and claimed to have through error signed a proforma invoice to the tune of 24,132.18 South African Rands (ZAR). It was not disputed that that sum amounted to SR23,907.29. He acknowledged, however, being indebted in the amount of SR2,000/- only.

The learned Judge, after alluding to the evidence, found as a fact – and rightly so in our view – that the respondent, by signing, first, the proforma invoice which clearly mentioned the amount of ZAR 24,132.18 and, subsequently, the bill of entry, was bound by the agreement in respect of the amount stated therein.

However, he went on to find that there was no evidence as to whether the medical goods were subsequently taken to South Africa. He also found that there was no evidence supporting the other claims for expenses in respect of the conveyance of the consignment back to South Africa, telephone calls, faxes, processing charges and the transport of the goods to and from the airport. Consequently, he dismissed those claims but awarded the sum of SR2,000/- as conceded by the respondent as well as the duty paid on the goods.

After reviewing the evidence on record, we are of the view that the findings of the learned Judge are patently wrong. The learned judge rejected the contention of the respondent that he signed the proforma invoice through error. Having found that the document signed by the respondent clearly stipulated a sum of ZAR 23,132.18, the learned Judge was wrong in proceeding to grant a sum of only SR2,000/- in respect of the goods ordered.

Moreover, his finding that there was no evidence suggesting that the goods were taken back to South Africa goes against the evidence on record inasmuch as there was ample evidence to that effect, not only from the appellant himself but also from an officer of the Ministry of Finance, called by the respondent, who confirmed that when the goods were being re-exported the invoice was stamped in accordance with normal procedures. It is significant to note that there was equally a letter from the consignor in South Africa which was produced by the appellant, and to which the respondent did not object, which indicated that the goods were brought back to Durban and could not be disposed of as they were by then outdated on the South African market. Moreover, when it was put in Court to the appellant that he tried to dispose of the medical goods on the local market but was unsuccessful, the appellant was adamant that the goods had been brought back to South Africa.

Finally, there was clear evidence adduced by the appellant in respect of each and every item of material damage suffered by the appellant, and that evidence was not challenged by the respondent.

Consequently, we take the view that all the items of material damage should, in the light of the evidence on record, have been granted. With regard to the claim for moral damages, we are of the view that a sum of SR1,000/- would be fair and reasonable in the circumstances.

We therefore allow the appeal, quash the judgment of the learned Judge and substitute therefor an order giving judgment in favour of the appellant in the sum of SR40,378.29, with costs here and in the Court below.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 17 day of December 1999.