

IN THE SUPREME COURT OF FIJIAppellate JurisdictionCivil Appeal No. 11 of 1984

Between:

KANTI LAL & SONS LTD.APPELLANT

- and -

MAPLE DISTRIBUTORS LTD.RESPONDENT

Mr. M.P. Patel for the appellant  
Mr. H.M. Patel for the respondent

J U D G M E N T

I shall in this judgment refer to the appellant as the defendant and the respondent as the plaintiff.

The plaintiff in the Magistrate's Court sued the defendant for the sum of \$162 being the amount alleged to be owing to it for a rocking horse sold and delivered by it to the defendant firm on the 18th December, 1981.

The defendant in the Statement of Defence denied being indebted to the plaintiff or that the rocking horse was sold to him. He alleged that the rocking horse was left at the defendant's shop to be sold by the defendant for the plaintiff and if not sold the plaintiff would take the rocking horse back.

The defendant further alleges that despite numerous reminders the plaintiff has failed to take the rocking horse away.

As an alternative defence the defendant alleged

that if the Court finds there was a sale then the action is unenforceable by virtue of failure to comply with Section 6 of the Sale of Goods Act No. 14 of 1979.

On the 7th September, 1983, there was no Appearance by or for the defendant and the learned Magistrate called on the plaintiff to prove its case.

Mr. H.M. Patel called the Managing Director of the plaintiff company and judgment was given for the plaintiff for the sum claimed and costs.

On the 27th January, 1984, the defendant applied for an order to set aside the judgment. The Record does not disclose that the judgment was set aside but on the 28th March, 1984, the action was reheard before another Magistrate when judgment was again given for the plaintiff for the sum claimed.

From this judgment the defendant has appealed and has raised six grounds of appeal as under:

- "1. THAT the Learned Magistrate erred in law and in fact in holding that the Plaintiff was under no obligation to satisfy the requirements of Section 6 of the Sale of Goods Act when in fact according to the Plaintiff's evidence, which the Learned Magistrate believed, an invoice in respect of the sale was made which shows that it was a credit sale and not a cash sale as the Learned Magistrate has said, as Section 6 of the Sale of Goods Act requires a seller of goods on credit to make an invoice. The fact that invoice was made, according to the Plaintiff's evidence, proves that the sale was a credit sale and not a cash sale.
2. THAT an admission by the Plaintiff that he made an invoice in respect of the said sale was sufficient for the Learned Magistrate to hold that the sale was a credit sale and not a cash sale and as such it required full compliance with Section 6 of the Sale of Goods Act.
3. THAT as the Plaintiff had made an invoice and posted the same a day later after sending the rocking horse instead of sending the article sold and the invoice at the same time to the Defendant as required by the said Act, and as the Plaintiff failed to tender the said invoice as evidence to

the Court on the hearing of this case the Plaintiff had breached Section 6 of the Sale of Goods Act which made the Plaintiff's action unenforceable.

4. THAT the Learned Magistrate misdirected himself and erred in holding the view that the transaction was a cash sale and not a credit sale when there was no evidence of cash sale before the Court.
5. THAT the Learned Magistrate should have held that as the article sold and the invoice were not sent together to the Defendant as required by Section 6 of the Sale of Goods Act but the invoice was posted one day later to the Defendant, and as the invoice was not tendered to the Court during the course of hearing to see whether the Plaintiff had complied with Section 6 of the Sale of Goods Act there was a breach of Section 6 of the Sale of Goods Act.
6. THAT the findings and the decision of the Learned Magistrate are unreasonable and cannot be supported having regard to the evidence."

Section 6 of the Sale of Goods Act provides as follows :

"6. - (1) A sale of goods on credit or an agreement to sell goods on credit in the course of trade shall not be enforceable by action at the suit of the seller unless -

- (a) at the time of the sale or agreement to sell, an invoice or docket, serially numbered, be made in writing in duplicate, both original and duplicate containing -
  - (i) the serial number;
  - (ii) the date of the transaction;
  - (iii) the name of the buyer;
  - (iv) the nature and, except in the case of goods exempted from this provision by order of the Minister, the quantity of the goods, in the English language and in figures; and
  - (v) the price in English words or figures; and
- (b) at the time of delivery of the goods, the original or duplicate of the invoice or docket be delivered to the buyer or to some person to whom the goods may properly be delivered on his behalf:

Provided that the provisions of this section shall not apply to an agreement to sell, over a period of time, goods of nature such as are commonly delivered at regular intervals, such as newspapers, bread or milk, or to any sale in pursuance of such agreement, where a written order signed by the buyer or his agent in that behalf is given to the seller at the time of the agreement to sell.

(2) In this section -

"docket" includes a packing note, delivery note or other printed form customarily used for recording the particulars of a sale;

"sale or agreement to sell in the course of trade" means a sale or an agreement to sell to a person by or on behalf of a person who carries on the business of selling goods."

When the case was reheard only the Managing Director of the plaintiff company was called to give evidence. His evidence was even more brief than when he gave evidence at the first hearing.

For some unexplained reason this witness was not asked to produce a copy of the invoice he alleged he had made out on the day of the sale and posted to the defendant. Objection was taken by Mr. Singh to his referring to a carbon copy but his objection was overruled. The Record does not disclose that he made any reference to the copy of the invoice and no effort was made by him to tender it.

When the witness endeavoured to tender a delivery book, Mr. Singh objected on the grounds that the relevant delivery note was a carbon copy and this time the objection was upheld.

The learned Magistrate accepted the evidence of the plaintiff and found as a fact that the transaction was a sale and that the rocking horse was delivered to the defendant on or about the 18th day of December, 1981.

The learned Magistrate then considered whether the plaintiff was required to comply with section 6 of the Sales of Goods Act. He held as a fact that the sale was not

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a sale on credit but a cash sale. He stated that there was no stipulation of credit and that on this point he accepted the evidence of the plaintiff and rejected that of the defendant.

The Record does not disclose that either of the two witnesses were asked or stated that the transaction was a cash sale.

On the contrary, the evidence discloses that the defendant rang from Nadi and on being advised about the price of the rocking horse requested that the horse be sent by fast freight.

The plaintiff made out an invoice on the day he sent the horse and posted the original to the defendant. There was no mention of a C.O.D. (cash on delivery) docket.

That evidence clearly indicates a credit sale and the Magistrate erred in holding that the transaction was a cash sale and that section 6 of the Sale of Goods Act had no application.

As was pointed out by Hammett C.J. in Safia Bibi v. Jora Singh & Sons 16 F.L.R. 25 at p. 31 when referring to the corresponding section 7 in the Sale of Goods Act Cap.209 said:

"The onus of proof of compliance with section 7 did rest on the plaintiff/respondent in this case. That onus was not discharged. There was no evidence that even if invoices had been delivered to the appellant, as Sohan Singh contended, those invoices did contain all the information which is required by this section".

Those words have application in the instant case. There was no evidence before the learned Magistrate that the plaintiff had complied with Section 6 of the Sale of Goods Act. The onus was on the plaintiff to establish this fact.

The appeal is allowed, the judgment of the

Court below set aside and judgment is ordered to be entered for the defendant with costs of the appeal and the Court below. Other than the costs thrown away by the defendant's failure to appear at the first hearing and the application to set aside the judgment in respect of which the respondent is to have the costs.

*R. G. Kermod*

(R.G. KERMODE)

J U D G E

S U V A,

28<sup>th</sup> JANUARY, 1985