
(1948) 05 PAT CK 0007
In the Patna High Court

Dhanraj Mills limited Co.

APPELLANT

Vs

Narsingh Prasad Boobna and Others

RESPONDENT

Date of Decision : 05-05-1948

Acts Referred:

Contract Act, 1872 — Section 4

Citation : AIR 1949 Patna 270

Hon'ble Judges : Shearer, J;Reuben, J

Bench : Full Bench

Judgement

Shearer, J.—This appeal arises out of a decree passed by the learned Additional Subordinate Judge of Patna, referring to arbitration a suit to recover damages for breach of contract. The contract in question was entered into on 12th November 1939, by one Murlidhar Lath, acting as the agent of the plaintiffs, who are cloth merchants in Patna City, and the defendant, which is a limited company and is the owner of the Dhanraj Cotton Mills at Bombay. The person who acted on behalf of the company was one Ramgopal Ruia, who was a Director of the Dhanraj Mills Limited and, the Managing Director of Ram Gopal Ganpat Rai & Sons, Limited, who were the Managing Agents. Under this contract the Dhanraj Mills were to supply to the plaintiffs 2001 bales of dhotis, the goods to be delivered in instalments during the first six months of 1940 "as and when manufactured." The contract was in a printed form containing a large number of conditions. On 13th November 1939, there was added in manuscript a clause which has led to the litigation and which was in these terms:

This contract is made under a clear understanding that the management want to work the mill night shift. If, however, the management does not work the mill night shift, or stop working night shift due to increase in labour charges or whatsoever any other reason the contract will be cancelled without claiming any allowance by the buyers. Whatever goods of the contract then ready will be taken delivery of by buyers at contract rate.

According to the plaintiffs, their agent, Murlidhar, had no authority to vary the

contract in this way and, in any event, his consent to the variation made in the contract as originally concluded was obtained by means of fraud. The defendant, on the other hand, asserted that Murlidhar had full authority from the plaintiffs and asserted, moreover, that Murlidhar had agreed on 12th November 1939, that the company should be entitled to renounce the contract if it was decided not to work a night shift or if the working of a night shift had to be stopped. It was, it was contended, a mere accident that the clause added in manuscript in the printed form was signed by Murlidhar on 13th November 1939, and not on the previous day. It was said that, while the contract was being made out Ramgopalji had been called away to attend a meeting and, instead, of waiting to have the contract completed and signing it on the following day, Murlidhar insisted on signing so much of it as had already been made out on that day, as it was an auspicious day, being the Moorat Diwali.

2. Ram Gopal Ruia in his evidence endeavoured to make out that on 12th November 1939, he had not considered, or seriously considered, the possibility of introducing a night shift in the mills. According to him, it was Murlidhar who suggested this to him knowing that the mill was not likely to be in a position to supply 2001 bales of dhotis unless it worked a night shift. Murlidhar had, he said, pressed him to enter into the contract on the specific understanding that, if eventually it was found impossible to work a night shift, the mill would be entitled to renounce the contract. It is quite clear that the mill would have been unable to fulfil this contract unless, during some part of the period, it worked by night as well as by day. Ram Gopal's story that on 12th November 1939, the idea of working a night shift had not been seriously considered by him, and that, as soon as he put it before the director in charge of the working of the mills the latter pronounced it to be quite unfeasible, is however absurd. Mr. Edward, the director, who, according to Ram Gopal, vetoed the proposal was not put into the witness-box. Another employee of the mills, Har Prasad, was much more frank and straightforward than Ramgopal. This man admitted that, prior to 12th November 1939, steps had been taken to instal or add to the electric lights in the mill and also to arrange for extra labour. There is also evidence to show that on 30th. November 1939, when the mill renounced the contract, large purchases of raw cotton, had been made. It is, in my opinion, perfectly clear that, when the contract was entered into, both parties to it assumed that a night shift was to be worked. The learned Subordinate Judge appears to have assumed that, as the plaintiffs knew that the contract was entered into on the understanding that the mill was to work by night as well as by day, they must also have known that a clause had been inserted in the contract to provide against the possibility of the night shift not being worked or being discontinued. Clause 15 in the printed form provides inter alia for cases in which the mill worked short time or had to be temporarily closed down. Counsel for the appellants has suggested that the clause which was added in manuscript on 13th November 1939, is very similar to Clause 15 in the printed, form. As will appear later, I am unable to take this view of the matter. So the present, it is enough to say that the conduct of the

plaintiffs and also of their agent, Murlidhar, is wholly in consistent with the plaintiffs having been aware prior to 20th November 1939, when they received a copy of the contract, that a condition had been inserted in it under which it was to be at the option of the defendant company to work or not to work a night shift and, in the event of its deciding not to work the night shift, to renounce the contract.

3. Shortly after signing the contract on 12th November 1939, Murlidhar sent a telegram to the plaintiffs, intimating that he had done so. This telegram shows that Murlidhar had also sent a letter to the plaintiffs. This letter was not produced at the trial, and the learned Subordinate Judge seems to have inferred from this that, if it had been produced, it would have contained some reference to the clause which was added to the contract next day. While I agree with the learned Subordinate Judge that this letter was a material document and that it should have been produced, I am satisfied that it cannot possibly have contained any reference to this particular matter. It appears that, after despatching the telegram, Murlidhar endeavoured to get into telephonic communication with the plaintiffs, but was unable to do so. Murlidhar, however, telephoned again to the plaintiffs on the next day. It has been shown that this telephone call was put through at 13.48 hours, which was an hour or two before the contract, as it stood originally, was varied. It may, I think, safely be assumed that, if Murlidhar had, in his letter, said anything about a provision in the contract relating to the possibility of a night shift not being worked or, if worked, being discontinued, he would have said something about it also in his telephone conversation. Now, on 14th November 1939, the plaintiffs sold 251 bales out of the 2001 bales they had ordered from the Dhanraj Mills, and on 16th November 1939, the sold another 101 bales. It is, in my opinion, quite impossible to suppose for a moment, that they would have sold these comparatively large quantities of the goods they had ordered from the defendant company if they had known or even suspected that the goods might not be delivered. I am satisfied that the plaintiffs knew nothing about this clause in the contract until they received a copy of it, and I am also satisfied that they did not receive this copy until 20th November 1939, Immediately on seeing it the plaintiffs wrote to the defendant company and also to their agent, Murlidhar, asking Murlidhar how it had come to be inserted and asking him also to get it deleted. On 25th November 1939, which must have been very shortly after Murlidhar received this letter from his principals, Ram Gopal sent a telegram to the plaintiffs asking them to come to Bombay by the first available train as Murlidhar was "quarrelling" with them. The story of Ramgopal that the trouble between Murlidhar and himself had arisen in consequence of Murlidhar wanting him to advance money to him out of monies with him belonging to the plaintiffs is, on the face of it, a pitiful falsehood. It is, I think, manifest that the reason why Ramgopal sent for the plaintiffs was that Murlidhar, in accordance with the instructions he had received, was pressing him " to work the night shift, and for some reason or other he was unwilling either to do this or to delete the disputed clause in the contract. The plaintiffs or at least

one of them, remained in Bombay for the better part of two weeks, endeavouring to come to some amicable and satisfactory arrangement with the defendant company, although on 30th November 1939, the defendant company had formally renounced the contract. To sum up, I am completely satisfied that the plaintiffs were unaware that any clause of this kind was to be inserted in the contract and that, if they had been made aware of the intention of Ramgopal to insert it, they would never have agreed to it.

4. As I have already said, the case which Ram Gopal attempted to make out was that Murlidhar had agreed to the insertion of this clause on 12th November 1939, and that, if it was not in fact inserted in the contract until 13th November 1939, this was due to a pure accident. The learned Subordinate Judge has subjected this part of the evidence of Ramgopal to a searching critical analysis, and it is unnecessary for me to go into it. It is enough for me to say that, on the face of it, the story which Ram Gopal told was in the highest degree unconvincing, and that Murlidhar's story that nothing about the insertion on a clause of this kind was said to him on 12th November 1939, is corroborated in more than one way. In the first place, there is the letter which the defendant company sent to the plaintiffs on 2nd March 1940. This letter was sent in reply to a letter sent by the plaintiffs to the defendant company, intimating that they proposed to institute a suit for damages. It may safely be presumed that before this letter of 2nd March 1940 was despatched by the defendant company it had received very careful consideration and, in fact, it was admittedly drafted by a man who was not merely a director of the company but was also a solicitor. Now, this letter contains the following passage:

This contract referred to in your notice under reply was also entered into by the said Murlidhar Lath as aforesaid. It was signed by Mr. Murlidhar Lath on 12th November 1939. But subsequently on 13th idem certain matters not clearly indicated in the terms of the contract were settled and reduced in writing by an endorsement on the contract itself, which was duly signed by Mr. Murlidhar Lath.

This is wholly inconsistent with the evidence given by Ram Gopal at the trial and wholly consistent with the evidence of Murlidhar that it was not until after he had put through the telephone call to his principals at Patna, that he was asked by Ram Gopal and Jwala Prasad to sign the addition which had been made to the contract. Then, as I have already said, it may quite safely be assumed that when Murlidhar telephoned to the plaintiffs on 13th November 1939, he said nothing whatever to them about this matter. In this situation, the case, it is clear, must be dealt with on the assumption that there was a concluded contract on 12th November 1939, and that there was a variation of this contract on 13th November 1939. Mr. P.R. Das, for the respondent, contended that once an agent had entered into a contract he was *functus officio* and had no authority to vary or cancel it subsequently. In this connection Mr. P.R. Das referred to *Blackburn v. Scholes* (1810) 170 E.R. 3177 and *Stefanos Xenos v. Francis D. Wickham* L.R. 2 Eng. & Ir. App. Cas. 296. These decisions, however, appear to relate to the

extent of the authority of particular kinds of agents and I very much doubt if they are of general application. In any event, in the view which I take of the matter, it is not necessary for me to go into this point.

5. The learned Subordinate Judge came to the conclusion that Murlidhar had authority to agree to a condition of this kind and that, in any event, if he did not, the plaintiffs had led the defendant company to suppose that he had. Before entering into this contract Murlidhar had been in Bombay for some two or three months and had entered into two other contracts on behalf of the plaintiffs, one on 14th September 1939, and that the other on 15th September 1939, the former being for the purchase of 101 bales and the latter for the purchase of 149 bales. The learned Subordinate Judge attached very great importance to the circumstance that, before entering in either of these contracts, Murlidhar had apparently not communicated with the plaintiffs. On this point, however, the learned Subordinate Judge appears to have been mistaken. There is on the record a telephone trunk call bill (Ex. 11 (c)) showing that these calls were put through to the building in which Murlidhar was then staying in Bombay. In other words, this document goes a very long way to corroborate the evidence given by Murlidhar and the plaintiffs that, before signing the contracts which he did on 14th September 1939, and 15th September 1939, Murlidhar had got into communication with the plaintiffs and had obtained their consent to his doing so. There is also on the record another telephone trunk call bill (Ex. 11) showing that on 11th November 1939 a trunk call was put through to the plaintiffs from the office of Ram Gopal. There is no reason not to suppose and, in fact, it was apparently conceded, that this telephone call was put through by Murlidhar and that the reason why Murlidhar put it through was that he wished to obtain the consent of the plaintiffs to the contract which he signed on the following day. One point which, in this connection, is of very great importance and which the lower Court has altogether omitted to consider, is the relationship in which Murlidhar stood to the plaintiffs. Whether Murlidhar was, as the plaintiffs said, in receipt of a monthly salary, or whether, as Ram Gopal said, he was remunerated by a share in the profits made by the sale of the goods made by the Dhanraj Mills for the plaintiffs, there is no doubt that, substantially, his position was that of a mere servant of the plaintiffs. Moreover, he was a servant who had entered their employment only some three months or so prior to the signing of the contract. Again, Murlidhar was in no sense a purchasing agent of the plaintiffs who had been sent by them to Bombay primarily to purchase cloth. His main duty, it is clear, was to supervise or keep a check on the cloth which was made by the Dhanraj Mills for the plaintiffs and to see that it was of good quality and conformed to a pattern which would make it readily saleable in Bihar. It is true that before signing this contract he had signed two other contracts, but it is important to notice that immediately before the latter contracts were signed the gumashta of the plaintiffs, Sheo Bhagwan, had been in Bombay and had, it is clear from the telegrams which he sent to the plaintiffs, discussed the placing of an order with the defendant company. Further, before the contract with which we

are now concerned was signed, one of the plaintiffs, Debi Prasad, had been in Bombay and had admittedly discussed the matter with Ram Gopal, and, when he left Bombay, Ram Gopal had intimated to him that he would communicate his acceptance or refusal of it or make a counter offer through Murlidhar. Lastly, it has to be remembered that the defendant company was in the habit of using printed forms for the contracts into which they entered. In my opinion, it is quite impossible to suppose, for a moment, that the plaintiffs gave Murlidhar authority either to buy so large a quantity of cloth as 2001 bales of dhotis or to enter into any contract which was not in the printed form used by the defendant company.

6. It may be said, and has been said, that what is material is not the extent of the authority which the plaintiffs actually gave to Murlidhar but the extent of the authority which the defendant company was led to believe Murlidhar possessed. This was the point of view from which the matter was approached by the learned Subordinate Judge. The learned Subordinate Judge attached very great importance to the conversation which took place between Ram Gopal on the one hand and Sheo Bhagwan and Murlidhar on the other, when Murlidhar arrived in Bombay. The conclusion to which the learned Subordinate Judge ultimately came on this matter was based, mainly, on the ground that Ram Gopal had not then been told quite explicitly that Murlidhar had no authority to sign a contract unless and until he had communicated with the plaintiffs and obtained their consent to his doing so. It is obviously difficult to attach much weight to accounts of a conversation which had taken place some six or seven years before the persons who spoke to it gave their evidence. Moreover, it is, in my opinion, quite wrong to isolate, as it were, this particular incident. The real question is this: did the plaintiffs by their conduct do anything to lead Ram Gopal to suppose that Murlidhar had authority to sign a contract containing a clause of this kind on his own initiative? Now, Ram Gopal was perfectly well aware that Murlidhar was not, in the ordinary sense of the term, a purchasing agent, but was employed primarily by the plaintiffs to see that the dhotis, which were made by the Dhanraj Mills conformed to a certain specification. Also, if Ram Gopal did not know that before signing the two earlier contracts Murlidhar had telephoned to the plaintiffs, he must quite certainly have known that he had telephoned to the plaintiffs on 11th November 1939, as this telephone call was put through from his own premises. If the matter had rested there, I should have found it extremely difficult to say that the plaintiffs had done anything which, as it were, estopped them from contending that Murlidhar had a very limited authority indeed. There is, however, one other matter which is most damaging to the defendants and it is that, when Ram Gopal asked Murlidhar to put his signature to the added clause in the contract, he called in Jwala Prasad. Jwala Prasad has no connection whatever with the Dhanraj Mills, although he is the father-in-law of Ram Gopal. But Jwala Prasad is also the foofa of the plaintiffs and the conclusion, to my mind, is irresistible that he was called in order to induce Murlidhar to consent to do something which he might otherwise have refused to do. Murlidhar's story, which I see no good reason to suppose was not

substantially true, was that he proposed to consult the plaintiffs on the telephone and that Jwala Prasad persuaded him not to do so, giving him to understand that as he himself was a close relation of the plaintiffs, there could not be anything objectionable in the added clause and the plaintiffs would not object to it as it had been inserted in his presence and with his concurrence. The conduct of Ram Gopal in calling in Jwala Prasad in this way is, in my opinion, inconsistent with his having been under any bona fide impression that Murlidhar had authority from the plaintiffs to vary the contract as he did. In the result then, differing from the learned Subordinate Judge, I am of opinion that, in varying the contract which had been concluded on the previous day, Murlidhar quite clearly exceeded the authority which had been delegated to him.

7. In coming to the conclusion that some deception or trick had been practised on Murlidhar by Ramgopal and Jwala Prasad and that it was, in consequence of this deception or trick, that Murlidhar had signed the contract, the learned Subordinate Judge relied mainly on the evidence of Ram Gopal himself. As I have already indicated, Ramgopal pretended that it was not until the negotiations for this contract commenced that the idea of working a night shift ever occurred to him, that the idea was put into his head by Murlidhar, that no preparations had been made for working a night shift and that he never seriously contemplated introducing one that although he consulted the director in charge of the Mills he knew that the proposal would at once be vetoed and that it was, in fact, vetoed as soon as it was made. This part of Ramgopal's evidence is, from beginning to end, a palpable tissue of falsehoods and Mr. Rege, for the appellant, did not seriously dispute this. What the learned Counsel contended was that if this evidence was so wholly unconvincing, it was wrong for the lower Court to attach any importance to it whatever. This criticism is, I think, not unfounded. Counsel for the appellant then went on to contend that the evidence on Murlidhar was also unsatisfactory and could not be wholly veracious, as, if it had been, it could have been corroborated in more than one way. In the first place, it is said, the letter which Murlidhar admittedly wrote to the plaintiffs in reply to the letter which they sent to him on 20th November 1939, may be presumed to have contained a fairly accurate account of the conversation which took place between Murlidhar on the one hand and Ram Gopal and Jwala Prasad on the other. This letter, it is said, could and ought to have been produced. Again, it must be conceded there is force in this criticism. Then, it is said that an inference adverse to the plaintiffs ought to be drawn from their omission to put Jwala Prasad into the witness-box. There is, however, on the record, a copy of a letter written by Debi Prasad to Jwala Prasad, asking him to give the plaintiffs an account of what took place on 13th November 1939. It is admitted, or at least was not disputed, that Jwala Prasad never replied to this letter. Jwala Prasad, although a connection by marriage of the plaintiffs is much more closely related to Ram Gopal. The plaintiffs, in my opinion, had every reason to apprehend that, if they had put Jwala Prasad into the witness-box, Jwala Prasad would not have told the truth or the whole truth. On this point, I agree with the learned Subordinate Judge. In

cross-examination Murlidhar said that one reason why he had signed the contract was that Jwala Prasad had told him that, if he did not do so, Ram Gopal would tear up the contract of which he had not been given a copy. Mr. Rege points out that Murlidhar had said nothing about this either in his examination in chief or in an affidavit which he had sworn long before the trial. It may possibly be that this story was untrue. Substantially, however, the evidence of Murlidhar that he was told, that, even if he signed the addition to the contract, the goods would still be delivered and the contract would not in fact be repudiated was, in my opinion, true and must be accepted.

8. Mr. Rege said that if, in fact, any kind of pressure had been brought to bear on Murlidhar, Murlidhar would have telephoned or written to the plaintiff's, which, admittedly, he did not do. It may well, however, be that Murlidhar was in fact, as he said, persuaded to sign the contract against his better judgment, and, having done so thought it better to wait and let his principals come to know of what he had done when a copy of the contract reached them. Certainly, it seems to me quite impossible to infer from this conduct of Murlidhar that no trick or deception was practised on him. The utmost that could be inferred is that Murlidhar did not realise at the time that he had been victimised. The question, however, at issue is not what artifice exactly was employed to induce Murlidhar to put his signature on the contract but whether a fraud was perpetrated on the plaintiffs and, in dealing with it, it has to be remembered that the plaintiffs certainly never anticipated that no nightshift might ever be worked at all and no goods might be delivered and also that Murlidhar had no authority to vary the contract in this way and Ram Gopal was aware of this. Now, on this question of fraud the most damaging thing to the defendant company is, in my opinion, the nature of the clause which Murlidhar was persuaded to add to the contract. Clause 15 in the printed form provides that in the happening of certain contingencies the company is to be entitled to rescind the contract. The contingencies there referred to are all contingencies which it was beyond the power of the company either to bring about or to prevent. If the clause which was inserted in the contract in manuscript on 13th November 1939, had provided that, in the event of a night-shift having to be discontinued on the ground of failure to obtain electric light or to obtain adequate labour or something of that kind, the argument of counsel for the appellant that it was in pari materia with Clause 1a in the printed form would, perhaps, have been tenable. But the condition which Ram Gopal and Jwala Prasad persuaded Murlidhar to agree to was a condition that, if the night shift was not worked at all, the mill should be entitled to renounce the contract. Mr. Rege, for the appellant, said that it was very difficult to believe that if Ram Gopal had intended on 13th November 1939, to introduce a night-shift and had entered into the contract on that footing, he would have changed his mind within twenty-four hours and decided against introducing a night-shift. It is not, however, at all necessary to assume that by 13th November 1939, Ram Gopal had already decided to abandon the idea of working a night-shift. It may be, that, although he had not then come to any very definite

conclusion in the matter, he had foreseen that a situation might arise in which it would be unprofitable for him to work the mill by night as well as by day and that in such an event he wished to be in a position to renounce the contract. From what took place subsequently, it is, I think, quite clear that that was what was in Ram Gopal's mind. In other words, Ram Gopal induced Murlidhar, an agent, whom he knew had not the requisite authority, to vary the contract in such a way as to give him an option either to perform or not to perform it. That, undoubtedly, amounted to a fraud on the plaintiffs. Even if Murlidhar knew exactly what he was doing and knew also that there was a danger of the contract being repudiated, it would make no difference except that, in that case, Murlidhar would have been a party to the fraud on his principals or employers. In fairness, however, to Murlidhar I must say that I do not think he was guilty of any dishonesty and the plaintiffs did not apparently suspect he was, as they retained him in their service. His account of what was said to him may not be completely veracious but that he was misled by Ram Gopal and also, consciously or unconsciously by Jwala Prasad seems to me quite clear. The learned Subordinate Judge came to the conclusion that a fraud was practised on Murlidhar and that motive of Ram Gopal for committing this fraud was that he had foreseen that it might be more profitable for the Dhanraj Mills to sell the raw cotton which they had purchased to manufacture these dhotis. The plaintiffs succeeded in showing that, immediately after the defendant company renounced the contract, it sold a large quantity of raw cotton and that during the month of November 1939, there had been a progressive rise in the market price of raw cotton. Mr. Rege, for the appellant, pointed out that under its articles of association the company dealt in raw cotton. That may be so. But the conduct of the company in selling a large quantity of raw cotton immediately after renouncing this contract does support the conclusion at which the learned Subordinate Judge arrived as to Ram Gopal's motives. In any event, whatever, his motives were, I agree with the learned Subordinate Judge that the plaintiffs did succeed in showing that the variation made in the contract was brought about by means of fraud.

9. The only other question that arises in the appeal is the question of jurisdiction. It has been strongly contended that the Court below had no jurisdiction to try the suit and that the suit could and ought to have been instituted in Bombay. There can, I think, be no doubt but that the contract was made at Bombay and was to be performed at Bombay. The point is, in my opinion, so clear that it is quite unnecessary for me to go into it. Mr. Rege, for the appellant, pointed out that the suit was instituted on 12th March 1940, whereas the contract was not to be performed or to be completely performed until 30th June 1940. Counsel for the appellant then invited our attention to the following passage in Leake on Contracts, Edn 8, p. 675:

Renunciation of the contract will operate as a present breach only if accepted and acted upon as such by the other party; who may, if he pleases, disregard it and insist upon performance according to the terms. If he desires to avail himself of

an act of repudiation he must evidence his election so to do with reasonable dispatch.

Counsel pointed out that the letter which the plaintiffs wrote to his clients intimating that they intended to take advantage of their disclaimer of the contract was communicated to them at Bombay. Mr. Rege is, no doubt, correct in saying that the plaintiffs were not entitled to institute a suit until they had intimated to the defendant company that they accepted its renunciation of the contract. It does not, however, follow from this that anything that occurred prior to the communication of this letter to the defendant company did not and could not constitute any part of the cause of action. The plaintiffs were entitled to institute the suit at Patna if their cause of action arose wholly or in part in the district of Patna. The expression ("cause of action" and "part of the cause of action" must be taken as meaning, respectively, the material facts and any material fact in the case for the plaintiff *Read v. Brown* (1889) 22 Q.B.D. 128. What is relied on by the plaintiffs is that the letter renouncing the contract, although it was written at and despatched from Bombay on 30th November 1939, was communicated to them at Patna. The disclaimer or renunciation of the contract is clearly a material fact which the plaintiffs had to establish and, therefore, part of the cause of action. The question that arises, and it is one of some nicety is, as I understand it, this: did the fact of renunciation take place in Bombay when the letter of the defendant company to the plaintiffs was written or posted and is the receipt of this letter by the plaintiffs at Patna merely a piece of evidence establishing a fact that had already occurred at Bombay, or did the renunciation of the contract take place at Patna when the letter containing the renunciation reached the plaintiffs? Mr. Rege, for the appellant, relied on *Engineering Supplies Ltd. Vs. Dhandhanania and Co.*, and *Dhanmal Marwari v. Messrs. Jankidas Baijnath* 49 C.W.N. 123. In each of these cases it was decided that the making of an offer was made by a letter or by telegram, it was made when the letter or telegram was handed over to the postal authorities, and that, in consequence, a Court having jurisdiction over the area in which the post office was situated had jurisdiction to entertain a suit for damages for breach of the contract. The correctness of the view there taken has, however, been doubted by a Bench of the Madras High Court in *Ahmad Bux Alia Jovya v. Fazl Karim* AIR 1940 Mad. 49 and by a Bench of this Court in *Arthur Butler and Co. Ltd. v. District Board Gaya* AIR 1947 Pat. 134. I respectfully agree with the view taken in these latter decisions which is supported by decisions of the Courts in England; see for instance, *Cowan v. O'Connor* (1888) 20 Q.B.D. 640 and *Clarke Brothers v. Knowles* (1918) 1 K.B. 128. It must, I think, be assumed that an offer is made, not "at the place where, if it is made by letter, the letter is put into the post, but at the place where the letter is delivered. Similarly, the acceptance of an offer takes place at the place where the acceptance is communicated. The post office is the agent of the sender of the letter or telegram and not the agent of the addressee. That being so, is it not also logical and reasonable to assume that when there has been a renunciation or disclaimer of a contract, the

renunciation or disclaimer takes place when and where it is communicated to the other party to the contract? Mr. Rege, for the appellant, invited our attention to Section 4, Contract Act. This, however, deals with the revocation of an offer or an acceptance and not with the disclaimer or renunciation of a completed contract, which is an entirely different matter. Moreover, one reason why this section was so framed appears to have been to ensure that, when an acceptance is sent by letter and is subsequently revoked by telegram and the telegram arrives before the letter, there shall be no concluded contract. In England, apparently, the position would be different. I must confess that if there was no direct authority on the point I should have been in considerable doubt as to what my decision should be. Mr. Das, however, for the respondents, cited as directly in point the decision of this Court to which I have just referred: *Arthur Butler and Co. Ltd. v. District Board Gaya* AIR 1947 Pat. 184. In that case a letter repudiating or renouncing a contract was sent by one party to the contract from Gaya to the other party at Muzaffarpur and it was decided that the Court at Muzaffarpur had jurisdiction to entertain a suit. Mr. Rege, for the appellant, pointed out that in that case the District Board of Gaya which renounced the contract had, before doing so, written to the company, which was the plaintiff, asking what the financial consequences to it of renouncing the contract would be and that the company had intimated to it that if it informed it on or before 15th October 1939, that it had cancelled the contract, it would charge Rs. 41,000 for the price of materials already ordered. The District Board subsequently sent the company a letter which it received at Muzaffarpur on 15th October 1939, repudiating the contract. Mr. Rege suggests that this was a circumstance which weighed greatly with Fazl Ali C.J. as that learned Judge observed:

The parties had agreed that this revocation to be effective must be communicated to the plaintiff company at Muzaffarpur on 15th October 1939, and this was done.

It is, however, obvious that any disclaimer or renunciation of a contract to be effective must be communicated to the other party to the contract. Unless and until it is communicated, there is no such disclaimer or renunciation as would entitle the other party to it to exercise its option either to sue immediately for damages or to await the period fixed for the performance of the contract and then sue if it is not performed. That also suggests that the disclaimer or renunciation is not complete until it is communicated and, therefore, takes place at the place where the communication is made and not at the place where the letter or telegram containing the disclaimer or renunciation is despatched. From the statement of facts given in the earlier portion of the judgment of Fazl Ali C.J. it does not appear that the plaintiffs in that case had said specifically that the letter or telegram cancelling the contract should be sent to them at Muzaffarpur, although, presumably of course, they intended that it should be and could not in fact have intended anything else. Such agreement as there was between them was as I understand it merely an agreement that if the one party renounced the contract on or before the date stipulated, the other party would accept the

renunciation and limit its claim for damages to a certain sum. I find it quite impossible to distinguish the decision in *Arthur Butler and Co. Ltd. v. District Board Gaya* AIR 1947 Pat. 134, and, as it is binding on us, we must follow it and hold that the Court below had jurisdiction to try the suit. For these reasons I would affirm the decree of the Court below and would dismiss this appeal with costs.

Reuben J.

10. I agree but, as the point of jurisdiction is important, should like to state my own view regarding it. The test laid down by Section 20, Civil P.C., is where the cause of action, wholly or in part, arises. The meaning of cause of action is well established. In the words of Rankin C.J., it is "the entire set of facts that gives rise to an enforceable claim, or in the words of Lord Fry, "everything which if not proved gives the defendant an immediate right to judgment, every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant could have a right to traverse". *Engineering Supplies Ltd. Vs. Dhandhaniah and Co.*, .

11. In a suit for damages for breach of contract, one of the facts necessary to be proved is the existence of a contract, that is to say, that a proposal was made and was accepted. In my opinion, both these events took place in Bombay. Another fact necessary to be proved is the alleged breach. In this case the breach was an anticipatory one, regarding which Section 39, Contract Act provides:

When a party to a contract has refused to perform...his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

This section enacts, as the law of this country, what was, and still is, the law in England (vide Leake's Law of Contracts, Eighth Edition, p. 671). Mr. Rege, has drawn our attention to Leake's observation:

Renunciation of the contract will operate as a present breach only if accepted and acted upon as such by the other party; who may, if he pleases, disregard it and insist upon performance according to the terms.

The position is similar in India. The renunciation entitles the promisee to end the contract; if he chooses not to do so, the contract continues to be binding between the parties.

12. In the present case, the letter of renunciation reached the plaintiff's firm at Patna on 4th December. In the meantime Debi Prasad had gone to Bombay in answer to the telegram about Murlidhar quarrelling with the defendants. Immediately, the reply was sent by telegram:

Your registered letter 30th November cancelling contract. 64-C-139. Not acceptable. Talk with our Debi Prasad at Bombay.

So, it is clear that the contract did not come to an end on that occasion. There were then talks at Bombay between the parties to the contract. The plaintiffs tried to induce the defendants to work night shift and to perform the contract, but the defendants refused. This state of things continued till on 26th February 1940, the plaintiffs sent from Patna a lawyer's notice to the defendants, charging them with breach of contract and demanding immediate payment of Rs. 1,53,420-6-0, as damages. Mr. Rege urges that this is the renunciation which put an end to the contract and the renunciation became complete when it reached the defendants in Bombay, and so does not operate to give the Patna Court jurisdiction. I cannot agree that the lawyer's letter of 26th February was the first step subsequent to 4th December for putting an end to the contract. In my opinion the defendants were still responsible for the first step. I say this because even after the telegram of 4th December and the negotiations in Bombay, the attitude of the defendants was one of refusal to perform the contract, and u/s 39, Contract Act, the plaintiffs were entitled at any time to put an end to the contract. The law is the same in England; Leake says, at p, 676:

Renunciation of the contract, if not accepted by the other party as a present breach, may be withdrawn at any time before the performance is due; but if not in fact withdrawn it is evidence of continued intention to the same effect.

13. The question is "when did the renunciation become complete?" The answer to my mind is that it became complete as against the defendants when the minds of the two parties became at one regarding the non-performance of the contract, and the plaintiffs put their lawyer's letter in course of transmission to the defendants by posting it at Patna. This view is strengthened by a consideration of the provisions of Sections 4 and 5, Contract Act. The refusal of the defendants to perform the contract corresponds to a proposal, and became complete only when it came to the knowledge of the plaintiffs. The letter of the plaintiffs accepting the refusal as ending the contract corresponds to the acceptance which converts a proposal into a contract. Under the provisions of Section 4 the communication of the acceptance is complete against the proposer as soon as it is put into course of transmission so as to be out of the power of the acceptor. On the analogy of the section, the acceptance would have been complete against the plaintiffs only when it came to the knowledge of the defendants, and up to that moment it was still open to the plaintiffs to withdraw their acceptance. In a suit against a particular party however, we are concerned to see when the cause of action became complete against that party. On my reasoning above, the cancellation of the contract became complete against the defendants when the lawyer's letter was posted at Patna. It follows that the Patna Court has jurisdiction to entertain the suit.