

Tika Ram Vs. Daulat Ram

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Court : Allahabad

Decided On : May-01-1924

Reported in : (1924)ILR46All465; 80Ind.Cas.661

Judge : Walsh, Acting C.J. and ;Neave, J.

Appellant : Tika Ram

Respondent : Daulat Ram

Judgement :

Walsh, Acting C.J. and Neave, J.

1. This is an appeal from a judgment of the Subordinate Judge of Budaun, returning a plaint on the ground of want of jurisdiction. It illustrates the importance of the questions of this character which arise, and it also illustrates the necessity of the courts being somewhat careful in applying the law so as not to impose an unreasonable and unanticipated burden upon commercial men, of being dragged from their place of business to defend suits, 800 miles away in parts of the world with which they have no concern whatever. This inconvenience is illustrated by the misfortune that we have not had the advantage of hearing counsel in this case on behalf of the respondent who resides and carries on business in Bombay. Dr. Katju, however, on behalf of the appellant, has argued the matter very fully, and has really taken us over all the ground which is relevant. The suit arises out of a relationship of the following character:

The plaintiff carries on some sort of trade, probably in grain, though he does not say so, at Bilsa, in the district of Budaun. The defendant works as a commission agent, what is known as pakka arhatia, probably corresponding to what is known in England as del credere agent, that, is to say, an agent or factor who, being entrusted with the goods of His principal to dispose of to the best advantage, is in lawful possession of them with a general power to deal with them without reference to his principal, but guaranteeing the solvency of the sub-purchasers, and while entitled to charge against his principal his expenses, and entitled also to an indemnity from his principal against all losses resulting from carrying out his duty, is under an obligation to pay to the plaintiff, his principal, the amount due after the accounts have been properly settled.

2. The main question is whether, in this suit which is brought by the plaintiff to recover money alleged to be due from the defendant commission agent on account of profits on sales improperly retained by the defendant, the cause of action or any part of it arose within the jurisdiction of Budaun. It is clear from the plaint that the plaintiff's legal adviser had some doubt about it, unless it could be established in fact that the conversation resulting in the contract had taken place within the local limits of the jurisdiction of the court, or unless some express agreement had been made between the parties that payment should be made by the defendant to the plaintiff at Bilsa, or unless in the alternative, some trade usage requiring payment to be made in that way could be established. The pleader went out, of his way to allege all three. That part of the case has broken down. The learned Judge finds that this is not a case, in spite of two authorities to which he was referred, decided by the Bombay High Court, in which the agent had to render an account at the

principal's place of business. He finds against the express agreement which was set up by the plaintiff and also against the alleged trade custom, which is always the desperate resort of anybody who knows that his case on the facts is going to break down. A litigant seldom alleges a custom for a particular practice unless he is satisfied that he has no other case to support it. The learned Judge is satisfied that the palpably false allegations which have been made in this case, have been made for the express purpose, which unfortunately is too often the case, of dragging the other party 800 miles from Bombay, and as a counter stroke to the suit of the defendant in Bombay, which will necessitate the plaintiff going there to defend it. Unfortunately, sitting in this Court, one has become too familiar with these false allegations, and palpably hollow suggestions of custom, and insidious suggestions of law, which are merely adopted for the dishonest purpose of suing a man who is in Bombay, and who the plaintiff knows quite well will be unable to appear in the United Provinces to defend the suit.

3. The learned Judge has dealt with the matter with considerable acumen, and in particular, we agree with the following passage:

It is not to be supposed that even if there was an express agreement to pay at the arhatia's place of business, and also to settle accounts there, nonetheless, payment would not be made by post and a statement of account would not be sent by post.

4. In other words, the learned Judge rightly thinks that the mere fact that payments have been made by, post and statements of account sent by post to Budaun is not conclusive on the question of where payment ought, under the contract, to be made. The ordinary maxim that a debtor must find his creditor, and that if no express agreement is made as to the place of payment, the debtor must pay the creditor where he can find him, while, of course, perfectly true, if understood, is unfortunately frequently quoted and sought to be applied to circumstances to which it has no relation at all. A little knowledge is a dangerous thing, and the capacity to know by heart and quote at random legal maxims without reference to the circumstances to which they are applied, is in itself a danger and frequently leads to misunderstanding in the lower courts. There is a great difference between three classes of contract in relation to which this maxim may be discussed. There is the ordinary case of purchaser and vendor, to which, of course, it is, in the main, generally applicable. If a purchaser in Allahabad applies to a tradesman in Calcutta to sell him goods, the purchaser in Allahabad must pay the vendor in Calcutta unless some other arrangement is made. The second class is a class of principal and agent, which may also colloquially be described as master and servant. It frequently happens that a large establishment dealing say, in carpets at Mirzapur, or cotton in Agra, or some other large commercial centre, has branch businesses presided over by managers who are in a sense, agents. They are agents to pledge their principal's credit; they are agents in many of the respects contemplated by the Contract Act, and they are frequently paid by commission on results. But in such cases as those, it may often be that the place at which the agent or branch manager is, by his contract or unwritten understanding with his principal, bound to account and bound to pay and discharge his liabilities, is the head place of business. But it is a very different matter in a case of this kind where the defendant is not a servant at all of the plaintiff, is totally independent of him, and is merely a contractor earning his living generally as a commission agent holding himself out to persons all over India, it may be, who are willing to seek and utilize his services in the markets of Bombay. In our view a totally different set of considerations applies to such persons. Unless the contract clearly indicates the contrary, an agent of this kind who becomes a factor entrusted with goods of his principal with wide powers has, no doubt, under the appropriate section of the Contract Act, eventually to account to his principal, but the accounting must necessarily be done at the place where all the business is transacted. The plaintiff is entitled to see the account, and if commercial men stood on strict technicalities, which of course they never do, the plaintiff might have to go to Bombay to see his agent's account. But he has only got to ask to see a copy and of course it would be sent to him by post. In the same way, the plaintiff can no doubt get payment of every thing which is due to him by writing to the defendant and asking him to provide for payment to be made at the plaintiff's place of business, independently of whether the defendant is bound to make payment in that way or not. Persons who contract with agents 800 miles away, and who

wish to place their agents under an obligation to pay, or be sued, in the foreign district, must, in our view, be careful to provide expressly for that in the contract. It is impossible to draw the inference that that was the intention of the agent, at any rate, and as it takes two persons to make a contract, the law cannot draw an inference which can not be reasonably attributed to both parties to the contract. Dr. Katju, in his very thorough argument on this point referred us to one or two authorities which, it may be suggested, had decided the contrary. There is one decision in particular of Mr. Justice IYABJI, in *Motilal Pratabchand v. Surajmal Joharmal* (1904) I.L.R. 30 Bom. 167, in which that learned Judge appears to consider that the mere fact that the instructions were sent by the plaintiff, the principal, in Bombay from Bombay, was sufficient to give jurisdiction in Bombay. The learned Judge also relied upon the fact that accounts were rendered and the demand for payment was made from Bombay. Without going so far as to say that we should have decided the case the other way, we are bound to say that we are not entirely in accord with the decision. The first ground, namely, that instructions were issued from Bombay, would be fatal to every defence of this kind relating to jurisdiction, and we are satisfied that it has no justification in law. The other grounds on which he decided appear to be based upon the authority of an English case, *Robey v. The Snaefell Mining Co. Ltd.* (1887) L.R. 20 Q.B.D. 152, which, although not entirely without assistance in a discussion of this problem, had no application to the particular case which the learned Judge was deciding. That was a question of payment for the delivery, erection and sale of machinery by the plaintiffs to the defendants. The latter were in the Isle of Man and the former were at Lincoln. Goods had been ordered by the defendants in the Isle of Man, and as they had not stipulated any special place for payment, it was held that the ordinary rule must apply, that the debtor must find the creditor, and that they ought to pay the plaintiff at Lincoln. That has no application to a case of the kind we have to consider, with regard, to transactions by an independent agent on commission.

5. The other case was *Kuthiravattam v. R. Foulkes* (1887) L.R. 20 Q.B.D. 152. There, the Madras High Court seems to have held that the final offer was a decisive point in deciding whether part of a cause of action arose within the jurisdiction. That question may have been relevant for the decision of the particular case, but the English cases which were cited in the judgment in support of that proposition were decided on a totally different question and really do not bear out the principle for which they appear to have been cited in the Madras case. It is sufficient to say, at any rate, that the point as to the final offer, if it is ever a decisive point at all, has no bearing upon a contract of this kind, the acceptance of which took place and execution of which was carried out wholly in the Province of Bombay.

6. So far as it goes, the authority to which our attention was drawn in *Salig Ram v. Chuba Mal* (1911) 8 A.L.J. 1160 appears to bear out our view.

7. We dismiss the appeal.

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