
(1975) 01 MAD CK 0035
In the Madras High Court

Bright Brothers (Private) Limited

APPELLANT

Vs

J.K. Sayani

RESPONDENT

Date of Decision : 02-01-1975

Acts Referred:

Contract Act, 1872 — Section 182, 183, 184, 185, 186

Citation : AIR 1976 Mad 55 : (1975) ILR (Mad) 569 : (1975) 88 LW 641 :
(1975) 2 MLJ 257

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The defendants in O.S. No. 4905 of 1968 on the file of the City Civil Court, Madras, are the appellants herein. Since the appeal was argued before me within a very narrow compass, it is unnecessary to refer to the facts of this case in great detail. The respondent is a wholesale dealer in plastic goods doing business at Madras, while the appellants herein are manufacturers of plastic goods, having their office and business premises at Bombay, In or about 1952 there was an arrangement between the appellants and the respondent under which the respondent became the sole selling agent of the appellants with regard to specified areas. The terms of that arrangement admittedly had not been reduced to writing. The respondent had been purchasing the goods of the appellants as well as booking orders for the sale of the appellants' goods and forwarding those orders to the appellants for being executed. A commission of 6 1/4 per cent was being paid by the appellants to the respondent in respect of the orders so executed as well as on the goods supplied by the appellants to the respondent directly. An extra commission of 1 1/2 per cent and concession regarding Central sales tax were also given to the respondent by the appellants. This arrangement which was in force from 1952 onwards was modified by a letter dated 27th February, 1964 written by the appellants to the respondent herein, marked as Exhibit A-44. Under this arrangement, the nature of the relationship between the parties was not altered, but only the remuneration received by the respondent by way of commission was changed. Under the revised terms, the

respondent was to get only 6-1/4 per cent, towards commission on all orders either booked in the name of the respondent or booked in the name of third parties and no additional commission or rebate regarding Central sales tax was payable to the respondent. However, a commission called, "Target Commission" of 1 1/4 per cent was to be paid by the appellants to the respondent, if the annual turnover exceeded a particular limit. This agency of the respondent was terminated by a letter dated 28 30th September, 1964 marked as Exhibit B-56. It is therefore the respondent instituted the present suit for recovery of a sum of Rs. 50,000 from the appellants herein. The said sum of Rs. 50,000 included the amounts claimed by the respondent under three heads. One was that the respondent was entitled to a reasonable notice before his agency was terminated, that that reasonable notice would be a notice of 12 months, that the respondent was earning a commission of Rs. 4,000 per month and that therefore the amount to which he would be entitled for the said notice period would be Rs. 48,000. The second was that he was entitled to a commission of Rs. 12,000 on the actual orders booked by him before the termination of his agency which were subsequently executed, some of them directly and some of them after having been re-booked in the name of the new agent appointed in the place of the respondent. The third was that the respondent was entitled to compensation for the loss suffered by him in payment of salary, etc., to the staff employed by him in connection with the agency business. Thus, the total of these three sums came to Rs. 75,000. The respondent admitted that as on the date of termination of the agency, he owed a sum of Rs. 13,432-44 to the appellants. Deducting the said sum of Rs. 13,432-44 from the sum of Rs. 75,000 the balance came to Rs. 61,567-59. However, the respondent restricted his claim in the suit to a round figure of Rs. 50,000.

2. The appellants contested the claim of the respondent in this behalf. They contended that the respondent was not their agent and that he was only a stockist for their goods ; they also denied that there was any need to give any notice before terminating the relationship that existed between the parties. There were certain other defences also put forward by the appellants as reflected in the following issues framed by the trial Court:

- (1) Whether the plaintiff is the sole selling agent for the plastic goods manufactured by the defendants for the States of Tamil Nadu and Andhra Pradesh or whether he was only a stockist ?
- (2) What were the terms and conditions of the jural relationship between the plaintiff and the defendants ?
- (3) Whether the termination of the agency of the plaintiff by the defendants is valid and binding?
- (4) Whether the settlement pleaded by the defendants in paragraphs 13, 14 and 15 of the written statement is true and valid and binding on the plaintiff?
- (5) Is the termination was (sic) in breach of the contract and the settlement

pleaded is not true and valid ?

(6) To what relief is the plaintiff entitled ?

3. The learned Principal Judge, City Civil Court, Madras, by his judgment and decree dated 26th March, 1970 came to the conclusion that the relationship of principal and agent existed between the appellants and the respondent, that the respondent was acting as the agent of the appellants as far as Madras State was concerned and that he was the sole selling agent of the appellants' goods in that area. He further held that there was no express understanding between the parties that the respondent should not deal in the goods of other manufacturers, that there was no express understanding to the contra either and that therefore the fact that the respondent sold the goods of other manufacturers would not constitute a misconduct on his part so as to entitle the appellants herein to terminate the agency of the respondent without giving a reasonable notice. The learned trial Judge also recorded a finding that there was no settlement as pleaded by the appellants herein. Finally he came to the conclusion that u/s 206 of the Indian Contract Act, 1872, the respondent was entitled to a reasonable notice, that that reasonable notice, having regard to the circumstances of the case, will be one of four months and that in this case admittedly there being no such notice, the respondent was entitled to the commission for the notice period, which was determined by the learned trial Judge at Rs. 16,000 at the rate of Rs. 4,000 per month. With regard to the claim of the respondent that he was entitled to a commission of Rs. 12,000 on the orders booked by him prior to the termination of the agency, but executed later, the learned trial Judge fixed the amount at Rs. 6,250. He rejected the claim of the respondent for a sum of Rs. 15,000 referred to already. In the result, he came to the conclusion that the respondent was entitled to a sum of Rs. 16,000 plus Rs. 6,250 totalling Rs. 22,250 from the appellants herein. Deducting therefrom a sum of Rs. 13,432-41 which admittedly the respondent owed to the appellants herein, the learned trial Judge passed a decree for a sum of Rs. 8,817-59 in favour of the respondent in the present suit. It is against this judgment and decree that the present appeal has been filed by the defendants in the suit.

4. Mr. V.K. Thiruvengkatachari appearing for the appellants did not seriously challenge the finding of the learned trial Judge that the respondent would be entitled to a sum of Rs. 6,250 by way of commission on the orders booked by him prior to the termination of the agency but executed later. However, he contended that the conclusion of the learned trial Judge that the respondent was entitled to a reasonable notice before termination of the agency is erroneous and that therefore the award of Rs. 16,000 by way of damages for the termination of agency without notice is unsustainable, and if that conclusion of the learned trial Judge is set aside, the result would be that the appellants would be liable to pay a sum of Rs. 6,250 to the respondent and the respondent would be liable to pay a sum of Rs. 13,432-41 to the appellants with the result no decree could be passed in favour of the respondent herein for any amount in the present suit.

Consequently, the only question for consideration before me in the appeal, is whether the respondent was entitled to a reasonable notice before termination of his agency as held by the learned trial Judge.

5. The argument on behalf of" the appellants in this behalf is two fold. One is that the respondent was merely a selling agent for the appellants herein and that such a selling agency can be terminated summarily without any notice. In support of this contention, reliance was placed on the following statement found in paragraph 878 of Halsbury's Laws of England, Fourth Edition, Volume I (Pages 527-528).

In the case of an agent who is a mere commission agent with no obligation to seek orders for the principal and who is in no other sense " employed" by the principal, the agency may be terminated summarily.

The above statement of law in Halsbury's Laws of England is based upon certain decisions which included *Levy v. Goldhill* (1917) 2 Ch. 297. However, it is unnecessary to consider this contention for the reason that it does not appear to have been put forward in that form before the trial Court. On the other hand, the learned trial Judge in paragraph 14 of his judgment points out that in paragraph 6 of the written statement filed by the appellants herein it was stated that the relationship between the respondent and the appellants was that of principal to-principal in respect of goods purchased by him from the appellants and del credere agent in respect of orders placed by him on behalf of other dealers. Whether the above statement of law contained in the Halsbury's Laws of England will apply even to a case of a del credere agent is not. clear. In any event, since I am accepting the other argument advanced on behalf, of the appellants, it is unnecessary to pursue this contention further.

6. The other ground which is substantial is that under the provisions of the Indian Contract Act, 1872, hereinafter referred to as the Act, the respondent herein was not entitled to a, reasonable notice, as held by the learned trial Judge and Section 206 of the Act on which reliance has been placed by the learned trial Judge does not apply to a case like the present one, where no period for agency has been agreed to between the parties either expressly or by necessary implication and it is this contention which I am considering in this appeal.

7. Chapter X of the Act deals with agency and contains Sections 182 to 238 Ten sections commencing from Sections 201 to 210 fall under a sub-heading. "Revocation o authority." As will be clear from the discussion that follows, even the expression, " Revocation of authority" may not be appropriate and the appropriate sub-heading could be only "Termination of authority" or "Termination of agency", because revocation is only one mode of terminating an agency., Section 201 deals with the methods in which an agency can be terminated. It says that an agency can be terminated" by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of

unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent-debtors Having enumerated various methods by which an agency can be terminated, Section 202 deals with a specific case of what is generally called, "an agency coupled with interest." According to that section, where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. Section 203 provides that the principal may, save as is otherwise provided by the last preceding section, revoke the authority Section 207 states that revocation and given to his agent at any time before the used so as to bind the principal. Thus, it will be seen implied and section reads : at Sections 202 deals with the termination of an agency coupled with interest, that is, it is not confined to any particular mode of termination, but to all methods of termination. On the other hand, Section 203 deals with revocation only and provides that the principal is entitled to revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. But this right of the principal is subject to Section 202. Section 204 again deals with the revocation of the authority of an agent by a principal and according to that section, the principal cannot revoke the authority given to his agent, after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency. Thus it will be seen that Sections 203 and 204 are connected in the sense that while the former entitles the principal to revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal, the latter disables the principal from revoking the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

8. Then follow two sections which are immediately relevant for the consideration of the question arising in this appeal, namely, Sections 205 and 206 which are as follows:

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal, must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation ; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Section 207 states that revocation and renunciation may be expressed or may be implied and the section reads:

Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Sections 208 to 210 dealing with termination of the agency are not relevant for

the present discussion.

9. Section 205 provides that if the principal and the agent agree that there should be a fixed term for the agency, whether the agreement is express or implied, neither party can terminate the agency prematurely, that is, prior to the expiration of that period without paying compensation to the other party, unless such termination is for a sufficient cause. There is no dispute before me that this section will apply only when the parties have agreed on the agency continuing for a specified period of time. As far as the present case is concerned, it is common ground that the appellants and the respondent had not agreed that the agency should continue for any particular period of time.

10. It is Section 206 alone that deals with the requirement of a reasonable notice and the immediate point for consideration is when that section uses the expression, "such revocation or renunciation", does it relate only to the "previous revocation or renunciation" mentioned in Section 20 or if it covers any revocation or renunciation. If Section 206 is correlated to Section 205, it is not disputed before me that the requirement of reasonable notice will apply only to a case of agency where the principal and the agent had contracted that the agency should be continued for any period of time and that if they had not agreed on any such period of time for the agency, Section 206 will not apply. The argument of the learned Counsel for the appellants is that the expression, "such revocation or renunciation" occurring in Section 206 necessarily makes that section applicable to the cases governed by Section 205 only, that in the present case admittedly the agency being not for a prescribed period, Section 206 is not attracted and that therefore the respondent was not entitled to a reasonable notice. On the other hand, the argument of the learned Counsel for the respondent is that the expression, "such revocation or renunciation" occurring in Section 206 will take in every revocation or renunciation dealt with by the relevant provisions of the Act relating to agency and it is not confined only to the agency falling within the scope of Section 203. It is admitted before me that barring certain observations of the High Court of In Re: Shaw Wallace and Co., there is no authority of any Court in this country on this point, namely, whether Section 206 covers only the revocation and renunciation mentioned in Section 205 or it takes in every revocation and renunciation of agency dealt with by the Act.

11. Before referring to the decision of the High Court of Calcutta referred to above, I shall attempt to construe the sections according to the ordinary plain language. The word, "such" means, "of that kind : of the same or like kind " The word, "such" always refers to something else and it generally and naturally refers to its last antecedent. Lord Halsbury L.C , in Ex parte George Staplyton Barnes 1896 A.C. 146 stated that the word, "such" referred to the last preceding provision.

12. In Commissioner of Income Tax, Punjab, Himachal Pradesh and Bilaspur, Simla Vs. Shree Jagan Nath Maheshwary, Amritsar, the High Court of Punjab observed:

In its grammatical usage, and in its natural and ordinary sense, the word "such" is understood to refer to the last antecedent, unless the meaning of the sentence would thereby be impaired, which does not seem to be the case here. The word "such" indicates something just before specified, or spoken of, that is proximately, and not merely previously. It particularises that immediately preceding antecedent, and not everything that has gone before. It signifies what has preceded proximately and not just previously or formerly.

Thus, it is clear that the expression, "such revocation or renunciation" occurring in! Section 206 will refer only to the "re-vocation and renunciation" dealt with in] Section 205.

13. This conclusion of mine gets confirmed from certain other features also. I have already referred to Section 201 which dealt with the termination of agency in general and enumerated the methods in which such termination can be brought about, two of them being revocation and renunciation. Sections 203 and 204 deal with revocation and they do not deal with renunciation. The only section, preceding Section 206, which deals with revocation and renunciation together and as a matter of fact uses the expression, "revocation or renunciation" in the section itself is Section 205. Therefore the expression "such revocation or renunciation" occurring in Section 206 must really relate back to Section 205 and to no other section, secondly, if the argument of the learned Counsel for the respondent is to be accepted the word, "such" in Section 206 will have no meaning whatever. It is one of the cardinal principles of interpretation that no word used by the Legislature in a statute should be ignored or should be held to be meaningless, superfluous or otiose, unless the Court is driven to such a conclusion, having regard to the scheme, object and other relevant circumstances of the statutory provision. In this context there is absolutely nothing warranting the conclusion that the word, "such" in Section 206 is superfluous or otiose. By giving the word "such" the normal and natural meaning as referred to above, the section is clearly intelligible and there is no difficulty in working or applying that section. Simply because, if the word, "such" is given its due meaning, the section will have one effect and if the word, "such" is held to be superfluous or otiose, it will have another effect, the Courts cannot refuse to give the word its normal and ordinary meaning and hold that it is superfluous or otiose, particularly when the giving of such normal and ordinary meaning to the word, "such" does not bring about any absurdity. It is a well-known rule of construction that if there is nothing to modify or qualify a language which a statute contains, it must be construed in the ordinary and natural meaning of the words it contains. Therefore, I am unable to accept the contention of the learned Counsel for the respondent which will have the effect of ignoring the word "such" occurring in Section 206 or holding that the said word is superfluous or otiose.

14. There is yet another ground for holding that the contention of the learned Counsel for the respondent is not sound. I have already extracted Section 207. That section uses the expression, "revocation and renunciation" without any

adjective before the same. That section states that revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively. Thus, on the face of it, the provision contained in the section is general and it applies to all . revocations and renunciations of agency dealt with by the Act. Contrasting the language of Section 205 with the language of Section 207, it is clear that the Legislature itself did not intend Section 206 to apply to every revocation and renunciation of agency dealt with by the Act and if that was the intention of the Legislature, it would not have used the word, "such" in Section 206 and it would have used the language of Section 207 by providing, "reasonable notice must be given of revocation or renunciation " This is yet another circumstance for holding that the Legislature intended Section 206 to apply to revocation and renunciation contemplated in Section 203 of the Act.

15. On such a construction, the combined effect of Sections 205 and 206 will be as follows:

1. Where there is an express or implied contract that the agency should be continued for any period of time, the previous revocation or renunciation by the principal or the agent will render him liable to pay compensation to the other party.
2. If such previous revocation or renunciation is for a sufficient cause then the liability to pay compensation will not arise.
3. If the principal wants to revoke the agency or the agent wants to renounce the authority before the expiry of the period prescribed and there is no sufficient cause for such revocation or renunciation, the principal or the agent, as the case may be, shall give reasonable notice of such revocation or renunciation to the other party.
4. If no such reasonable notice is given, then the principal or the agent, as the case may be, will have to make good the damage resulting to the other by such previous revocation or renunciation.

16. The above construction of mine of Sections 205 and 206 of the Act is not opposed to any principle or authority. It has always been held that an agency being one based on mutual trust and confidence should be revocable and terminable and there can be no question of permanency with regard to a contract of agency. The only question that may arise for consideration will be, if a contract of agency is terminated by either of the parties to the same, does such termination give rise to any right in favour of one party against the other party so terminating the contract of agency.

17. As early as 1873, James, L.J. said in *Llanelly Railway and Book Company v. London and North Western Railway Company* (1873) 8 Ch. A. 942:

I start with this proposition, that prima facie every contract is permanent and irrevocable, and that it lies upon a person who says that it is revocable or determinable to show either some expression in the contract itself, or something

in the nature of the contract, from which it is reasonably to be implied that it was not intended to be permanent and perpetual, but was to be in some way or other subject to determination. No doubt there are a great many contracts of that kind ; a contract of partnership, a contract of master and servant, a contract of principal and agent, a contract of employer and employed in various modes--all these are instances of contracts in which, from the nature of the case, we are obliged to consider that they were intended to be determinable. All the contracts, however, in which this has been held are, as far as I know, contracts, which involve more or less of trust and confidence, more or less of delegation of authority, more or less of the necessity of being mutually satisfied with each other's conduct, more or less of personal relations between the parties.

Thus, a contract of agency being one involving mutual trust and confidence is terminable.

18. The only question that may arise in this context is that if the parties themselves have prescribed a period for the continuance of the agency, whether the agency can be terminated before the expiry of the period so prescribed. It is that situation which has been dealt with in Sections 205 and 206 of the Act, by providing that it can be terminated for a sufficient cause or on a reasonable notice. On the other hand, if no period is prescribed for the continuance of the agency, there is nothing to prevent either of them putting an end to the agency at any time, subject to the restrictions contained in Sections 202 and 204 already referred to, on the right of the principal to revoke the agency. If the parties themselves want to avoid and provide for a safeguard against, abrupt or arbitrary termination of the relationship there is nothing to prevent them from contracting between themselves that the relationship would not be terminated until the expiry of a particular period. In such a situation, if the agency is terminated before the expiry of the prescribed period, the party guilty of such termination should be liable to pay damages to the other in the absence of sufficient cause or reasonable notice. Notwithstanding this facility available to the parties, if they do not contract to that effect and enter into a relationship of principal and agent without there being any fixed period for the continuance of such relationship, neither party can complain against the action of the other in terminating the relationship at any time he liked, subject of course, as I have pointed out already, to the restriction imposed on the principal's authority to revoke the agency under Sections 202 and 204.

19. It will be now appropriate to refer to the decision of the High Court of Calcutta mentioned already, that is *In Re: Shaw Wallace and Co.*, That case arose out of a reference made under the Income Tax Act, "922. The assessee, Messrs. Shaw Wallace & Co., were the distributing agents in India for the Burmah Oil Company and sole agents in India and Aden for the marketable products of the Anglo-Persian Oil Company. The assessees had at no time any formal agency agreement with either of the oil companies. The agency was transferred to some other body and the assessees were paid compensation for the termination of the

agency. The question for consideration was, whether the compensation received by the assesseees was in the nature of a capital receipt and therefore not "income, profits or gains" while the meaning of the Income Tax Act. One of the arguments that was advanced before the Court was that it was an ex-gratia payment. In considering that argument, the learned Chief Justice (Rankin, C.J.) referred to Section 206 of the Indian Contract Act. For the purpose of understanding the context in which the reference was made, it is desirable to extract the entire paragraph in which the discussion occurs, which is as follows:

We are only concerned with the legal rights of the parties in so far as they assist us to appreciate the nature or character of the receipt upon which it is claimed. If the parties make an amicable arrangement according to their own notions of what is fair or their own view of their legal rights, we are concerned merely to appreciate what their bargain or settlement was. If the principal really means to compensate the selling agent for a sudden "dismissal" or more properly a sudden determination of the agency it is only in very exceptional circumstances that anything is to be gained by considering whether the agent would have enforced a claim for damages and whether he could thereby have obtained the same amount. I see nothing in the facts of the present case to suggest that the large sums now in question were handed over to the assesseees upon the footing that there was no real liability. The principals may have been generous and wisely generous in dealing with their obligations but talk of exgratia payment is singularly unimpressive in this case. I should be very much astonished to be told, and I should in any case require from the Commissioner a clear finding based upon proper evidence before I would accept it; that the agency of the assessee with their establishments all over India and elsewhere could be revoked suddenly without the principal is becoming liable to indemnify their agents in respect of any obligations, incurred by them in connexion with the discharge of the agency. Assuming that in English law there is no general doctrine that agents are entitled to notice before the agency is terminated by the principal, yet this rule is subject to exception arising from the particular circumstances of the case; and in India the matter has been dealt with by the Contract Act. Section 206 lays down : "Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

If the phrase "such revocation or renunciation" is to be taken as referring back to Section 205 I confess that I find no meaning in the section; and it is at least arguable that what the draftsman meant to say is that when there is no express or implied contract that the agency should continue for any fixed period reasonable notice must be given of the revocation or renunciation of the agency and, etc. The question of damages and the question of indemnity doubtless would overlap in the circumstances of these agencies, and in the case of the Burmah Oil Company we knew that the sum of . 12 lakhs was in a sense to cover work done and to be done by the assesseees until the new agent could take over completely."

From what I have, extracted above, it is clear that the interpretation of Section 206 was not strictly relevant for the point to be considered in the reference made under the Indian Income Tax Act. Secondly, with very great respect to the learned Chief Justice, I am unable to agree that if the phrase, "such revocation or renunciation" occurring in Section 206 of the Act is to be taken as referring back to Section 205, there is no meaning in the section. I have already pointed out what the meaning of that section is, if the expression, "such revocation or renunciation" is to be taken as referring back to Section 205 and I have also given reasons as to why the Court is not entitled to hold the word "such" as superfluous or otiose in Section 206, which will be the result, if Section 206 is held not to refer back to Section 205.

20. For the above reasons, I held that the requirement of reasonable notice of revocation or renunciation contemplated by Section 206 is applicable only to the "previous revocation and renunciation" dealt with by Section 205, that is, it is applicable only to agencies in which the parties have contracted either expressly or by necessary implication that the agency should continue for a particular period of time and in this case admittedly there being no such contract, Section 206 has no application and therefore the respondent is not entitled to a reasonable notice before the termination of the agency.

21. Mr. K.N. Balasubramaniam, learned Counsel for the respondent, contended that on, the basis of the following observation of McNair, J., in *Martin-Baker Aircraft Company Limited and Anr. v. Canadian Flight Equipment Limited* (1955) 2 All E.R. 722, the respondent is entitled to a reasonable notice.

If it were a pure agency agreement and nothing more, there is much to be said for the view that it would be determinable summarily at any moment. An agreement of this nature, however, has to be looked at as a whole and the whole of its contents considered, and if one finds (as one finds here) that the person who is a sole selling agent has to expend a great deal of time and money and is subject to restriction as to the sale of other persons", products which may be competitive, it seems to me that it is a form of agreement which falls much more closely within the analogy of the strict master and servant cases where, admittedly, the agreement is terminable by reasonable notice, though not determinable summarily except in the event of misconduct.

I am unable to hold that the above observation of the learned Judge is of any assistance to the respondent in the present case. The above statement proceeds on the basis of the relationship between the parties being more in the nature of master and servant than of principal and agent, and stress is laid on the existence of restriction imposed on the agent in dealing with the products of other persons. As far as the present case is concerned, by no stretch of imagination it can be contended that the relationship of the appellants and the respondent was in the nature of master and servant. I have already referred to the fact that the respondent even before he entered into the arrangement with the appellants was himself a wholesale dealer in plastic goods. Equally I have

referred to the contention of the respondent himself that there was no understanding between the appellants and the respondent that he ought not to deal in the goods of other people. As a matter of fact, one of the grounds put forward by the appellants before the trial Court was that the respondent was dealing in the goods of other people, that that was the reason why he did not purchase goods sufficiently from the appellants and back sufficient orders for the goods of the appellants, and that the act of the respondent constituted a misconduct on his part entitling the appellants to terminate the agency. The respondent denied this claim of the appellants and the learned trial Judge himself has found that the respondent was not guilty of misconduct in dealing in the goods of other people, since there was no express restriction imposed on the respondent to that effect.

22. Apart from these features, there is another aspect of it to be taken note of. I have already referred to the terms for payment of commission to the respondent herein. These terms did not impose an obligation on the respondent to buy goods from the appellants or to book orders for the goods of the appellants. If the respondent bought goods from the appellants or booked orders for the goods of the appellants, he was entitled to commission on the basis of the value of the goods. But if he did not buy any goods or did not book any order, he would not be entitled to any commission and there was no penalty attached in this behalf. When the revised terms were brought into force by Exhibit A.-44 dated 27th February, 1964, the respondent became entitled to an additional commission of 1-14 per cent over and above 6-1/4 per cent by way of target commission, if the respondent's annual turnover exceeded a particular limit. On the other hand, there was no arrangement that the respondent should do any minimum business with the appellants to earn commission. Thus, there was no obligation at all on the part of the respondent to buy goods from the appellants or to book orders for the goods of the appellants. Under such circumstances, it cannot be held that the relationship between the appellants and the respondent was that of master and servant so as to attract the observations of Mc Nair, J., quoted already.

23. In this context, the following observations of Peterson, J., in *Levy v. Goldhill* (1917) 2 Ch. 297, will be relevant:

The plaintiff's second claim in the present action, is for damages for wrongful dismissal on the ground that he was entitled to reasonable notice, It was not attempted to prove a custom of the trade, but it was said that the plaintiff was entitled to reasonable notice. Now in this case there was in my opinion no employment in the strict sense of the term The plaintiff was not the servant in any way of the defendant; he was not bound to do any work whatever. The agreement merely provided that, if the plaintiff introduced customers and if the orders were accepted by the defendant then the plaintiff should be entitled to half of any profits which were derived from those orders. There was no obligation on the part of the plaintiff to do work for the defendant, nor was there any obligation on the part of the defendant to provide work for the plaintiff, but there

was merely a provision that the defendant would in a certain event pay certain remuneration to the plaintiff.

Under these circumstances, I hold that the conclusion of the learned Principal Judge, City Civil Court, Madras, that the respondent was entitled to a reasonable notice of four months and on that account was entitled to a compensation of Rs. 16,000 for the notice period is not correct. If the respondent was not entitled to the said sum of Rs. 16,000 under the head referred to above, the respondent himself admittedly owing a sum of Rs. 13,432-41 to the appellants as against the sum of Rs. 6,250 due by the appellants to the respondent, the respondent will not be entitled to any decree in the present suit. Hence, the appeal is allowed and the judgment and decree of the learned Principal Judge, City Civil Court, Madras, in so far as he decreed the suit of the respondent against the appellants for a sum of Rs. 8,817-(sic)9, are set aside. Having regard to the nature of the question raised and discussed by me above, admittedly there being no decision of any High Court on the point, I do not make any order as to costs either here or in the trial court.