
(1943) 02 MAD CK 0011
In the Madras High Court

Manilal and Others

APPELLANT

Vs

M.P. Venkatachalapathi Iyer (deceased) and Others

RESPONDENT

Date of Decision : 24-02-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1943 Mad 471 : (1944) ILR (Mad) 95 : (1943) 56 LW 242 : (1943) 1 MLJ 353

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioners ask the Court to revise, in the exercise of the powers conferred upon it by Section 115,

Civil Procedure Code, an order of the Subordinate Judge of Madura holding that the Court had jurisdiction to entertain a suit filed by the

respondent.

2. The respondent is a merchant carrying on business in Madura. The petitioners are merchants carrying on business in Bombay. On the 7th

September, 1940, the respondent wrote to the petitioners offering to purchase 200 pounds of naphthalene at the price of Rs. 12-8-0 per pound.

On the 9th September, 1940, the petitioners replied making a counter offer. They were willing to supply the goods at the price of Rs. 13 a pound.

By a letter dated 13th September, 1940, the respondent offered to buy 500 pounds of naphthalene at the rate quoted by the petitioners. This offer

was accepted by the petitioners in a letter dated 14th September, 1940, and posted in Bombay.

3. The Subordinate Judge held that he had jurisdiction to entertain the suit as in his view part of the cause of action arose in Madura. He regarded

the receipt of the letter in Madura from the petitioners as being part of the cause of action. This opinion is opposed to at least five Bench decisions

of this Court, two of which were quoted to him. He rejected them because of the observations of Patanjali Sastri, J., in a recent case, Sepulchre

Brothers, Proprietors, The Belgium East India Trading and Engineering Company Vs. Sait Khushal Das Jagjivan Das Mehta trading in the name of

J. Khushal Das and Company, . The present petition came in the first instance before Horwill, J., who referred it to a Bench for decision.

4. A contract is made at the place where the offer is accepted. In accordance with English authorities this Court has held that an offer when

accepted by post is accepted at the place where the letter of acceptance is posted and therefore the cause of action arises there. See The Firm of

A.M. Mylappa Chettiar by Partners of the Firm of that Name Vs. Aga Mirza Mohamed Shirazee, Managing Proprietor of the Firm, , The National

Insurance Company, Limited Vs. Seethammal, , Bengal Insurance and Real Property Co., Ltd. v. Velayammal ILR (1937) Mad. 990 Ahmad Bux

Alla Jovaya Vs. Fazal Karim, and Pachaiammal and Another Vs. The Hindustan Co-operative Insurance Society Limited, an Incorporated

Company and Others, . All these cases were decided by Division Benches.

5. In Chemalapati Venkata Reddy Vs. Nataraja Setti and Another, , Ramesam, J., sitting alone expressed the opinion that the receipt of

acceptance when the contract is complete is part of the cause of action because he considered that there was no reason why an acceptance should

be in a worse position than an offer. The case did not call for a decision on this question, and the observations can only be regarded as obiter. In

Sepulchre Brothers, Proprietors, The Belgium East India Trading and Engineering Company Vs. Sait Khushal Das Jagjivan Das Mehta trading in

the name of J. Khushal Das and Company, Patanjali Sastri, J., accepted the dictum of Ramesam, J., notwithstanding that the decisions of this

Court in the The National Insurance Company, Limited Vs. Seethammal, and Ahmad Bux Alla Jovaya Vs. Fazal Karim, , were quoted to him and

were binding on him. He brushed them aside on the ground that the learned Judges who had decided them had not considered this aspect and

because in his opinion support for the dictum of Ramesam, J., was to be found in the English case of Evans v. Nicholson (1875) 32 L.T. 778. A

Judge has, of course, always the right of expressing his own opinion and indicating that he is not in agreement with an authority binding on him, but he is nevertheless in duty bound to follow it, as the Full Bench of this Court which decided Ahmad Bux Alla Jovaya Vs. Fazal Karim, , had occasion to point out. The fact that a Judge thinks that some argument has been overlooked in a judgment binding on him is no reason for refusing to follow it. The result of Patanjali Sastri, J., refusing to follow the cases of this Court which bound him has led the Subordinate Judge into the erroneous belief that his judgment represents the law as laid down by this Court. So far as this Court is concerned the law has been stated in the five Bench decisions to which we have referred. The judgments there are binding on us as they were binding on Patanjali Sastri, J., and we must follow them.

6. The petition will be allowed with costs. This means that the plaint will be returned to the plaintiff for presentation to the proper Court. The question of the costs before the Subordinate Judge will be decided by him.