
(1919) 11 AHC CK 0043
In the Allahabad High Court

Bishun Padu Haldar

APPELLANT

Vs

Firm Messrs. Chandi Prasad and Co.

RESPONDENT

Date of Decision : 24-11-1919

Acts Referred:

Contract Act, 1872 — Section 7

Citation : AIR 1919 All 7 : 54 Ind. Cas. 437

Hon'ble Judges : Lindsay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lindsay, J.—A suit was brought by the plaintiffs, a firm of chemists in Moradabad, against the defendants, also a firm of chemists carrying on a business in Benares. The amount in dispute was Rs. 61-10 0 and this sum was claimed by the plaintiffs on account of an alleged breach of contract. The main defence to the suit was that there was no contract between the parties. The lower Court found in favour of the plaintiffs and decreed the claim. There were several other points debated in the Court below but here I am concerned only with the question whether or not there was a binding contract between the parties. The facts may be briefly stated as follows: On the 7th of February 1918 the plaintiffs wrote to the defendants enquiring the price at which they could supply cocaine. The defendants replied on the 13th of February 1918 informing the plaintiffs that the rate for cocaine was Rs. 20 per ounce "without engagement." The meaning of this latter expression is that as the market rate of cocaine was varying from day to day, the defendants were unable to quote any definite rate for the article.

2. On the 14th of February the plaintiffs sent to the defendants a money order for Rs.17.8. On the coupon attached to the money order the plaintiffs wrote and asked that the defendants should set aside for them a certain amount of cocaine, the price of which was represented by Rs. 17 8 0, It is admitted that the price was calculated on the quotation of Rs. 20 per ounce which had been given by the

defendants. It is proved that the money sent by this money order was received by the defendants on the 16th of February 1918 : an acknowledgment of the receipt reached the plaintiffs in due course. It was stated at the time the order was given that the plaintiffs were applying to the Collector of Moradabad for a permit to import the cocaine and the defendants were asked to delay the sending of the parcel until the permit had been obtained.

3. On the 23rd of February the plaintiffs sent the permit which they obtained from the Collector. On the 4th of March 1918 the defendants intimated to the plaintiffs that they were unable to supply cocaine at Rs. 20 per ounce. They intimated that the price had risen and asked the plaintiffs what they were prepared to do, The plaintiffs apparently took up the position that there was a contract for the supply of the Article at Rs. 20 per ounce and they wrote accordingly. Later on, the defendants returned the money to the plaintiffs, who refused to receive it; the result has been this suit for breach of contract, the damages claimed being on the difference between the alleged contract rate and the market price of the day.

4. As I have already said, the Judge of the Court below took the view that there was a binding contract between the parties. He treated the order of the plaintiffs, which was sent to the defendants on the 14th of February 1918, as a proposal and was of opinion that that proposal had been accepted by the defendants by their conduct. The learned Judge pointed out that the defendants had accepted the money and had kept silent for a considerable period. In his judgment, therefore, the defendants had bound themselves by their conduct and their refusal to deliver the cocaine at the rate quoted in their first letter amounted to a breach of contract.

5. The argument here is that there was no acceptance of the plaintiffs' offer. It was said that the mere neglect of the defendants to give a speedy answer to the communication sent by the plaintiffs on the 14th of February 1918 could not have the result of placing the defendants under a legal obligation. If there had been nothing more in the case than the communication of a proposal by the plaintiffs followed by silence on the part of the defendants, this argument would have been sound enough. On this point I may refer to a judgment of the Bombay High Court, *Haji Mahomed Haji Jiva v. E. Spinner* 24 B. 510PC : 2 Bom. L.R. 691. At page 524 of the report Jenkins, C.J., observes: "I take it to be clear that a person making a proposal cannot impose on the party to whom it is addressed, the obligation to refuse it under the penalty of imputed assent, or attach to his silence the legal result that he must be deemed to have accepted it."

6. He referred in support of this dictum, to an English decision *Felthouse v. Bindley* (1862) 6 L.T. (N.S.) 157 : 11 C. B. (N.S.) 869 : 81 L.J.C.P. 204 : 10.W.R. 423 : 142 E.R. 1037 : 132 R.B. 784. As is observed in the commentary to Section 7 of the Indian Contract Act edited by Pollock and D. F. Mulla, "Neglect to answer a business offer is certainly not, as a rule, prudent or laudable; still there is no legal duty to answer at all".

7. The facts of this case, however, are different, for we find that not merely was there a written proposal conveyed from the plaintiffs to the defendants but the plaintiffs along with the written order sent a sum of money which the defendants accepted.

8. In these circumstance?, I think, it was open to the Court below to find that there was an acceptance of the plaintiffs' proposal. The acceptance of a proposal must be absolute and unqualified, but it is also well established that an acceptance may be made without express communication. Here it seems to me the Judge of the Court below could reasonably find that the conduct of the defendants in receiving this sum of money and crediting it to their account amounted to a definite acceptance of the plaintiffs' proposal. For these reasons I am unable to hold in favour of the applicants that the decision of the Court below is not in accordance with law. The application fails accordingly and is dismissed with costs to the opposite party, including in this Court-fees on the higher scale.