IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 47 of 1980

Between:

SHIV PAL BIDESI Appellant

and

A.S. FAREBROTHER & CO. LTD. Respondent

K.C. Ramrakha for the Appellant.
H.C. Patel for the Respondent.

Hearing: 12th November, 1981.
Delivery of Judgment: 27th November 1981.

JUDGMENT OF THE COURT

Marsack J.A.

This is an appeal against the judgment of the Supreme Court sitting at Suva on the 23rd May 1980 in favour of the respondent (the former plaintiff) against the appellant (the former defendant) for the sum of $2198.13. The plaintiff's claim was for the balance said to be owing in respect of goods supplied by the respondent to the appellant over the period from September 1976 to January 1977.

Two grounds of appeal were filed by the appellant but only one was argued before this Court. This ground is set out as follows:

> " The learned trial Judge erred in law and in fact in holding that the defendant had admitted liability to one T. Cooper for the amount of the judgment debt, and had sought further time to pay the account. "

The respondent company had a large wholesale business and in the course of that business supplied a number of traders. The appellant traded under the name of 'SPB Traders'. Business between the parties commenced in 1975 when arrangements were made as to credit terms and discount. Goods were ordered by a personal call on the respondent company by the appellant or one of his salesman; and at times an order would be given by telephone. Later the appellant fell behind with his payments, and a meeting took place in April 1977, in the respondent's office, between the respondent's manager, Anthony William Cooper, and the appellant. Accountants on both sides were present. Mr. Cooper, in his evidence, stated that appellant had come to the meeting "in response to my queries". The appellant testified that he went to see Mr. Cooper "because his accounts suggested we had purchased more goods than we had". At that meeting Mr. Cooper produced what he referred to as a "reconciliation statement"; this was in the form of a list of twenty-three "outstanding invoices" which gave in each case the date, the file number and the cost of the goods supplied. After certain adjustments had been made this showed an amount of $3226.13 as still owing by the appellant to respondent. In the course of his evidence Mr. Cooper stated:

> " Bidesi said he would discuss outstanding invoices with accountants and if they were outstanding he would promptly settle the account. He would settle before the end of that month. He did not settle. "

Respondent then took action in the Supreme Court claiming the sum of $2198.13 representing the balance said to be owing after certain payments had been credited and some adjustments made. The learned trial Judge held that the evidence established this amount as owing and gave judgment accordingly.

In Mr. Ramrakha's submission the learned trial Judge was wrong in holding, as he did, that Mr. Cooper's evidence, which he accepted, established that when the parties met in April 1977 the appellant "accepted the reconciliation statement Ex.1 and asked for time to pay". Earlier in his statement Mr. Cooper said "Bidesi did not dispute any item on that statement at the meeting". He also stated in his evidence "Mr. Bidesi advised me he had financial problems. Apologised for delay in payment. He would see that account would be paid." As we read his evidence, it was that appellant agreed that he would pay the amount certified by his accountant to be owing.

In his evidence the appellant stated that he was objecting to paying for goods supplied otherwise than in response to an order from him in writing. The learned trial Judge held that appellant had not sent, as he claimed, two letters to the respondent company stating that the company was to supply goods only on his order. This issue was not argued before us on appeal, and we must take it therefore that the Judge's finding on that point cannot now be challenged.

The only question in issue is therefore: was there sufficient proof that the amount claimed was duly owing to the respondent in respect of good supplied and delivered to the appellant? Mr. Ramrakha's main contention on this point was that the learned trial Judge misquoted the witness Cooper when he said in his judgment that the appellant accepted the reconciliation statement and asked for time to pay. We have already quoted the extracts from Mr. Cooper's evidence to the effect that appellant said he would discuss the outstanding invoices with his accountants and would promptly pay if they were found to be outstanding. He also said that appellant raised no objection to the reconciliation statement.

We do not think that this evidence amounted to an unqualified promise to pay the amount shown as owing in that statement; but it did amount to a promise to pay what was found to be owing.

The amount claimed, for which judgment was given, was made up as follows:

| | | |
|---|---|---|
| Amount shown in reconciliation statement | | $3226.13 |
| Less: paid by appellant 5th May | $763.78 | |
| Discount deducted | 264.22 | 1028.00 |
| | | $2198.13 |

In his statement Mr. Cooper stated

> "Some discount was wrongly allowed. We are not claiming that."

When the reconciliation statement was made up the respondent produced copies of the invoices showing the goods sold to the appellant, and it was on these invoices that the statement was compiled. The company was however unable to produce, except in the case of five of the invoices, delivery books in which the goods were signed for by the appellant or his agent. Counsel in the Supreme Court contended that only these five had been fully authenticated and liability was denied in respect of the others. In his evidence Mr. Cooper deposed that because of the bulk of business and shortage of space these records had been stored away on different premises, and some had been destroyed by rats. The learned trial Judge however pointed out that the copies of invoices produced showed monthly sales during the relevant period September 1976 to January 1977; and that this course of business was confirmed generally by the witness Virendra Prasad, the appellant's manager at the time. The Judge accepted the evidence of the

invoices and held that goods were sold and delivered to the appellant accordingly.

His further finding which counsel contended was not borne out by the evidence, to the effect that appellant accepted the reconciliation statement, is set out in his judgment by way of confirmation of his finding regarding supply and delivery. It is true that the evidence of Mr. Cooper was not expressed in exactly those words; but the learned trial Judge does not rely on what he refers to as the acceptance by the appellant of the reconciliation statement as proof of the supply and delivery of the goods detailed in the invoices. His judgment as to the amount owing by appellant to respondent is based on his acceptance of the accuracy of the invoices. His finding that appellant accepted the reconciliation statement is expressed to be confirmation of the decisions he had already reached. So, even though that finding is not in exact accordance with the evidence of the witness Cooper, this cannot be held to upset his finding on the main issue.

In the result we are of the opinion that the learned trial Judge was fully justified in his finding that the amount for which he gave judgment was owing by the appellant to the respondent.

For these reasons the appeal is dismissed with costs to the respondent to be fixed by the Registrar if not agreed.

VICE PRESIDENT

JUDGE OF APPEAL

JUDGE OF APPEAL

SUVA,
27th November, 1981.