
(1979) 04 MAD CK 0020
In the Madras High Court
Case No : L.P.A. No. 132 of 1975

J.K. Sayani

APPELLANT

Vs

Bright Brothers Pvt. Ltd.

RESPONDENT

Date of Decision : 26-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 205, 206

Citation : AIR 1980 Mad 162 : (1980) 93 LW 241 : (1980) 1 MLJ 130

Hon'ble Judges : Ramaprasada Rao, C.J.; Ratnam, J

Bench : Division Bench

Advocate : D. Thilokchand Chopda and D. Madanchand Chopda, for the Appellant; V. Srinivasan, for the Respondent

Judgement

Ramaprasada Rao, C.J.—This Letters Patent Appeal is directed against the judgment of Ismail, J. now reported in Bright Brothers (Private)

Limited Vs. J.K. Sayani, . The plaintiff in O. S. No. 4905 of 1968, an the file of t he City Civil - Court, Madras, is the appellant before us. The

plaintiff-appellant entered into an arrangement with the defendants respondents under which the plaintiff appellant became the sole selling agents of

the respondents with regard to a specified area. It is admitted that the said arrangement did not prescribe any particular period during which the

said agency should be in vogue. The plaintiff was purchasing the goods from the respondents from time to time as well as booking orders for the

sale of the respondents' goods. A commission of 6.112 per cent was to be paid by the respondents to the appellant in respect of such dealings.

An extra commission of 1.1/2 per cent was also provided for in certain circumstances. Under Ex. A. 44, dated 27-2-1964, though there were

certain modifications regarding the percentage of commission and the circumstances under which such entitlement as to commission by the appellant could be claimed, there was no further material alterations in the arrangement. This agency of the appellant was terminated by a letter dated 28/30-09-1964 marked as Ex. B. 56. The plaintiff-appellant instituted a suit for recovery of various sums. The first one was that the plaintiff was entitled to a reasonable notice before his agency was terminated and under that head, the plaintiff estimated such commission at Rs. 4,000/- per month and was of the view that a reasonable notice of twelve months period ought to have been given, and therefore, claimed a sum of Rs. 48,000/-. The second head of claim was that he was entitled to a commission of Rs. 12,000/- on the actual orders booked and for services rendered by the plaintiff-appellant to the respondents during the tenure of the agency. The third head under which the claim was made by the plaintiff-appellant was that the respondent defendants were bound to pay compensation to the plaintiff for the loss suffered by him in payment of his salary and for the closure of their shop suddenly. The plaintiff admitted that a sum of Rs. 13,431-41 was due to the defendant but denied liability for the balance of the claim. The plaintiff in the course of the trial limited his relief to a sum of Rs. 50,000/-. Various issues were raised before the trial judge, who ultimately came to the conclusion that u/s 206 of the Indian Contract Act, the plaintiff was entitled to a reasonable notice and he was of the view that a period of four months would be the period which in the circumstances would be a reasonable period for determination of the agency and fixed the compensation on that ground at Rs. 16,000/-. Under the other heads, having regard to the admissions made by the plaintiff, that a sum of Rs. 13,431-41 was due by him to the defendants, the trial Judge gave ultimately a decree for Rs. 8817-59. As against the said judgment, the defendant went on appeal and the learned single Judge of this court, who considered the main issue was of the view that the learned trial Judge was not right in having held that a reasonable notice of four months before the determination of the agency was necessary and modified the decree of the trial Judge accordingly.

2. In fact, the principal contention which was raised before Ismail, J., was whether a reasonable notice for determination for the service of the

agency was necessary at all, when under the arrangement between the parties, no period of agency has been agreed to either expressly or by necessary implication.

3. Ismail, J. was of the view that Sections 205 and 206 of the Indian Contract Act are, so inter-linked that Section 206 can only be invoked in a case where there is an express or an implied contract that the agency should be continued for any period of time and if for any reason such agency is revoked by the principal or renounced by the agents without sufficient cause, - then one must compensate the other.

4. Chapter 10 of the Indian Contract Act dealing with agency has divided the subject under independent different heads such as appointment and

authority of agents (Ss. 182 to 189), sub-agents (Sections 190 to 195), ratification (Ss. 196 to 200), Revocation of authority (Ss. 201 to 210),

Agent's duty to principal (Ss. 211 to 221), principal's duty to agent (Sections 222 to 225), and effect of agency on contracts with third persons

(Ss. 226 to 238). The law relating to contracts as adumbrated in the Indian Contract Act has been so codified that the Act should be viewed as a

Code relating to the law of contracts. In this sense, therefore, Chapter 10 and its various" sub heads have to be dealt with- together and - the

various sub-sections in relevant subhead. In the instant case, we are concerned with the sub-head "Revocation of authority" which is contained in

Sections 201 to 210 of the Indian Contract Act. We are of the view that this sub-head appearing in Chapter 10 of the Indian Contract Act has a

purpose to serve and has a bearing upon the concept of revocation of the authority of agency. As agency contemplates two principal parties,

namely, the principal on the one hand and the agent on the other, the principal- has the right, subject, of course, to certain limitations to revoke the

agency and even so, the agent in his turn has also the right to renounce the agency subject equally to certain terms and conditions. It is in this

context we are of the view that the terms revocation and renunciation which primarily appear and are projected in the forefront in the sub-head of

revocation of authority in Sections 201 to 210 have to be read together, instead of being treated in a truncated way for the purpose of

interpretation. While interpreting the statute which has all the moorings of, a Code, it would be difficult and. indeed. it appears to us not possible

even to read two successive sections appearing in the sub-head of revocation of authority as being a self-contained provision for the purpose of notice of revocation for renunciation. . As every section under the sub-head in question has a bearing on every other, section under it, it appears to us -that while interpreting the purport, meaning and the effect of notice of revocation or renunciation u/s 206, the section immediately preceding Section 206 dealing with notice of revocation or renunciation, should not be the only section which should be looked into for the purpose of guidance and interpretation. As every enactment has to be grammatically interpreted and as all -provisions therein should be given effect to as far as possible instead of giving them up for purposes of convenience of interpretation, we are unable to agree with Ismail, J. that for. purposes of notice of revocation or renunciation, which is referred to in Section 206, it can only be of relevancy to Section 205 alone and to no other section in the sub-head of revocation of authority. In fact, the head "Revocation of authority" is so comprehensive enough as to include revocation both by the principal as well as revocation by the agent.

5. The accent is laid upon the word "such" appearing in Section 206 of the Act. It is now for us to consider whether it is u/s 205 alone the concept of revocation or renunciation is thought of. Let us consider Section 201 of the Act dealing with "termination of agency". Section 201 says that an agency is terminated by the principal revoking His authority or by the agent renouncing the business of the agency etc. If, therefore, Section 206 were to be applied only to the provision for revocation by principal or renunciation by agent referred to in Section 205 alone, then Section 206 would become nugatory, when we read the section with reference to and in conjunction with Section 201. u/s 201 general termination of the agency by the principal revoking the authority of the principal as also the general right of the agent renouncing the business of the agency is thought of. Can it, therefore, be said that in such cases Sec. 206 is not applicable at all? Section 206 says

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

Could it be possible to surmise, that reasonable notice - need not be given in

cases of revocation or renunciation if no period of agency is provided for. Sec. 201 as we said, is general in scope. If the word "such" appearing in Section 206 is to be given the meaning that such revocation or renunciation appearing therein would only be referable to the principal's right to revoke and the agent's right to renounce under Sec. 205 which provides for a time during which such agency subsists, then such an understanding of the word "such revocation or renunciation" appearing in Section 206 ignores certain rights of the principal or the agent as the case may be, in cases of general revocation or general renunciation. Section 205 reads as follows

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"".

No doubt Section 205 provides for a period of time during which agency should subsist. If what is intended by the Code of the Contract Act is

that the principal is liable to compensate the agent only if the agency is for a period and even so if the agent is obliged to compensate the principal if

the agency should be continued for any fixed period of time, then can Section 201 which provides for a general right to both the principal and the

agent, be exercised to the detriment of one as against the other without being under an obligation to compensate, aggrieved party?

6. Ismaili, J. would refer to Sec. 203 wherein it is provided that the principal may revoke the authority given to the agent at any time before the

authority has been exercised so as to bind the principal. This, in our view, is not quite apposite for the discussion because the revocation of the

authority can be effected before the creation of jural relationship of principal and agent. Therefore, the question of compensation does not arise.

On the other hand Sec. 204 gives the clue for our conclusion. S. 204 of the Act compels the principal not to revoke an authority given to an agent

after the agent has partly exercised the same and this interdict is provided by the statute. in so far as it relates to such acts and obligations as arising

from acts already done in the agency. In so far as acts or obligations done in the agency are concerned could it not be, expected in justice, equity

and good conscience that the agent would be given a reasonable notice of such

intention and if the principal fails to give such reasonable notice, should he not make good the damage thereby resulting to the agent by reason of such premature determination. There appears to be a link which is a necessary nexus as between one section and the other appearing in the sub-head of revocation of authority. Ismail J. rightly, in our view, quoted 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 Provisions. In our view Section 201 and Sec. 204, if they are to be understood in the realistic, legalistic and equitable sense, then whenever one of the two parties as between the principal and the agent is aggrieved by a premature determination of the right of agency without reasonable cause, then the other should be compensated. It is unnecessary that such compensation should be given only in a case where a period of time is fixed for the existence or continuance Of such jural relationship.

7. In AIR 1946 6 (Privy Council) , the Privy Council was considering the case of a life insurance agent who was appointed for life. One D was appointed on 9th July 1892 for life as Insurance Agent and so long as he continued in business, it was held that the agency cannot be determined without a reasonable notice of determination of such agency. In Re: Shaw Wallace and Co., , which no doubt arose under the Income Tax Act expressed the view thus

When an agency is not for a fixed period, compensation received by the company as agents of a business not being the commission for a year or a shorter period paid in advance in lieu of notice, is merely the capitalized value. Of future annual taxable income

We are only referring to this case to fortify our view that in the case when the agency is not for the fixed. period, compensation is payable . With respect, we are unable to agree with the conclusion that the word "such" in Section 204 of the Act, should only be read f or Purposes of interpreting, Section 205 of - the Contract Act. On the other hand, we are of the view that the word "such! has been used so as. to be referable to all the other relevant sections which precede and succeed Section 205 under the sub head "Revocation of authority"..

8. Particular" reference is made to Section 207 of the Act. Section 207 in our view does not touch upon the rights or obligations of either the principal or the agent. It only deals with a general term where under revocation or renunciation may be by necessary implication, also. In fact, Section 205 also refers to an implied term of a contract of, an agency, It, therefore, follows that such an implied contract may also be determined by a conduct which is implied as between the parties. Section 206 in our view has to be understood as being general in scope and not being one which has an impinge only and only upon S. 205 for the only reason the word "such" is used in Section 206. As revocation and renunciation of the contract of agency may take place in myriad ways, the. rights and obligations that flow from such termination can only be after the party who intends to snap such jural relationship, puts the other aggrieved party on reasonable notice. This could also be Justified on the principles of natural justice.

9. Damages or compensation do arise out of some overt or covert act on the part of another. In the course of exercising that power, or a right which a person may have, may it be under a contract, he should not act in bad faith. He should not depart from the requirements of natural justice or the person either revoking the agency or renouncing it, might have refused to take into account something which was obligatory on his part to take into account or it might have based its decision on some matter which under the contract between the parties he had no right to take into account. These are again some of the matters which enter into the judicial verdict while considering whether a reasonable notice is necessary whilst snapping the jural relation ship of principal, and agent; A unilateral act when the same being susceptible to judicial scrutiny would lead to miscarriage of Justice and would deprive the wronged party of the right to claim compensation or damages as the case may be. We are therefore of opinion that whether there is an express or implied contract that the agency should be continued for any period of time, a reasonable notice of such revocation or renunciation as the case may be is necessary. No doubt agency is based on trust and confidence. But such trust and confidence also cannot be whittled down by whims and fancies by one party by deliberately creating a wrong to the other If the contract itself provides for the

issuance of a notice, then the matter is beyond doubt and difficulty. But if the contract is silent about such notice the statute con templates a reasonable notice. The word "reasonable appearing in Section 206 by itself is a key for the interpretation of that word with which we are concerned. Reasonableness varies with the facts and circumstances of each case. The views of the word "reasonable" notwithstanding. the appearance of the word "such" in Section 206 dominates the situation and that has to prevail, upon under all circumstances. Section 202 provides for a contingency which is entirely different be cause the agency coupled with the interest cannot be terminated to the pre judice of such interest. Section 204, as we said already, supports our conclusion since the principal who attempts to pre maturely revoke the authority cannot do so, if the authority has been Partly exercised in so far as those acts and obligations which have already been done in the course of such agency are concerned. This again implies that the agency which has -been terminated prematurely could be the subject matter of complaint by the aggrieved person on the ground that no reasonable notice was given to him Though strictly agency does not fall under the doctrine of master and servant, yet the principles applicable to such relationship could be invoked in the name of good conscience, as otherwise the man aggrieved would be without any remedy whatsoever on the facts of the case, it has, been established that since 1952, until the termination was effected in 1964, the appellant was expending moneys on his, own by establishing custom, by spending on his own for Payment Of salary to- his staff and for taking all possible steps, to safeguard the interest of the defendant's business. In fact, the plaintiff was obliged to work for the defendants during the time of the agency and secure the necessary orders for them. it -was in mutual interest that the agency was created and it is also seen from the facts of the case that there was an admission on the part of the plaintiff that he owed a sum of Rs. 13422-41, to the defendants at or about the time when the suit was instituted.

10. Having regard to our view in the matter that on the only ground that the appellant was permitted to deal with the other's goods also, it cannot be said that in equity he is not entitled to any compensation. The contract does not forbid him from being the agent of others. It is not even pleaded

before us in that light. The finding of the learned Judge is that the plaintiff was not guilty of misconduct in dealing with the goods of other people and

he also expressed the view that there was no express restriction imposed on the appellant to that effect. We, therefore, find that having regard to

our interpretation as above, the plaintiff is entitled to a reasonable compensation we fix the same at Rs. 12000 on the basis that the plaintiff would

be entitled to at least three months' compensation before determination. It is not in dispute that the plaintiff was earning a commission of Rs. 4000

per month. We, therefore, fix the compensation at Rs. 12000.

11. The judgment of Ismail, J. is set aside and the judgment and decree of the trial Judge is modified so as to entitle the plaintiff to a decree for a

sum of Rs. 4817-59 (Rs. 12000 plus Rs. 6250 minus Rs. 13432-41= Rs. 4817-59) as compensation for the absence of reasonable notice etc.

and the appeal is allowed to the extent indicated above. No costs.

12. Appeal allowed.