

Phoolchand and ors. Vs. Laxminarain

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Court : Rajasthan

Decided On : Mar-04-1966

Reported in : AIR1967Raj151

Judge : Kan Singh, J.

Acts : [Contract Act, 1872](#) - Sections 211 and 213; Limitation Act, 1908 - Schedule - Articles 65, 89 and 90; [Limitation Act, 1963](#) - Schedule - Articles 3, 4 and 27

Appeal No. : Second Appeal No. 305 of 1961

Appellant : Phoolchand and ors.

Respondent : Laxminarain

Advocate for Def. : B.N. Chanda and; Lekh Raj, Adv.

Advocate for Pet/Ap. : S.K. Mal, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a defendant's second appeal and is directed against an appellate Judgment and decree of the learned District Judge, Jodhpur dated 2nd May, 1961 whereby in dismissing the defendant's appeal against the judgment and decree of

the Civil Judge, Jodhpur the learned Judge affirmed the decree for a sum of Rs. 6,694/10/-. The main question that has been canvassed before me, as was done before the learned District Judge, was about the suit being within limitation. The relevant facts may be recounted as follows:

2. Respondent Laxminarain commenced this action on 3rd December, 1957. It was averred by him that the defendant was a member of the Bullion Association Limited, Jodhpur and was carrying on bullion business as such. According to the plaintiff the defendant was constituted by him as his pucca Adatia and he started having dealings in the sale or purchase of bullion through the defendant. According to the usage prevalent in that Bullion Association Migsar Sud 5 of Samvat Year 2011 (equivalent to 30th November, 1954) was the day of Vaida for the relevant transaction. For that vaida the plaintiff, according to him, had sold through the agency of the defendant 51 silver bars at rates ranging from 159 rupees per hundred tolas to 159 rupees 33 Paisas per hundred tolas. This was sometime before 25th November, 1954.

It was the plaintiff's case that on 25th November, 1954 he asked the defendant's muneem Kundanlal and plaintiff's son to purchase 51 silver bars on his account, so that the previous transaction could be squared up. The plaintiff proceeded to say that the defendant's muneem and his son procrastinated and did not give any satisfactory reply. At this the plaintiff sent a telegram to the defendant to purchase 51 silver bars as already instructed, so that his outstanding transaction of sale could be squared up. This led to a telegram in rejoinder from the defendant. According to the plaintiff, as a result of these transactions with the defendant, he was entitled to get Rs. 6,694-10-0 as his profit. The defendant denied his liability and stated that he had done the business on behalf of the plaintiff in Kachchi Adat. He further pleaded that the plaintiff had sold 51 silver bars of an earlier Vaida which was carried forward and in order to square up that transaction the plaintiff had purchased 51 silver bars in all on two dates, i.e. 3rd November, 1954 and 24th November 1954.

As a result of these transactions, according to the defendant, the latter had to realise Rs. 1,087 from the plaintiff. For this the defendant filed a separate suit

against the respondent. Thus, according to the defendant, the plaintiff was not entitled to have any money from him. The plea of limitation was also raised by the defendant. The learned Civil Judge framed a number of issues but I am at this stage concerned only about the question of limitation and therefore it is not necessary to advert to the several issues,

3. The learned Civil Judge held that the transactions had been entered into by the defendant with the plaintiff in pucca Adat. He also held that the defendant's version of the transactions was wrong and on the evidence recorded by him he held that the plaintiff's version was correct. In considering the question of limitation the learned Civil Judge observed that in Vaida transactions the date that is fixed for the making of the payments is the date from which the limitation begins. According to him, in the present case as the Vaida was of Migsar Sud 5 of Samvat Year 2011 and the date of making payments has been referred to in the evidence as 'ballan' which fell on migsar Sud 8 of Samvat Year 2011 corresponding to 3rd December, 1954 the suit was held by him to be within time as the same was filed on 3rd December 1957 as already observed.

In coming to the conclusion that the date on which the payment was to be made was 3rd December 1954 the learned Civil Judge relied on the statement of the defendant himself and on the entries that he had made in his account books. The learned Civil Judge observed that the entries in the defendant's books went to show that even in respect of the past transactions the defendant used to make the credit of debit entries three days after the date of the Vaida, that is, on the 'ballan' day. The learned Civil Judge repelled the defendant's argument to the effect that the agency should be taken to have been terminated on 25th November, 1954, so that there could be no question of the period of limitation starting from that date.

4. In appeal before the learned District Judge it was contended on behalf of the defendant-appellant that the date of so-called 'ballan' would not in the circumstances furnish the starting point of limitation. It was submitted that on the plaintiff's own case as set up in the plaint and as would be evident from the telegraphic messages exchanged between the parties that the defendant was accused of misconduct and consequently the suit would be covered by Article 90

of the Limitation Act and as the plaintiff had come to know of the misconduct on the part of the defendant on 26th November, 1954 at all events the running of the period of the limitation could not be postponed to 3rd December, 1954.

It was reiterated on behalf of the plaintiff-respondent before the learned District Judge that the crucial date in the case was 3rd December 1954 when the money recoverable from the defendant would become payable. As regards the question of the termination of the agency it was pleaded by the plaintiff-respondent that the agency could terminate only when everything had been completed according to terms thereof and this could be said to have been so done only when the accounts were made up on the 'ballan' day. Thus, according to the plaintiff, the period of limitation could not have commenced anterior to 3rd December 1954. The question to which the learned District Judge applied himself pointedly was whether in the circumstances the case was governed by Article 89 or by 90 of the Limitation Act.

As considerable arguments had been directed at the reasoning of the learned District Judge I find it convenient to state the reasons that prevailed with the learned District Judge in his own words:

'As has been, this is a suit by the principal against the agent for the recovery of the profit received by the latter on his behalf which has not been accounted for. Plainly, therefore, the suit is governed by Article 89 of the First Schedule to the Limitation Act, Article 90 can possibly have no application because the plaintiff has not raised the suit on the ground of neglect or misconduct of the defendant. It may be that the defendant did not adhere to the plaintiff's instructions regarding the purchase of the bars and he might be said to be guilty of misconduct, but there is no requirement of law that a principal is bound to sue the defendant for his neglect or misconduct. For obvious reasons, it is open to the principal to base his claim on the rights according to him in terms of the agency. As such, the plaintiff was well within his rights to institute the suit against the defendant on the basis of his right as principal, and there was nothing to prevent him from ignoring any neglect or misconduct of the defendant. Since Article 90 of the First Schedule to the Limitation Act governs the 'other suits' by principals against agents for neglect or

misconduct, it is a residuary article with regard to actions between principal and agent and can be applied only if no other article is applicable to the facts of the case. As has been mentioned above, the plaintiff claimed that a certain sum of money was received by the defendant as his agent, on his behalf, which the defendant had not accounted for, and so Article 89 is applicable to the facts of the present case, not Article 90.

'It would thus be seen that the plaintiff's suit is governed by Article 89, and the remaining question for consideration is about the point of time from which the period of limitation is to be calculated. The article provides two terminus-a-quo; (i) when the account is during the continuance of the agency, demanded and refused, and (ii) where no such demand is made, when the agency terminated. There is no plea in the instant case that the account was demanded and was refused, and so it has to be seen on what date the agency terminated so as to start the period of limitation.

'In bullion transactions of the nature in dispute, each transaction is a separate contract, although the purpose may be to square up the deals. The date of 'Vaida' is therefore relevant for each such transaction, and the date of 'ballan' is an integral part of the terms of the contract. It cannot therefore be said that one contract ends on the date when a cross-contract of similar size is entered into, or even on the date of the 'vaida' for the two transactions. It is the date of 'ballan' on which the profits and losses are calculated and become payable, and so the date of making a cross transaction cannot give a start to the period of limitation because under the terms of the contracts the parties never contemplated any payments before the 'ballan' date.'

5. In attacking the judgment of the learned District Judge the learned counsel for the appellant has submitted that the learned Judge was in error in applying Article 89 of the Limitation Act to the case. According to the learned counsel the proper article that could be attracted in the facts and the circumstances of the case was Article 90. He proceeds to say that on the plaintiff's own showing the defendant disregarded his direction to purchase 51 silver bars on 25th November, 1954. This, according to the learned counsel, was certainly a case of neglect on the part

of the agent, if not positively a case of misconduct. He Further urges that from the attitude taken by the plaintiff himself while addressing the defendant by the several telegrams which are on record, it is a case where dishonesty has been imputed to the defendant and this will make it a case of misconduct on the part of the defendant.

The learned counsel then submitted in the alternative that even if Article 89 were held applicable the starting point of limitation will still be earlier to 3rd December 1954 and the suit which was filed on 3rd December 1957 would yet be clearly time barred. The learned counsel in elaboration of his argument pointed out that it is a case where it cannot be said that the actual transaction of purchase had been entered into by the defendant, so that the outstanding transaction of sale of 51 bars and the cross transaction of purchase would fall to be dealt with only on the 'ballan' day that is 3rd December 1954. According to the learned counsel it is a case of a clear breach of plaintiff's direction as a result of which no transaction of purchase was entered into and therefore in the circumstances whatever liability was to arise had so arisen on the date of the alleged breach of such direction.

Therefore according to the learned counsel the suit should have been filed within a period of three years from the date of the alleged breach of the plaintiff's direction. As such according to him the running of limitation could not be deferred to a later date as is sought to be made out by the plaintiff. At any rate, according to the learned counsel the agency came to an end when the defendant declined to enter into any transaction of purchase as desired by the plaintiff. Learned counsel maintains that even if this is not so, on any consideration the business will be taken to have come to an end on the day of the Vaida, i.e. 30th November, 1954 because thereafter no business could be transacted.

The question of settlement of account, if any, according to the learned counsel cannot keep the agency alive and the fact that account may be gone into at a later date will not furnish by itself any cause of action. The learned counsel added that in no case could it be said that by not entering into the second transaction of purchase for the plaintiff the defendant had received any money as could be the subject matter of accounting between them. Here again, he takes his stand on his

earlier submission that it is a case of breach of a direction and thus a breach of a contract which entailed the liability, if any, then and there.

6. The learned counsel also contended that the courts below have not properly computed the damages on account of the alleged breach of the instructions by the defendant. He also raised the plea that the defendant did not have a proper opportunity to lead his evidence.

7. The learned counsel invited my attention to *A.C. Mukerji v. Municipal Board, Benaras*, AIR 1924 All 467, and *Sri Krishna Chandra Gajpati Narayan Deo v. K. Hanumantha Rao*, AIR 1950 Orissa 241 for showing that disregard of instructions by an agent is tantamount to misconduct within the meaning of Article 90 of the Limitation Act. For showing that this would certainly be negligence If not misconduct he referred to *Roop Kishore Agarwal v. Kesrimal*, ILR (1959) 9 Raj 938. On the same aspect be referred to *Pannalal Jankidas, a firm v. Mohanlal*, AIR 1951 SC 144, *Ram Dhan v. Lal Chand*, AIR 1931 Lah 302(1) and *Sheo Ghulam v. Salik Ram*, AIR 1924 All 481 (FB).

In support of his submission that the business of an agency came to an end with the completion of the business on 30th November, 1954 he placed reliance on *Gordhandas v. Firm of Gokal Khataoo*, AIR 1926 Sind 264, *Manindra Chandra Nandi v. Aswini Kumar Acharjya*, AIR 1921 Cal 185, *Firm Gokal Chand Gian Chand and Co., Amritsar v. Punjab National Bank Ltd., Amritsar*, AIR 1961 Punj 180, *Ruchiram Sukha Nand v. Charan Das*, AIR 1928 Lah 833, *Hingu Lal v. Sarju Prasad*, AIR 1937 All 363, and *K. Belli Gowder v. Emperor*, AIR 1934 Mad 691(2). To reinforce his other submission that it is not a case of money that could be said to have been received by the defendant on plaintiff's account he invited my attention to *Jasraj v. Devichand*, ILR (1952) 2 Raj 459 and *Deorao Zolba v. Laxmansing Bania*, AIR 1943 Nag 227.

The learned counsel also adverted to the characteristic of a pucca Adatia and he put emphasis on the position of a pucca Adatia visa-vis his constituent to be of a principal and as such he had no liability to render any account to his constituent and each individual transaction has to be viewed as a separate contract and if any contract is breached then the liability of the pucca adatiya will accrue then and

there and will not be dependant at all on accounting. Learned counsel submits that it is open to a pucca Adatiya to disregard the instructions of his constituent where he asks him to enter into any cross transaction for the constituent. In such a situation the learned counsel maintains that all that the pucca Adatiya has to do is to inform his constituent that he would not be carrying; out his instructions and thereafter the constituent is to care for himself by entering into any such covering transaction through someone else. He referred to *Balkrishan and Co. v. Ram Nath Saighal*, AIR 1940 Lah 195 and *Shop Baksiram Rodmal, Akola v. Firm Jasroon Shrinath Harda*, AIR 1948 Nag 173.

8. Sarvashri Chanda and L. R. Mehta who argued the case for the respondent submitted that as the transactions were entered into between the parties in accordance with the established usage of the Bullion Association of which the defendant was a member, the amount that will be payable as a result of squaring up of the transactions will be so payable only after the necessary formalities are done on the Dalian day. Till then, the learned counsel proceeded to argue , the plaintiff will be in no position to file any suit. It is pointed out by the learned counsel for the respondent that it should make, no difference as regards the fate of the case whether the instructions given by the plaintiff to the defendant for the purchase of 51 Silver bars on 26th November, 1954 were actually carried out or as in me present case were disregarded.

It is urged by them that the contract of agency between the plaintiff and the defendant was one in the nature of a standing contract for the period of the Vaida and it is only when everything has been done according to the usage of the Association by making a clearance of the outstanding transaction by taking accounts with the defendant can the cause of action against the defendant be said to have actually arisen. This, according to them, was on 3rd December, 1957 and it was within limitation. Learned counsel submit that when between a principal and an agent there are multiple transactions for a particular Vaida then the net result of such transactions is to be ascertained with a view to finding out the liability of one party towards the other and each individual transaction cannot be taken in isolation.

In this behalf they revived the contention that they had advanced in the two courts below that according to the defendant's own course of dealing he would be making the entries in his books three days after the Vaida day, that is, on the date of 'ballan'. As regards the applicability of Articles 89 and 90 to the case the learned counsel submit that Article 90 is a residual article and governs only cases of neglect or misconduct on the part of an agent which are of tortuous nature. Learned counsel maintain that if there is any case of neglect or misconduct in the course of dealings that can certainly be taken note of while settling the accounts between the parties and from that alone the case will not be taken out of the ambit of Article 89 of the Limitation Act.

Learned counsel also submit that in essence the transactions were of sale and purchase though the parties might not be accepting the actual deliveries and therefore the date for performance of such transactions of sale and purchase would be the Vaida date and according to the usage of the Association actual delivery could be asked for only on the 'ballan' day and so could the difference in the prices of the transactions of sale and purchase be demanded on that day, if no delivery is to be given or taken. Learned counsel submit that Articles 89 and 90 alone will not exhaust the relevant provisions governing limitation for suits of this nature and according to them it is a case that would come under Article 65 or Article 88. The learned counsel for the respondent invited my attention to *Ramgopal Chunilal v. Ramsarup Baldevdas*, AIR 1934 Bom 91, *Firm Ram Dev Jai Dev v. Seth Kaku*, AIR 1950 EP 92, *Harakchand Taraohand v. Sumatilal Chunilal*, AIR 1982 Bom 25, *Uderam Premasukh v. Shivbhajan Rampratab*, AIR 1920 Bom 78 and *Lakhmi Chand v. Firm Chhajju Mal Ratan Lal*, AIR 1926 Lah 200.

As for showing that even where the agent has not carried out the instructions of the principal for entering into a cross transaction to cover up an earlier transaction the agent will still be placed in the same position as he would have been on carrying out the instructions of the constituent, the learned counsel invited my attention to *Firm Ganpat Mal Sundar Das v. Firm Khersingh Balwant Singh and Co.*, AIR 1937 Lah 581, *Ulfatrai Hukmchand v. Nagarmal Gopimal*, AIR 1941 Bom 211 and *Michael v. Hart and Co.*, (1901) 2 K. B. 867. The learned counsel also cited *Babu Ram v. Ram Dayal*, (1890) ILR 12 All 541 and *W. R. Fink v. Buldeo*

Dass, (1899) ILR 26 Cal 715 for showing that in a case like the present one the agency would not terminate with the transactions but would subsist till the agent renders accounts and makes the payment.

9. Before I proceed to deal with the question of limitation it will be convenient to dispose of the other contentions raised by the learned counsel for the appellant namely, about the computation of the damages resulting from the breach of instructions or the defendant not having had the proper opportunity to lead the evidence. It is evident from the judgment of the learned District Judge that the learned counsel for the defendant in the court below confined his argument only to issue No. 3 which was about limitation. It was on this stand taken by the learned counsel that the learned District Judge not only did not refer to the other issues but did not go into the question at all.

The learned District Judge has again noted in Para 12 of his judgment that though in his opening address the learned counsel for the appellant (defendant) raised an argument that the defendant had not been afforded adequate opportunity to lead his evidence yet, he gave up that plea during the course of his reply. This clearly implies that these two pleas which are now sought to be resuscitated before me have deliberately been abandoned in the court below with the result that that court has not gone into these pleas and has not expressed any opinion regarding their tenability. In the circumstances I am not inclined to entertain these pleas again at this late stage.

10. In examining the question of limitation I have only to proceed on the basis of the plaintiff's version of the transaction as the defendant's story has been discarded, that is, the basis for consideration of the question is that from before 25th November, 1954 the transaction of sale of 51 silver bars by the plaintiff at the rates ranging from Rs. 159 per hundred tolas to Rs. 159.33 per hundred tolas was outstanding and on 25th November, 1954 the plaintiff directed the defendant to purchase 51 bars of silver to square up the earlier transaction and this direction was disregarded. I have also to take it that the relationship between the plaintiff and the defendant was that of a constituent and a pucca Adatiya.

In considering the question of limitation in a case a court has naturally to ask itself the question as to what is the nature of the right of the plaintiff and when it could be said to have arisen. In other words, it has to examine the question as to what are the fundamental facts that can be said to constitute the plaintiff's cause of action and when the cause of action can be said to have arisen. Once an answer is round to this question then the court has to set its sight on the various articles of the Limitation Act with a view to seeing as to by which article the particular suit would be governed. In doing so it has to be kept in view that between some articles there is at times overlapping and a suit may seem to fall in more than one articles. If on an examination of the several articles as may appear to be relevant the court cannot find any article in which the suit would clearly fall then the court has to fall back upon the residual article.

The ascertaining of the plaintiff's right or for that matter the cause of action will not present much difficulty where the contract between the parties, where suit arises out of such a contract, is evidenced by an instrument. The court is faced with some difficulty where there is no agreement in writing. In the present case parties were carrying on their dealings without there being any agreement in writing between them. But at the same time it cannot be gainsaid that as between a constituent and a pucca Adatiya the relationship will be taken to be governed by the custom or the usage of the Association under whose aegis the trading was done. As such for finding out as to how and when the plaintiff in the present case can be said to acquire his right of action one has to see as to what was the usage of the Association and how the parties were conducting themselves.

The learned Civil Judge after examining the evidence and also taking note of the entries made by the defendant in his own books came to the conclusion that the date of making payment which is called 'ballan' was Masgsar Sud 8 of Samvat Year 2011 corresponding to 3rd December, 1954. The learned District Judge, as will be clear from the passages from his judgment extracted above, observed that in bullion transactions the date of Vaida was relevant for each transaction and the date of 'ballan' was an integral part of the terms of the contract. He, therefore, came to the conclusion that it is the date of the 'ballan' on which the profits and losses are calculated and become payable and not the dates when a transaction

or cross transaction is entered into that would furnish the starting point for the period of limitation. He came to a clear finding that under the terms of the contract the parties never contemplated any payments before the 'ballan' day.

11. The relationship of a constituted and his pucca Adatiya is of a complex nature and courts have observed time and again that this relationship defies an exact definition or an easy description. This system of pucca Adatiya has been traced to the genius of the people of the Bombay commercial world and by the exigencies of commerce this system has now found its way to other markets in India. But it has also been recognised that when the system was adopted at other places it was affected by local customs of individual markets (vide observations in para 10 in AIR 1948 Nag 173). As such while judging the rights and obligations of a pucca Adatiya and his constituent in a particular market, though the court has to keep in view the main characteristic of the relationship of a pucca Adaiiya and his constituent as have been evolved by the Bombay commercial world, the conditions of the local markets have also to be taken due note of.

There has been so much change in the adoption of this system at various places that the varying shades of this relationship are 'reflected in judicial decisions. In some cases it has been held that a pucca Adatiya is a principal in every sense of the term with his constituent so much so that he is not liable to render any account to him. It has also been held that a pucca Adatiya may even disregard the direction of his constituent. In Gopal Das Parmannand v. Muf Raj, AIR 1937 Lah 389 it was held that where a transaction has taken place between a pucca Adatiya and his constituent the transaction must be regarded as a contract between a principal and a principal. Similar opinion was expressed in AIR 1937 Lah 581 and AIR 1940 Lah 195.

In the last mentioned case it was held that as between a pucca Adatiya and his constituent there was no relationship of a principal and an agent as would justify a demand by the constituent of an account. According to the learned Judge the only claim which can be made against a constituent by a pucca Adatiya is for a liquidated sum. In AIR 1948 Nag 173 from the characteristic of pakki Adatiya the learned Judges concluded that a pucca Adatiya who had entered into a

transaction of sale or purchase on behalf of his constituent has a right to keep that contract outstanding till the due date or to cover it with a cross contract. Even if the constituent subsequently gives a second order to the pucca Adatiya to enter into a cross contract to cover the first contract the pucca Adatiya is not bound to carry out the second order though all that he is required to do is to inform the constituent, so that he may put through his order through some other pucca Adatiya.

As to what are the incidents of the relationship between a pucca Adatiya and his up-country constituent and whether there is a liability of Adatiya to account to his constituent had been exhaustively surveyed by a Full Bench of the East Punjab High Court as it then was in AIR 1950 E. P. 92 (FB). The Bench consisted of S. R. Das C. J. as he then was and of Kapur J., as he then was in the East Punjab High Court besides Khosla J. The learned Chief Justice who delivered the judgment made a survey of all relevant case law and summarised his conclusion as follows :--

'The main incidents of the relationship between an up-country constituent and the pucca Arhtia are as follows:--

(1) A pucca Arhtia is an agent employed for reward but he is an agent of a special type, the ordinary incidents of agency having, in thier application to the Pucca Arhtia, been considerably modified by custom or usage of the market.

(2) An ordinary agent has to carry out the principal's mandate for purchase or sale by actually entering into contracts with third parties so as to bring about privity of contract between the principal and the third parties. A Pucca Arhtia however has no authority to pledge the credit of the constituent to third parties or to enter into contracts with third parties in the name of the constituent or to establish any privity between the constituent and third pares but may carry out the mandate of the constituent by allocating the contract to himself as the principal. In other words, the Pucca Arhtia himself buys from the constituent or sells his own goods to the constituent which an ordinary agent cannot ordinarily do.

(3) When a Pucca Arhtia under instructions of the constituent puts through a contract, in such contract the constituent and the Pucca Arhtia are the contracting parties as principals and a new relationship as between principals arises between the constituent and the Pucca Arhtia with respect to the individual contracts so concluded.

(4) A Pucca Arhtia may or may not cover himself by entering into contracts with third parties but if he does, he does so entirely on his Own account and no privity is established between the constituent and the third parties and the constituent has no concern with such covering contracts with third parties and cannot call upon the Pucca Arhtia to account for those contracts. The profits or losses arising out of these covering contracts with third parties are entirely the concern of the Pucca Arhtias.

(5) The Pucca Arhtia is under no obligation to substitute a fresh contract to meet the order of the constituent.

(6) The Pucca Arhtia stands in a dual relationship with the constituent, namely, he is an agent for the purpose of quoting market prices and putting through contracts under instructions of his constituent, although he may allocate the contract to himself and he is also a principal with respect to the contract he as agent actually concludes with himself. The two distinct relationships subsist side by side.

(7) An ordinary agent has to show to his principal how he has carried out the latter's Instructions for purchase or sale by disclosing the names of the purchasers or sellers and the particulars of the rates etc., at which the goods were purchased or sold and strictly to account for the profit, if any, made by the agent in course of the principal's business; but a pucca Arhtia not being bound to enter into any contract with third parties is absolved from liability to account on the stringent footing like an ordinary agent and is indeed not liable to disclose his covering contracts or to account for the profits or loss made by him out of those covering contracts. The Pucca Arhtia nevertheless has all the ordinary duties of an agent in so far as they are not specially abrogated by custom or usage of the market. Thus he has to give correct quotations of the market rates, put through contracts under orders of the constituent, although he may make the contract with himself as a

principal, to Inform the constituent as to whether he has carried out the instructions, submit accounts showing the results of the cross-contracts, the account due by or to the constituent and to remit the balance, if any, to the constituent. In short, although the Pucca Arhtia is absolved from the liability to account for the covering contracts and the profits or loss made thereout, there is no reason to hold that he is not liable to render ordinary accounts showing what contracts he as agent made with himself as principal, and at what rates, how the contracts so concluded have been performed or squared up by cross-contracts, the moneys received or paid to the constituent and the net amount due by or to the constituent.'

The Lahore cases cited before the Bench were explained it was observed as regards the earlier Lahore cases that these cases did not establish that the only relationship between a pucca Adatiya and his constituent is that of a principal and a principal and that no relationship of a principal and an agent exists between them. In the view of the Full Bench the relationship of a principal and an agent subsists side by side with the relationship as between a principal and a principal. In other words, the relationship is a dual one. From this it was concluded, as is clear in the passage re-produced above, that the Pucca Adatiya has a duty to account to his principal. Where there are several contracts, according to the learned fudges, it was pre-eminently a matter for accounts and the Pucca Adatiya cannot avoid accounting only on the plea that all the transactions were within the knowledge of his constituent.

I respectfully agree with the view taken in the East Punjab case. As already noticed on the basis of the observations in AIR 1948 Nag 173 when the system of Pucca Adatiya has travelled into other markets, its minor characteristics have been affected by local customs of individual markets though it retained its main characteristic. Therefore in dealing with the question as to whether the Pucca Adatiya in the present case would be liable to render account, and if so, at what stage I have to be guided by the facts established in the present case. . This applies even regarding the time when payment was to be made. In this connection I may refer to the defendant's own document Ex. A. 6 which is the copy of his plaint filed in the suit against the respondent,

It is mentioned in para 2 of that plaint as follows :--

'That each transaction of sale and purchase of silver bars is done under the aegis of the Association. The standard weight of a silver bar is taken to be 2,800 tolas. The transaction for each bar of silver or gold mohar is done for 10 days Vaida falling on Bad 10, Sud 5 and Sud 15. 'The payment of profit and loss for each Vaida is done after the Vaida after accounts are taken and the payment is ordinarily made on the 3rd day of the Vaida. Every member of the Association on the completion of the Vaida prepares account to the other members and submits it to the clearing house of the Association. This is done on the printed clearing slips of the Association and the balance sheet is also submitted in the Association. In this way, through the clearing house of the Association giving or taking of money fs done.'

(Translation and underlining (here into ' ' above) is mine). Therefore for seeing as to what are the rights of the parties one has to take due note of the usage of the Association. As to what actually it is, is a question of fact and I am inclined to accept the conclusion reached by the two Courts below that the payment of the Vaida of 30th November, 1984 was to be done on 3rd December, 1954 which was the day of 'ballan'.

12. The learned counsel for the defendant, however, strenuously contended that the above might be the position if the second transaction of 25th November, 1954 regarding the purchase of 51 bars of silver were to be there as per direction of the plaintiff, but as this was not done the case presented quite a different situation to which the above principles would not apply. According to the learned counsel disregard of the direction itself constituted a breach of contract for which the liability of the defendant arose on the day of the breach that is 25th November, 1954. In such a matter, the learned counsel submits there could hardly be a question of proper accounting. This position, as already observed, is contested by the learned counsel for the respondent.

I have devoted my anxious consideration to this aspect of the matter as there was no direct authority brought to my notice. Learned counsel for the defendant placed strong reliance on AIR 1948 Nag 173, and urged that when a Pucca Adatiya

receives a second order from a constituent to cover his first order the Pucca Adatiya is not bound to carry out the second order. It will be noted that the judgment in the case proceeded on the premise that a Pucca Adatiya acted as a principal in relation to his constituent. The learned Judges referred to the Lahore cases and the earlier Nagpur cases in support of their view. As I have already observed, I have been inclined to prefer the East Punjab view and therefore the conclusion that has been reached in the Nagpur case cannot be accepted by me in the circumstances.

To my mind, though in certain respects a Pucca Adatiya may be taken to be a principal yet he is not entirely shorn of his character as an agent and thus, the statutory provisions of the Contract Act defining the rights and obligations of an agent vis-a-vis the principal will continue to apply to him with full force. As an agent the Pucca Adatiya, in my view, is bound to carry out the direction of his principal, vide Section 211 of the Contract Act. Section 211 provides that 'an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and, if the profit accrues, he must account for it.'

This section clearly emphasises that where there are clear directions or the principal they have to be carried out though in the absence of directions the agent is still under a duty to carry on the business according to the custom prevalent at the place. I can understand that a Pucca Adatiya may be within his rights in refusing to take an altogether new order from a constituent but where one transaction has already been entered and is outstanding the agent cannot reasonably decline to enter into a new transaction for squaring up that transaction. It is nobody's case that parties used to insist on actual delivery of goods from each other and evidently they were entering into forward contracts where differences alone had to be settled and then payments made.

In order to avoid actual delivery of goods the parties used to balance a transaction of sale by a corresponding transaction of purchase and vice versa. In such a situation when one transaction is already there I find it extremely difficult to accept that the defendant was not under an obligation to enter into the second transaction as per instructions of the plaintiff. It was held in (1901) 2 KB 867, that in an account taken between the defendants and the principal the latter was entitled to be credited, in respect of certain shares found to have been wrongfully sold by the defendants and for that the highest price that might have been realised in the market at any time between the date of the sale and the settling day was taken to be the basis.

In that case the defendants who were a firm of stock brokers purchased the shares on stock exchange on behalf of their principal and the contract was that they would sell the shares before the settling day if so directed by the principal, but before the settling day arrived the defendants sold them in breach of the contract without principal's consent. Thus, this case affords an example that while there was one transaction of purchase with authority the corresponding transaction was entered into without authority and yet it was taken to be a matter of accounting and it had to be discharged on the settling day. AIR 1941 Bom 211; also lends support to the above view. In that case there was an outstanding transaction between an upcountry constituent and his Pucca Adatiya and the transaction remained outstanding between them on 14th October, 1939. The Pucca Adatiya gave a telegram asking for instructions sometime in the morning and as he did not receive any reply he closed the transaction in the afternoon between 3 and 4 P. M. Thereupon in the night the upcountry constituent gave contrary direction for not closing the transaction. He also instructed him to repurchase.

In such a situation the learned Judge held that notwithstanding the fact that the Pucca Adatiya had closed the transaction it shall still be treated as outstanding. The following observations of the learned Judge may be quoted with advantage :--

'I have come to the conclusion that the transactions must be treated as still outstanding that the plaintiff was entitled to give the order to close, that the defendants ought to have acted upon that order and that the plaintiff is entitled to

be put in the position in which he would have been placed If they had carried out his instructions.

From the language of Section 211 of the Contract Act the learned counsel for the appellant tried to make out that when an agent acts contrary to instructions he is required to make good the loss but he is to account only if any profit accrues and as in the present case the loss is being claimed from the plaintiff there was no liability to account. I am unable to accept this argument as sound. The liability to account by an agent is always there and account has to be rendered on demand, vide Section 213 of the Contract Act. Making good the loss or accounting for the profit did not, in my view, make any difference about the duty to render accounts. In the present case the first transaction could be settled only on the 'ballan' day and the not carrying out of the direction by the defendant on 25th November, 1954 could thus properly be taken note of in settling the accounts for the first transaction.

One cannot reasonably isolate the two transactions and in finding out what money was payable by one party to the other their combined effect was to be seen at the appropriate time. Therefore the position that has emerged is not different even if the direction was not carried out in the present case. The plaintiff has to be placed in the same position in which he would have been if his directions were carried out. Following this to its logical conclusion the sum due to the plaintiff will become payable when it would normally be so payable on the 'ballan' day. The lower Court was, therefore, right in holding that the starting point of the limitation was 3rd December, 1954 when the amount became payable. Once this conclusion is reached then it is wholly immaterial whether Article 89 or for that matter any other Article is held to be applicable.

Article 65 will obviously govern such a case as the contingency for payment will arise only on the 'ballan' day. According to the custom of the Association under whose aegis the defendant was trading this position is crystal clear, vide para 2 of the defendant's plaint in the other case (Ex. A. 6) which has already been extracted above. In view of this conclusion, in my view, it is not necessary to encumber this judgment by entering into any detailed examination of the question

as to when the agency can be said to have been terminated, i. e. whether on 25th November 1954 or 30th November 1954 as contended by the learned counsel for the appellant or on the 'ballan' day 3rd December 1954 as contended by the learned counsel for the respondent. Cases are available in support of either view.

While (1890) ILR 12 All 541 and (1899) ILR 26 Cal 715, support the learned counsel for the respondent the learned counsel for the appellant is supported by Venkatachalam Chetty v. Narayanan Chetty, AIR 1916 Mad 281. I need not advert to the other cases referred to by the learned counsel on either side. Nor is it necessary to deal with cases having a bearing on the question whether there was neglect or misconduct of the agent involved in the breach of the contract or not. The other cases have a bearing on the question whether Article 89 of the Limitation Act applies or the case is governed by Article 90 of the Limitation Act. In view of the above discussion I hold that the judgment under appeal is correct and does not call for interference.

18. In the result I hereby dismiss this appeal but in the facts and the circumstances of the case leave the parties to bear their own costs.

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