
(1954) 04 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 23 of 1953

Inder Sain

APPELLANT

Vs

Piare Lal
 Piare Lal Vs Inder Sain

RESPONDENT

Date of Decision : 22-04-1954

Acts Referred:

Contract Act, 1872 — Section 213

Citation : AIR 1955 P&H 143

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : H.R. Sodhi and M.R. Aggarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Kapur, J.—This is a defendant's appeal against an appellate order of the Senior Subordinate Judge, Ludhiana modifying the decree of the trial Court holding that the plaintiff had no right to ask for accounts.

2. The plaintiff brought a suit on 12-11-1952, alleging" that he was acting as agent of the defendant in that he had to go out and obtain orders for the sale of bicycle parts and he also was canvassing other persons and that the profits of the proceed which accrued as a result of his canvassing and orders obtained were to be divided in the ratio of nine annas for the plaintiff and seven annas for the defendant. Other conditions are not necessary for the purposes of this suit. In para. 4 of the plaint he alleged that the plaintiff obtained orders which were sent to the defendant for compliance and there were also other orders which were sent direct to the defendant and which were the result of the exertions of the plaintiff. As he did not know of those orders he brought a suit for accounts. An objection was taken that no suit for accounts lay by an agent against a principal, but this objection was overruled by the appellate Court and thus it was held that such a suit did lie.

3. A large number of cases has been quoted before me, but in my opinion the

law laid down in Bowstead on Agency in Art. 79 at p. 170 correctly lays down the legal position. It is there stated:

"Where the accounts between a principal and agent are of so complicated a nature that they cannot be satisfactorily dealt with in an action at law, the agent has a right to have an account taken in equity ; but the relation of principal and agent is not alone sufficient to entitle an agent to an account in equity, when the matter can be dealt with in action at law."

4. In India this statement of the law was accepted by Tapp J. in -- "Ram Lal Kapur and Sons v. Asian Commercial Assurance Co. Ltd." AIR 1933 Lah 483 (A), where it was held that a principal becomes an accounting party in special circumstances or under trade usage or a definite contract.

5. It is true that in many cases a different view has been taken in India and my attention had been drawn by the counsel for the appellant to a judgment of the Allahabad High Court -- Mirza Najm Effindi Vs. Firm Kohinoor Footwear Co., Mathur J. went so far as to say that every when accounts are complicated an agent is not entitled to sue for rendition of accounts against a principal, but it is open to the agent to serve, interrogatories on the principal or to apply for discovery and inspection of his accounts and that merely because ascertainment of the amount due would necessitate an investigation into accounts does not alter the nature of the suit. I cannot see how interrogatories can be issued where an amount has "to be ascertained from the accounts of a defendant before a suit is brought, and in order to determine the amount for which the suit is to be brought surely accounts have to be looked into.

6. Counsel then referred to a judgment of the Calcutta High Court in -- Narmada Chandra Banerjee Vs. Maharaj Bahadur Singh Dugar, where it was held that there cannot in law be a suit for accounts unless the defendant in the suit is under an obligation to render accounts to the plaintiff and the principal is under no obligation to render accounts to the agent and the fact that the sum cannot be ascertained without investigation into the accounts does not alter the nature of the accounts.

7. There are other cases which support the view which the counsel for the appellant is agitating for.

8. As a general principle of law I am in respectful agreement with the view, particularly in view of Section 213, Contract Act, that it is the agent who is an accounting party to the principal & not the principal", but in cases such as the one which is now before me where it has to be ascertained as to what are the orders which were received from a particular locality and which are the result of canvassing by the plaintiff, I cannot see how the amount can be ascertained unless accounts are gone into and that in my opinion seems to be the view deducible from Bowstead on Agency also. In my view, in the present case, the proper remedy for the plaintiff was to sue for accounts. Of course before the accounts can be taken it has to be ascertained whether any orders were received

as a result of the exertions of the plaintiff of which he could not have any knowledge, because the orders were received as a result of his canvassing though not brought or received by him personally.

9. I would therefore dismiss this appeal, but in view of the circumstances of the case leave the parties to bear their own costs, & I certify this case to be a fit one for appeal under the Letters Patent.