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**Court :** Kolkata

**Decided On :** Feb-27-1912

**Reported in :** (1912)ILR39Cal802

**Judge :** Lawrence H. Jenkins, K.C.I.E. C.J. and; Woodroffe, J.

**Appellant :** Ramji Das

**Respondent :** Janki Das

**Judgement :**

Lawrence H. Jenkins, K.C.I.E. C.J.

1. This appeal arises out of a suit brought on a contract No. 3525 of the 6th of November 1907 for the sale by the defendants of a lac of gunny-bags of the sort described in the sold-note. The terms of the contract are set out in the sold-note, and it there appears, among other things, that the price was Rs. 30-4 per 100 bags free alongside, and that delivery of the goods was to be given and taken 20,080 monthly, from December 1907 to April 1908. That contract is signed by the plaintiffs as brokers; it purports to be addressed to the principals. The instalments of December and January were settled, and no question arises regarding them, except as to brokerage, as to which nothing has been said before us. The February instalment was not delivered; and according to the plaint, damage to the extent of Rs. 972-14-3 was thereby sustained by the plaintiffs and became due to them. The total sum claimed in this suit is thus Rs. 1,031-9. The case was

instituted in the Presidency Small Cause Court, but was transferred to the High Court, and came on for hearing before Mr. Justice Harington, who has passed a decree in the plaintiffs' favour. From his judgment the present appeal is preferred.

2. It is not denied that the defendants entered into a contract in the terms of the sold-note; but it has throughout been denied that the defendants entered into such a contract as is alleged, that is to say, a contract as is set forth in the plaint, which represents, the plaintiffs as vendors to the purchasers. When the case came before Mr. Justice Harington, the following issues were raised: (i) Did the defendants enter into the contract stated in the plaint? (ii) Did the plaintiffs contract for an undisclosed principal or for themselves? (iii) Were the plaintiffs ready and willing to deliver?

3. Objection was taken to the third issue, but not to either of the other two--no objection could be taken to either of them, because they embodied and amplified that which was set forth in the written statement from the very commencement.

4. The plaintiffs respondents, have been represented before us by Mr. Pugh, who very properly accepted the position that this case must turn upon whether or not the plaintiffs are able to establish that they had an undisclosed principal behind them. The plaintiffs, as I have already said, purported to sign as brokers. If the contract was with the plaintiffs, it was entered into with them in their character of agents; and as no principal was disclosed then the position must be that there was an undisclosed principal or that there was no principal at all. The plaintiffs' contention is that there was an undisclosed principal, one Bhai Kubiram, and that the existence of this undisclosed principal entitles them to sue, under the provisions of Clause 2 of Section 230 of the Contract Act. So that what we have now to see is whether in truth Kubiram was the undisclosed principal or whether he is an afterthought. The plaint as drawn is opposed wholly to the idea that there was an undisclosed principal. It treats the plaintiffs as themselves the vendors. In the same way the settlements of December and January appear to me to point, if anything, not to Kubiram being the undisclosed principal, but to the plaintiffs themselves claiming to be the principals. There is no brokerage charged to Kubiram; as far as I can see there is no contract with Kubiram, and for some

reason, which I am wholly unable to understand if the case is a true one, Kubiram was not put into the box: no book of his was produced, and we are told, and the statement has not been contradicted before us, Kubiram's name never came to light until the opening of the plaintiffs' case. I am not satisfied that Kubiram was an undisclosed principal of the plaintiffs. If Mr. Justice Harjington had held otherwise, I should have hesitated 'to differ from him on a question of fact like that, but as I read the judgment of the learned Judge, he is careful to avoid that conclusion. All he says is that 'there is evidence that in this case there was a person behind the plaintiffs who they said was in fact a principal whose name they did not disclose.' The learned Judge does not say that he believed that evidence. He does not discuss the various elements in the case which tell against the view that Kubiram was really and truly the undisclosed principal, but he goes on to say that in his view it is immaterial whether there was the relationship of principal and agent between Kubiram and the plaintiffs. But if Kubiram was not the undisclosed principal then Section 236 of the Contract Act applies. In order to appreciate the true scope of that section one must bear in mind the general scheme of Chapter X of the Contract Act which deals with the subject of agency. The sections of that Chapter are divided into a series of groups, and of those I only need refer to two: There is the group comprising Sections 211 to 221, which deal with the agent's duty to the principal. Then there is the group which includes Sections 226 to 238, which deal with the effect of agency on contracts with third persons. Mr. Justice Harjington, in accepting the view that it was immaterial whether there was an undisclosed principal or not, was influenced by the consideration that the relationship of principal and agent did not exist between the plaintiffs and the defendants. At the outset it is difficult to see how it could be said that there was not that relationship, and defendants certainly did not accept that view. But it is unnecessary -to discuss the case from that point of view. Section 236 is clear and distinct. It provides that a person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting not as agent, but on his own account.' Having negatived the theory of Bhai Kubiram being an undisclosed principal, we have a position to which Section 236 of the Contract Act applies with precision. It is to no purpose to consider what the line of cases is which that section seeks to embody, or whether it is in accord

with the English rule of law. Enough to say that the section as it stands is the final exposition of law in India and, in my opinion, Kubiram disappearing, Section 236 governs the case. The plaintiffs, therefore, are the persons with whom a contract has been entered into in the character of agents, and so they are not entitled to require the performance of it, inasmuch as in reality they were acting not as agents, but on their own account.

5. For these reasons, I think the judgment of Mr. Justice Harington cannot be upheld, and we must reverse his decree and dismiss the suit with costs throughout to be paid by the plaintiffs.

Woodroffe J.

6. I agree.

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