IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Appellate Jurisdiction
Civil Appeal No. 8 of 1980

BETWEEN: CORAL ISLAND MOTORS Appellant

A N D : NARAYAN REDDY f/n Reddy Respondent

Mr. A. Kuver, Counsel for the Appellant
Mr. J. Reddy, Counsel for the Respondent

J U D G M E N T

This is an appeal by the defendants against the decision of the learned magistrate in an action concerning goods sold by them to the plaintiff.

The grounds of appeal do not challenge the magistrate's findings of fact.

On 14.6.77 the plaintiff took delivery of a rice hulling machine from the defendants, a large firm with branches thoughout Fiji engaged in the sale and supply of motor/vehicles, and other machinery. The agreed price was $1700.00 and the plaintiff paid $818.00 cash and the balance was covered by a bill of sale.

Nur Ali, the defendant's mechanic, fitted the rice huller on the plaintiff's premises. On 19th June, 1977 when the plaintiff commenced operating it the machine broke down in that the screen broke. The defendant explains that the cylinder shaft was bent and was replaced by a new shaft.

The screen broke again. The plaintiff complained 9 times by 'phone and 3 times in person. Two new screens were fitted but broke.

The plaintiff then said he would not pay under the Bill of Sale until the machine was properly repaired. No one came to effect repairs for 4 months. On the 4th month the defendants re-possessed it for non-payment of the instalments under the Bill of Sale. By that time the plaintiff had told the defendants that he did not want it and purchased another elsewhere.

The learned magistrate found that it was not fit for the purpose for which it was intended and that the defendant failed to rectify the defects. Under S.17(a) Sale of Goods Act he gave judgment for the plaintiff for the refund of his $818.00.

The defendant appeals on the ground that the magistrate erred in applying S. 17(a) Sale of Goods Act;

that he erred in holding that the plaintiff was entitled to repudiate the contract although there had not been a breach of condition;

that the contract was for specific goods which the plaintiff had accepted and that the property in them had passed to the plaintiff.

Mr. Kuver, for the appellant submits that the plaintiff was not entitled to rely upon the seller's skill and judgment which is essential to S.17(a). I think it would be useful to set out subsection (b) also. The subsections reads as follows:-

> "Section 17. Subject to the provisions of this Ordinance and of any Ordinance in that behalf there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as follows:-
>
> (a) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:
>
> Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose;
>
> (b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:
>
> Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed;"

Mr. Kuver argued that the plaintiff was not allowed to rely upon the seller's skill and judgment because all he asked for was a machine for hulling rice.

There has been an abundance of litigation covering S. 14(a) and (b) of the English Sale of Goods Act which has exactly the same provisions.

As stated by the Judicial Commission of the Privy Council in Grant v. Aust. Knitting Mills 1936. App. Case 85 at 99 the buyer is entitled to the benefit of the implied condition that the goods are reasonably fit for the purpose for which they are supplied if that purpose is made known to the seller. In saying that he wanted the machine for hulling rice the plaintiff could not have made the purpose of the purchase more plain. Was the buyer in this case also entitled to rely upon the seller's skill and judgment? In Grant (supra) the Privy Council stated at p.99.

> " It is clear that the reliance must be brought home to the mind of the seller, expressly or by implication. The reliance will seldom be express, it will usually arise by implication from circumstances; thus - in a purchase from a retailer the reliance will in general be inferred from the fact that a buyer goes to the shop in the confidence that the trader has selected his stock with skill and judgment; the retailer need know nothing about the process of manufacture.----------
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> /goods sold must be, as they were in the present case goods of a description which it is in the course of the seller's business to supply."

The Privy Council also indicated that where the goods are obviously manufactured for a particular purpose that in itself shows the purpose for which the buyer requires them.

It can scarcely be necessary for me to comment further in applying/law as enunciated above to the facts of this case.

The appellants sell rice hulling machines. They obviously repair and maintain them. For what purpose can a person want a rice huller? The only answer to that is "for hulling rice." Clearly the buyer was relying upon the appellant's skill and judgment as one who deals in the purchase and re-sale of rice hulling machines as well as the more skillful aspect of installing, repairing and maintaining them.

There can be no doubt that there was an implied condition that the machine was fit for hulling rice. There has been no attempt by the appellants to argue that it was fit for that purpose. The machine during approximately 4 months did no useful hulling. The learned magistrate correctly concluded that it was not fit for the purpose for which it was sold.

Although it was not specifically raised in the Court below S. 14(h) also applies. GRANT (supra) at p.100 shows that the word "merchantable" means:-

> "-------that the article sold, if only meant for one particular use in ordinary course, is fit for that use."

The machine was sold as a rice huller and in order to be "merchantable" should hull rice. It failed in that requirement and therefore was not of merchantable quality.

S.14(b) will only apply if the article is sold by description. In Grant (supra) p.100 the P.C. pointed out that

> "---------there is a sale by description even if the buyer is buying something displayed before him on the counter; a thing is sold by description though it is specific, so long as it is sold not merely as the specific thing but as a thing corresponding to a description----------."

The article was sold as a rice huller when the customer described that that was what he wanted. There is nothing to suggest that the proviso to S. 14(b) applies in this case. No inspection would reveal the bent shaft. It could not be until the machine was installed that one would be able to detect operating defects.

Mr. Kuver, for the appellant, contended that since the purchaser had accepted the goods he was not by reason of S.14(1)(c) in position to reject them. He argued that there had been an acceptance under S. 37 which reads as follows:-

> "S.37. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them."

He says that any condition relating to the goods had become a warranty by reason of the acceptance.

Delivery is not synonymous with acceptance. The plaintiff could not discover before he received the huller that it had latent defects. He could only discover them by operating the machine and he has in equity a reasonable time in which to ascertain the defects and to inform the vendor of them and of his intention to repudiate. This is exactly what the buyer did. The appellants had the opportunity of putting the huller into a merchantable condition but they failed to do so in spite of the plaintiff's requests. They simply promised to do so and requested him to pay the instalments under the Bill of Sale.

The Bill of Sale required the balance of $817.00 to be paid at $150.00 per month on and from 31st July, 1981. The plaintiff did not pay any instalment because it had broken the screen before 5th July, 1977. Replacement screens were broken and the complainant said he would not pay under the bill of sale until the machine was made satisfactory. Up to 18th October, 1977 the plaintiff was unable to use it and prior to that date told them to take it away. He did not retain it for 4 months because of an unqualified acceptance but to allow the appellants to fulfill the conditions under S.17(a) & (b) which they failed to do. When on October 14th 1977 they came to try and remedy the defects the machine had already been rejected.

Acceptance was conditional on the machine being workable and the plaintiff was entitled to reject it within a reasonable time and he did so.

It is immaterial whether the conditions under S.17(a) & (b) had sunk to the level of warranties because the appellants have re-possessed the machine. Consequently the only issue is whether the plaintiff had received what he was entitled to under the contract. He had not and he is entitled at least to the refund of his $818.00 deposit.

A further aspect which the parties may have overlooked is that even if the appellant's interpretation of the facts were correct they are only entitled to the $818.00 due under the Bill of Sale. How much was the machine worth when seized? It was only 4 months old and had had very little use. There is no suggestion that the defects were due to any misuse. If the appellants contend that the plaintiff received value for money then on being repaired if this were possible its value

would be ~~nearly restored~~. The appellants could only at the most set off the value of the machine against the $818.00 due under the bill of sale. It must after repair have been worth more than $818.00 say $(X+818.00). The difference of $X.00 would have to be paid to the plaintiff. In the circumstances the appellants have not endeavoured to be fair and honest to the plaintiff even on their own interpretation of the facts.

The appeal is dismissed with costs to the respondent (plaintiff).

LAUTOKA,
26 August, 1981.

(Sgd.) J.T. Williams,
JUDGE