(2012) 12 DEL CK 0204

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 40 of 2011

M/s Rubfila International Ltd. APPELLANT

Vs

Alok Gupta RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Contract Act, 1872 — Section 213

Citation : (2012) 12 DEL CK 0204

Hon'ble Judges : Pradeep Nandrajog, J;Manmohan Singh, J

Bench : Division Bench

Advocate : V. Mohana, for the Appellant; Arun Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The respondent Alok Gupta filed a suit against the appellant pleading that he was carrying on business as the sole proprietor of M/s. Alok Enterprises and with effect from November 01, 1996 was appointed as an agent by the appellant for sale of its products in Northern India and he had to receive commission @1% on the sales made by the appellant to third parties on orders obtained by him and further that a part of his property would be taken on rent @ Rs. 5,000/- per month from November 01, 1996 by the appellant and additionally he was to be reimbursed office expenses for the office use made by the appellant of his premises and further that his wife Renu Gupta was employed by the appellant as a Sales Executive at a salary of Rs. 10,000/- per month and that one Jacob Thomas, an employee of the appellant and his i.e. Alok''s wife Renu Gupta started managing the office from the premises of the respondent. At the asking of the appellant he paid salary to his wife and debited the said sum to the account of the appellant and further that he bore the office expenses and debited the same to the account of the appellant. He pleaded that this initial arrangement lasted, till when in the month of October, 1997 a meeting was held between him and one Mr. Raasaih and Mr. R.J. Menon, Managing Director and Marketing Manager respectively of the appellant at the factory of the appellant wherein it was agreed that with effect from April 01, 1997 the appellant shall pay to him commission at revised rates on slab basis. He further pleaded that in the month of July, 1998, another meeting took place between him and the Managing Director of the appellant wherein it was agreed that with effect from April 01, 1998 the appellant shall pay to him commission at the revised rate of 2% for the entire sales in North India. In the month of December, 1998 another meeting was held wherein it was confirmed that he shall be paid commission at the revised rate of 2% for the year 1999-2000. He pleaded that he was entitled to a rendition of accounts from the appellant and that if accounts were rendered he would be entitled to receive at least Rs. 13,51,521/- from the appellant. In the written statement filed by the appellant, it was pleaded that it had never appointed Alok as an agent for sale of its products and that whatever sales were made to him were direct sales on principal to principal basis. Admitting that his wife Ms. Renu Gupta was appointed as the Marketing Executive of the appellant it was denied that any salary on behalf of the respondent was paid by the appellant to her and it was pleaded that she alone had a right, if any to claim salary. It was pleaded that Alok and his wife visited the office of the appellant in October 1996 and desired to be appointed as the agent in the Northern region. The appellant did not agree because M/s. Filatex India was acting as its agent in Northern India and thus it was agreed that Alok''s wife would work as a Marketing Executive of the appellant and his sole proprietary firm could purchase the product manufactured by the appellant on principal to principal basis. That it was agreed that if Alok procured orders from third parties, he would be paid 1% commission, but would not be entitled to any commission for direct sales made to him. It was denied that the premises of Alok were taken on rent. It was denied that he was entitled to be reimbursed any office expenses. It was pleaded that Alok was liable to pay Rs. 29,52,317/- to the appellant. Being relevant, certain averments in the written statement need to be noted; and we do. They read as under:-

(c) During the discussion the defendant herein asked the plaintiff to do market study in order to find out the marketability of their product. The defendants were not immediately agreeable for appointing them as agents since M/s. Filatex India was, already existing in the Northern Territory. The plaintiff however represented that they can buy the products of the defendant and sell it to their customers while Ms. Renu Gupta, wife of the plaintiff will act as the Marketing Executive of the defendant. Therefore, the defendant appointed Ms. Renu Gupta on 5.11.96 as their employee (Marketing Executive) on a monthly salary of Rs. 10,000/-. It was also agreed that for whatever orders the plaintiff procure he would get a special commission of 1% and for the goods which the plaintiff purchases for M/s. Alok Enterprises no commission will be allowed. This was an oral understanding and there was no agreement executed appointing the plaintiff as an agent. There is no relationship of agency in that sense between the plaintiff and the defendant.

7) .....It is false to contend that the defendant had agreed to pay the plaintiff a Commission of 1% on the total sales made by him directly or by the company on

the orders procured through him plus reimbursement of all telephone and office expenses. It is submitted that Ms. Renu Gupta, wife of the plaintiff was appointed as their Marketing Executive on November 5, 1996 for a salary of Rs. 10,000/- per month. She had also been given some incentive for the business procured by her. The amount which was payable to Ms. Renu Gupta was adjusted in the amount receivable by the defendant from the plaintiff on the purchases made by the plaintiff. Mr. Jacob Thomas was deputed to Delhi for effective supervision of the market and for collection of the amounts due.

8) .....It is submitted that for the purpose of obtaining Central Excise as well as Sales Tax registration and certificate, the premises of the plaintiff were shown as rented premises by the defendant. However, there is no lease agreement between the parties and certain account adjustments have been made in the amount payable by the plaintiff to the defendant. There is no amount due on that account to the plaintiff.

9) In reply to Para 5 it is a total false hood to state that the defendant had appointed other persons apart from Ms. Renu Gupta and Mr. Jacob Thomas in Delhi. There were no other staff and there were no office expenses in Delhi. It is incorrect to state that M/s. Alok Enterprises met all the office expenses which was debited to the account of the defendant. In fact the entire expenses were met by the defendant and they have been debited in the defendant''s books of accounts. The plaintiff was not paid any office expenses as claimed by him.

2. In addition to the written statement filed, the appellant filed a counter claim in sum of Rs. 32,24,628.61 together with interest @24% per annum, inter-alia pleading that Alok had purchased goods in sum of Rs. 27,65,840/- from the appellant during the period from August 07, 1998 to March 31, 2001. In addition thereto, he had also purchased goods in sum of Rs. 14,274/-, Rs. 22,588/- and Rs. 1,49,615/- from D.R. Trading Company, M.D.R. Tapes and M/s. H-Lon Industries respectively during the said period for which he had to make payment to the appellant.

3. On the basis of pleadings of the parties, vide order dated January 18, 2004 following issues were framed by the learned Single Judge:-

1. Was the plaintiff appointed as an agent by the defendant for Northern India? If yes, on what terms? OPP

2. Was Mrs. Renu Gupta, wife of the plaintiff employed by the defendant as a Marketing Executive at a monthly salary of Rs. 10,000/- with further right to get special commission of 1% for the good supplied on bookings effected by her? OPD

3. To what amount, if any, is the plaintiff entitled to from the defendant? OPP

4. If issue No. 3 is decided in favor of the plaintiff, whether plaintiff is entitled to any interest and at what rate? OPP

5. To what amount is the defendant entitled to from the plaintiff? OPD

6. If issue No. 5 is decided in favor of the defendant, whether defendant is entitled to interest from the plaintiff and at what rate? OPD

7. Relief to the parties.

4. In support of his case, the respondent examined himself and his wife Ms. Renu Gupta as PW-1 and PW-2 respectively.

5. In his testimony, the respondent as PW-1, essentially reiterated the averments made in the plaint filed by him. It would be relevant to note the following portion of his examination-in-chief:-

6. ...As per the agreement between the parties the salary of Shrimati Renu Gupta was to be initially paid by the plaintiff and the sum was then going to be reimbursed to the plaintiff by the defendant."

12. That subsequently vide agreement as reflected in the minutes of meeting held on October 01, 1997 at Kerala factory in which the plaintiff was represented by his wife, it was agreed that the plaintiff shall be paid the commission of 2% instead of one percent and further the plaintiff shall not be reimbursed the office expenses. The wife of the plaintiff was never paid any commission nor she was incurring the office expenses nor was she entitled to reimbursement. Thus it is clear that the reference to the wife of the plaintiff was to the plaintiff only.

15. Thus as per the agreements between the parties dated November 04, 1996, October 01, 1997 and July 27, 1998, the plaintiff was entitled to the commission for the business procured by him for the defendant at the agreed rate. In addition he was to get the reimbursement of the expenses incurred by him for the following purposes:

(a). Salary paid to Shrimati Renu Gupta @ Rs. 10000/- wef November 01, 1996 till March 31, 1998 and the other staff.

(b). Rent of the premises @ Rs. 5,000/- per month wef November 01, 1996 till August 31, 1999.

(c) Expenses incurred for running the defendant''s office at Delhi till October 01, 1997 or August 01, 1999 as the case may be found by this Hon''ble Court.

6. He was cross-examined and it would be relevant to note the following portion of the cross-examination of the respondent:-

The commission for which the suit has been filed is pursuant to an agreement appointing me as an agent. I have produced that agreement which is Exhibit PW-1/36, Minute of the meeting held at RIL, Palakkad on 4th November, 1996.

It is correct that Exhibit PW-1/36 is not an agreement but only the minutes. It is correct that Exhibit PW-1/36 only contemplates about appointment of agent and by that document I was not appointed as an agent.

My property was used as business premises at the instance of the defendant company for my wife. No lease agreement was executed between me and the defendant company for the use of business premises in my property.

It is correct that there is no written agreement for payment of any commission by the defendant company to me. Volunteered: Only the minutes are there.

It is correct that I have claimed the salary payable to my wife in the present suit who is not a party to the suit.

It is correct that Exhibit P-1/D-1 to D-21 were issued in respect of goods sent by defendant company to me (Objected to by the learned counsel for the plaintiff)

Payments have been made by me against invoices marked as Ex. P-1/D-1 to Ex. P-1/21. Payments made can''t be linked to a particular invoice as payments were made of a lump sum amount. There is no particular entry in my accounts relating to the payments against invoice No. 467, Ex. P-1/52 as payments were made in lump sum.

It is incorrect to suggest that I was a mere purchaser was claiming to be an agent of the defendant company there were lot of complaints made against me to the defendant company by the customers.

7. In her testimony, Ms. Renu Gupta PW-2, deposed that on November 05, 1996 she was appointed to the post of Marketing Executive in the appellant company. As per the understanding between the parties her salary was to be paid by her husband and the appellant was to reimburse her husband the salary paid by him to her. The office of the appellant was at premises bearing Municipal No. F-11, Pandav Nagar, Delhi, taken on rent by the appellant from her husband, who used to bear the expenses incurred at the aforesaid premises and the appellant was to reimburse her husband the amount incurred towards office expenses.

8. She was cross-examined and it would be relevant to note the following portion of her cross-examination:-

The salary is the part of claim in the present suit but I do not think that I have signed the claim....It is incorrect to suggest that address of F-11, Pandav Nagar, Delhi was used by the defendant company only for the purpose of giving the address to the Central Excise and Sales Tax Authorities.

9. In support of its case, the appellant examined Mr. Sudesh, Assistant Manager (Secretarial and Legal) and Mr. Ashok Kashyap, a handwriting expert, as DW-1 and DW-2 respectively.

10. In his testimony, Sudesh DW-1, essentially reiterated the averments made in the written statement/counter claim filed by the appellant. In addition thereto, Sudesh deposed that R.J. Menon left the services of the appellant in the month of December, 1998 and he expired in the year 2005. It would be relevant to note the following portion of the cross-examination of the witness:-

Mr. J.R. Rasaih is Managing Director of defendant company and he is still the

Managing Director....I am recognizing handwriting and signature of Mr. Jacob Thomas on Ex. PW-1/23. I do not know whether facts stated in Ex. PW-1/23 are correct. It is wrong to suggest that I am deliberately denying the facts stated in Ex. PW-1/23 as facts are contrary to the stand of defendant company. Ex. PW-1/24 bears the original signatures of Mr. R.J. Menon and at the time of carrying out admission/denial of the document, I had only denied only the contents of this document and not the signatures. I recognize the signatures of Mr. Jacob Thomas on Ex. PW-1/5. As per Ex. PW-1/5, an attempt was made to settle the accounts between the plaintiff and the defendant company but it was never settled. I will be able to recognize the handwriting of Mr. Jacob Thomas but except for his signatures Ex. PW-1/5 is not in the handwriting of Mr. Jacob Thomas. It is incorrect to suggest that I intentionally liked while denying Ex. PW-1/5 to be in handwriting of Mr. Jacob Thomas. I do not know whether cash payments were accepted by the defendant company vide Ex. PW-1/6 to Ex. PW1/8 and vide Ex. P-3. Documents Ex. PW-1/6 to Ex. PW-1/8 appears to have been signed by Mr. Rumy Chandy. These cash payments are not shown in the accounts of the defendant company as these payments were not received by the defendant company. It is incorrect to suggest that salary was not paid to Ms. Renu Gupta by the defendant company as payment was to be made to her by the plaintiff who was to recover the amount from the defendant company. Volunteer, the salary was paid to Ms. Renu Gupta by the defendant company directly. In relation to entry dated March 25, 1998 in Ex. DW-1/11 relating to Ms. Renu Gupta was reversed following audit objection as amount was credited to the account of the plaintiff by mistake. It is incorrect to suggest that I have stated falsely as regard the reversal of entry dated March 25, 1998 in Ex. DW-1/11 by manipulating the accounts as the correct position was the amount was actually due to the plaintiff as per the understanding between the parties. Mr. J.R. Rasai is hale and hearty and is the managing director of the defendant company at present.

(Emphasis Supplied)

11. Pandit Ashok Kashyap DW-2, a handwriting expert, deposed that he had examined the signatures of Mr. R.J. Menon purportedly contained in the minutes of the meeting dated November 04, 1996 Ex. PW-1/36 with his admitted signatures and prepared the report dated April 22, 2006 Ex. DW-2/A-I in said regards. It would be relevant to note following portion of the testimony of the witness:-

8. My considered opinion in this case after the examination of relevant documents is as follows:-

1. The suspected signature marked Q-1 on Exhibit No. P.W. 1/36 dated November 04, 1996,.....are forged and have not been signed by the author of the admitted signatures marked........S-8 on Exhibit No. P.W./24 dated October 01, 1997 and S-9 & S-10 running in two sheets on Exhibit No. P.W. 1/28 dated July 27, 1998 i.e., Mr. R.J. Menon.

(Emphasis Supplied)

12. Since extensive documents were exhibited at the trial and the resolution of the disputes centers around said documents, we briefly note, the relevant documents proved by Alok and the stand of the appellant pertaining thereto. In a tabular form, the same would read as under:-

13. Similarly, the appellant proved many documents, and in respect of the relevant ones we would note the stand of Alok Gupta. Put in a tabular form the same would be as under:-

14. Vide impugned judgment dated December 22, 2010 it was held by the learned Single Judge that:- (i) the appellant company is liable to pay a sum of Rs. 2,18,666/- to the respondent, being the salary paid by the respondent to his wife Renu Gupta for the period from November 05, 1996 to August 31, 1998 and adjusted against the sum payable by the respondent for the goods purchased by him; (ii) the appellant is liable to pay a sum of Rs. 1,70,000/- to the respondent, being the rent payable by the appellant company for the premises bearing No. F-11, Pandav Nagar, New Delhi leased from the respondent; (iii) the appellant company is liable to pay a sum of Rs. 6,32,010/- to the respondent, being the amount paid by the respondent towards the expenses incurred in the office of the appellant company at Delhi; (iv) the respondent has been able to establish that he had paid a sum of Rs. 2,78,640 + Rs. 6,98,000 + Rs. 5,94,000 = Rs. 15,70,640/- to the appellant company; (v) the appellant company is liable to pay a sum of Rs. 1,40,914/- to the respondent, being the commission payable to the respondent for the year 1996-1997 as evidenced from the statement of accounts Ex. DW-1/11 of the appellant company. The appellant company is entitled to receive a sum of Rs. 27,65,840/- from the respondent for the goods purchased by him from the appellant company. The net result is that the appellant company is entitled to receive a sum of Rs. 27,65,840/- - Rs. 27,32,230/- (Rs. 2,18,666/- + Rs. 1,70,000 + Rs. 6,32,010/- + Rs. 15,70,640/- + Rs. 1,40,914 = Rs. 27,32,230/-) = Rs. 33,610/- + a sum of Rs. 323/- (pre-suit interest @12% per annum calculated for the period from April 01, 2001 till the date filing of counter claim) = Rs. 33,933/- from the respondent together with pendente lite and future interest @12% per annum.

15. As regards the claim of commission for the period from November 04, 1996 to August, 1999 raised by the respondent, the learned Single Judge has divided said period into 3 sub-periods viz., November 01, 1996 to October 31, 1997, November 01, 1997 to July 26, 1998 and July 27, 1998 to August, 1999. With respect to the issue of commission payable to the respondent for the period from November 01, 1996 to October 31, 1997 the learned Single Judge held as under:-

32. Though the plaintiff has claimed a sum of Rs. 13,51,521/- towards commission, he has not been able to prove his entitlement with respect to whole of this amount. As noted earlier a sum of Rs. 1,40,914/- was credited by the defendant in the account of the plaintiff on 18th September, 1998 towards

commission for the year 1996-97. The defendant cannot escape its liability to pay the aforesaid amount to the plaintiff. The plaintiff is, therefore, entitled to adjustment of this amount against the amount of Rs. 1,74,524/- payable by him to the defendant.

33. As per clause 4 of the minutes of the meeting held on 04th November, 1996 (Ex. PW-1/36), the plaintiff was to be paid a commission for all orders procured to be supplied directly by the company (defendant) and all materials purchased by the plaintiff for re-selling. The learned counsel for the plaintiff fairly conceded that no evidence has been led by the plaintiff to prove the order procured by him for direct supply by the company. It is difficult to accept that the plaintiff was not in a position to give details of such orders, if any, procured by him. If a person procures an order for another person, he would definitely be having all the particulars pertaining to that order such as the name of the purchaser, date of the order, quantity of the goods to be supplied and the price at which the goods were to be supplied. Therefore, it was not at all difficult for the plaintiff to provide all those details to the Court. As regards the materials purchased by the plaintiff for re-selling, though there is evidence showing the value of the goods purchased by the plaintiff from the defendant-company from time to time, there is no evidence to prove what was the value of the goods which the plaintiff had re-sold to others or which were purchased by him for re-selling. It was contended by the learned counsel for the plaintiff that since the plaintiff does not have any manufacturing facility all the goods purchased by him from the defendant-company were meant only for re-selling and were actually sold by him. However, in the absence of specific evidence to prove that all the goods which the plaintiff purchased from the defendant were meant for reselling and were actually re-sold by him, it is difficult to say that he was entitled to commission on all the purchases made by him from the defendant company.

16. With respect to the issue of commission payable to the respondent for the periods from November 01, 1997 to July 26, 1998 and July 27, 1998 to August, 1999 the learned Single Judge held as under:-

34. In terms of the agreement reached between the parties in the meeting held on 1st October, 1997 (Ex. PW-1/24), the sale commission became payable on slab basis in respect of the sale of entire northern region. Though as per the minutes, the sale commission was payable to Mrs. Renu Gupta who was employed as Marketing Executive with the defendant-company, I have, while deciding issue No. 1, came to the conclusion that the commission was in fact payable to the plaintiff irrespective of whether it has to be paid in his name or in the name of his wife Mrs. Renu Gupta. There is no evidence to prove the sales made by the defendant-company in northern region w.e.f. 1st November, 1997 when the agreement reached in the meeting held on 1st October, 1997 was to come into force. The minutes also stipulated that there will be no reimbursement of expenditure towards maintenance of office, including telephone expenses etc. It is not known whether these expenses have been claimed by the plaintiff and/

or his wife Mrs. Renu Gupta or not. Till the total value of the sale made by the defendant in the northern region w.e.f. 1st November, 1997 is known, the amount of commission payable to the plaintiff in terms of the minutes of the meeting held on 1st October, 1997 cannot be worked out. As and when such amount is worked out, the reimbursement, if any, already taken by the plaintiff towards maintenance of office, including telephone expenses, etc. for the period 1st November, 1997 onwards will have to be deducted from that amount. At this stage, no adjustment can be given to the plaintiff except for the amount of Rs. 1,40,914/- already acknowledged in the account books of the defendant-company."

35. As per the decision taken in the meeting held at Hotel Maurya Sheraton on 27th July, 1998 (Ex. PW-1/28), the plaintiff was not to be paid any commission for the material purchased in the name of his firm Alok Enterprises, but was to paid 2% commission sale made to on all other customers of entire northern region. The amount of commission payable to the plaintiff in terms of the decision taken in the meeting held on 27th July, 1998 cannot be worked out unless the amount of sale made by the defendant to all customers other than the plaintiff, in the entire northern region is known. Since the sale figure of the defendant company for the northern region is not known, the plaintiff cannot be given any further adjustment at this stage towards the commission payable to him.

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39. ....Since the amount of commission payable to the plaintiff in respect of the decisions taken in the meeting held on 31st October, 1997 and 31st July, 1998 cannot be worked out unless the defendant provides the figures of the sale made by it in the northern region w.e.f. 1st November, 1997 the plaintiff is entitled to a decree for rendition of account with respect to commission payable to him w.e.f. 1st November, 1997. The plaintiff will get commission on slab basis in terms of the minutes of meeting held on 1st October, 1997, in respect of all the sales made by the defendant in the entire northern region. The reimbursement, if any, already obtained by the plaintiff and/or his wife Mrs. Renu Gupta towards maintenance of office, including telephone expenses, etc for the period from 1st November, 1997 will be set off against the amount which is found payable to the plaintiff towards commission in terms of the decision taken in the meeting held on 1st October, 1997.

The amount of commission payable to the plaintiff w.e.f. 27th July, 1998 will be carried out at the rate of 2%, but, he will not be entitled to any commission for the material purchased in the name of Alok Enterprises w.e.f. 27th July, 1998. The defendant is directed to furnish figures of the sale made by it in the northern region w.e.f. 1st November, 1997. The defendant will give separate figures one for the sales made by it in the northern region w.e.f. 1st November, 1997 to 26th July, 1998 and the other with respect to the sales made to customers other than Alok Enterprises in the northern region w.e.f. 27th July, 1998. The defendant will also furnish figures of the reimbursement, if any, paid to the plaintiff and/or his wife Mrs. Renu Gupta towards maintenance of office, including telephone expenses, etc for the period from 1st November, 1997.

17. On the issue that as per the minutes of meeting held on October 01, 1997 the commission was payable to the wife of respondent Ms. Renu Gupta the learned Single Judge held as under:-

18. ....Relying upon Ex. PW-1/24 it was contended by the learned counsel for the defendant that commission was payable to Mrs. Renu Gupta and not the plaintiff Shri Alok Gupta. The facts and circumstances of the case, in my view, indicate that the commission was actually payable to the plaintiff irrespective of whether it was paid in his name or in the name of his wife Mrs. Renu Gupta. This is an admitted case that both, the plaintiff Alok Gupta and his wife Renu Gupta, had visited the office of the defendant and participated in the first meeting which was held on 04th November, 1996. In fact, the defendant has specifically alleged in the written statement that in October, 1996, the plaintiff alongwith his wife Mrs. Renu Gupta "claiming themselves to be the owner of Alok Enterprises" visited his office in Palakkad, Kerala and desired to become agent of the defendant for the entire Northern Region, but, the defendant was not immediately agreeable to appoint "them" as agent. It is also alleged in the written statement that the salary payable to Mrs. Renu Gupta was adjusted from the balance receivable from the plaintiff. It is also alleged that the service of Mrs. Renu Gupta were terminated w.e.f. 1st September, 1998 and the amount which was payable to her was adjusted in the amount receivable by the defendant from the plaintiff.

18. Ex. PW-1/28 are the minutes of the meeting held at Hotel Maurya Sheraton on 27th July, 1998. Clause 3, 6 and 15 of the minutes read as under:-

....

The defendant has admitted the signatures of Mr. R.J. Menon and Mr. Jacob Thomas on this document during the course of admission/denial of documents on 09th December, 2009. Clause 3 referred above is yet another proof that the plaintiff was to be paid commission by the defendant and in the meeting held on 27th July, 1998 it was decided that the commission would be given to him at the rate of 2%, but he would get it only on the sale made to other customer of Northern Region and he will not get any commission on the materials purchased in the name of Alok Enterprises. This meeting was attended not only the plaintiff Alok Gupta, but also by his wife Mrs. Renu Gupta. Admittedly, neither any salary was actually paid by the defendant to Mrs. Renu Gupta nor was any commission paid to her.

20. From the facts and circumstances discussed above, it appears that both plaintiff Alok Gupta and Mrs. Renu Gupta were working together and under an arrangement between the parties, commission was to be paid to the plaintiff which initially was fixed at 1%, was modified w.e.f. 1st November, 1997 so as to make it 1.5% on sale upto Rs. 40 lacs, 2% on the sale for next Rs. 20 lacs and

2.5% on the sale of next Rs. 10 lacs and above. It was further modified in the meeting held on 27th July, 1998 when the plaintiff promised to work only for the defendant. Adjustment of salary of Mrs. Renu Gupta against receivables from the plaintiff is yet another circumstance, indicating that the plaintiff as well as his wife Mrs. Renu Gupta were acting in unison and irrespective of whether the commission was to be paid in the name of the plaintiff and in the name of his wife Mrs. Renu Gupta, the actual beneficiary was the plaintiff Alok Gupta. It would be pertinent to not here that Mrs. Renu Gupta is not independently claiming either any commission or her salary from the defendant. She has come in the witness-box as PW-2 and has supported the case of the plaintiff. I find no merit in the contention of the learned counsel for the defendant that amount of commission can be claimed by Mrs. Renu Gupta and not by the plaintiff. I, therefore, hold that though the plaintiff was not formally appointed as an agent of the defendant for the Northern Region, he was entitled to commission in terms of the agreement contained in the minutes of the meeting held on 04th November, 1996 (Ex. PW-1/36), 1st October, 1997 (Ex. PW-1/24) and 27th July, 1998 (Ex. PW-1/28).

18. In arriving at the aforesaid conclusion(s), it was held by the learned Single Judge that:- (i) the fact that the Managing Director J.R. Rasiah did not step into the witness box on behalf of the appellant company to controvert the case set up the respondent that the minutes of meeting dated November 04, 1996 Ex. PW-1/36 is a genuine document leads to an inference that the minutes Ex. PW-1/36 is a genuine document coupled with the facts that:- (a) appellant company had admitted in its written statement that a meeting had taken place between the respondent and his wife and the officials of the appellant company wherein it was agreed that the respondent would get a commission of 1% on the orders procured by him but no commission would be payable on the materials purchased by him; (b) an entry was contained in the statement of accounts Ex. DW-1/11 of the appellant company wherein a sum of Rs. 1,40,914/- was credited in the account of the respondent towards commission payable to him for the year 1996-1997; (c) it was admitted by the appellant company that the minutes of meeting dated October 01, 1997 Ex. PW-1/24 contain the signatures of its Marketing Manager J.R. Menon inasmuch as the handwriting expert examined by the appellant company Ashok Kashyap had taken the signatures of R.J. Menon contained in the document Ex. PW-1/24 as genuine signatures for ascertaining the genuineness of minutes of the meeting dated November 04, 1996 Ex. PW-1/36; (d) the appellant company had admitted that the minutes of meeting dated July 27, 1998 Ex. PW-1/28 contain the signatures of its Marketing Manager J.R. Rasaih and its employee Jacob Thomas establishes that the appellant company had agreed to pay commission to the respondent though no formal agency agreement was executed between the parties; (ii) the facts that the appellant company had not furnished any proof of payment of salary made to the wife of respondent Renu Gupta and that the appellant company admitted in its written statement that the salary payable to Renu Gupta was adjusted against

the sum payable by the respondent for the goods purchased by him establish that it was agreed between the parties that respondent would pay salary to his wife and the appellant company would reimburse said amount to the respondent; (iii) the facts that the appellant company had stated in its written statement that it was running an office in Delhi and it is not the case of the appellant company that it was running the office in Delhi from some premises other than the premises of the respondent, neither Runy Chandy nor Jacob Thomas stepped into the witness box on behalf of the appellant company to controvert the case of the respondent that they were posted in Delhi and used to function from the premises of the respondent, the appointment letter Ex. P-24 issued by the appellant company to the wife of respondent Renu Gupta recording that Renu Gupta would be working in Delhi and the appellant company admitted signatures of Jacob Thomas on the statement Ex. PW-1/23 which records that the respondent had let out the premises in question to the appellant company at a rent of Rs. 5,000/- per month establish that the respondent had let out premises bearing Municipal No. F-11, Pandav Nagar, Delhi to the appellant company at a rent of Rs. 5,000/- per month; (iv) clause 5 of the minutes of meeting dated November 04, 1996 Ex. PW-1/36 which prescribes that the expenses incurred in the office of the appellant company in Delhi would initially be borne by the respondent and subsequently the appellant company would reimburse said amount to the respondent when seen in the light of the letter Ex. D-2 to Ex. D-5 written by wife of the respondent Renu Gupta to the Marketing Manager of the appellant company, memo Ex. PW-1/5 signed by Jacob Thomas, credit note Ex. PW-1/51 signed by the Managing Director of the appellant company and an entry contained in the statement of accounts Ex. DW-1/11 of the appellant company wherein a sum of Rs. 2,32,825/- has been credited in the account of the respondent towards Delhi office expenses establishes that the appellant company is liable to reimburse the respondent for the amount paid by him towards the expenses incurred in the office of the appellant company at Delhi; (v) the receipt dated August 30, 1999 Ex. P-3 issued by the appellant company to the respondent and vouchers dated August 05, 1998 Ex. PW-1/6 and July 22, 1998 Ex. PW-1/7 when seen in the light of the facts that the receipt Ex. P-3 was admitted as a genuine document by the appellant company and that the appellant company had admitted that the vouchers Ex. PW-1/6 and Ex. PW-1/7 contain the signatures of its employee Jacob Thomas but did not produce Jacob Thomas to dispute the contents of said vouchers establish that the respondent had paid a sum of Rs. 2,78,640 + Rs. 6,98,000 + Rs. 5,94,000 = Rs. 15,70,640/- to the appellant company and (vi) the appellant company has not been able to establish that goods worth Rs. 1,86,477/- was received by the respondent from D.R. Trading Company, M.D.R. Tapes and M/s. H-Lon Industries and thus the respondent is not liable to pay said amount to the appellant company.

19. Whereas Alok Gupta has not filed any cross appeal or cross objections, meaning thereby such findings which have been returned against him by the

learned Single Judge have attained finality, the appellant has filed the above-captioned appeal challenging the decree passed against it and not in its favour.

20. During the hearing of the appeal, following 6 arguments were advanced by the counsel appearing for the appellant company:-

A. That the learned Single Judge committed an illegality in holding that the minutes of the meeting dated November 04, 1996 Ex. PW-1/36 is a genuine document. In said regards, counsel pointed out that the address of the branch office of the appellant company has been shown as ''F-11, Pandav Nagar, New Delhi - 110091'' in the letter head on which the minutes of the meeting dated November 04, 1996 are recorded though even as per the respondent the aforesaid premises were taken on rent by the appellant company only after November 04, 1996. According to counsel, the aforesaid discrepancy in the minutes Ex. PW-1/36 is a strong indicator to the fact that the said minutes are forged. To further substantiate the contention that the minutes Ex. PW-1/36 is forged document the counsel pointed out that a perusal of the minutes Ex. PW-1/36 shows that meeting held on November 04, 1996 was attended by 4 persons namely, J.R. Rasiah, R.J. Menon, respondent and his wife Renu Gupta but the minutes Ex. PW-1/36 bears the signatures of only the respondent and J.R. Rasiah.

B. That the learned Single Judge did not correctly appreciate the minutes of the meeting dated November 04, 1996 Ex. PW-1/36, October 01, 1997 Ex. PW-1/24 and July 28, 1998 Ex. PW-1/28, particularly the minutes Ex. PW-1/24. Counsel highlighted that clause 2 of the minutes Ex. PW-1/24 prescribes that the ''sales commission payable to Mrs. Renu Gupta, Marketing Executive as an incentive would be given on slab wise sale of entire Northern Region as given below as per turnover based on the basic sale price.'' Counsel argued that minutes Ex. PW-1/24 clearly bring out that the commission was payable to the wife of the respondent Renu Gupta and not to the respondent. Counsel further submitted that the entries contained in the statement of accounts Ex. DW-1/11 of the appellant company wherein the amount which was credited in the account of the respondent towards commission payable was transferred in the account of wife of respondent is yet another pointer to the fact that the commission was payable to the wife of the respondent and not the respondent. Counsel argued that such being the factual position the respondent had no locus to claim the commission from the appellant company.

C. Because the learned Single Judge failed to note that the statement of accounts Ex. PW-1/52 filed by the respondent did not support the case projected by the respondent in his plaint.

D. Because the learned Single Judge failed to appreciate that the statement of accounts Ex. DW-1/11 of the appellant company when seen in the light of the invoices Ex. P-1/D1 to Ex. P-1/D-21 issued by the appellant company in respect of the goods purchased by the respondent for the period from August 07, 1998 to February 22, 1999 demonstrate that the transaction(s) between the appellant company and respondent were on principal to principal basis and belies the case of the respondent that he was an agent of the appellant company.

E. Because the learned Single Judge committed an illegality in allowing the claim made by the respondent relating to the salary of his wife Renu Gupta when Renu Gupta was not a party in the suit in question.

F. Because the learned Single Judge committed an illegality in holding that the respondent had made payment in sum of Rs. 15,70,640/- to the appellant company when there was not even a single averment to the said effect in the pleadings filed by the respondent. Counsel submitted that it is settled legal position that a party can be permitted to adduce evidence on the basis of the case pleaded by him in his pleadings. Counsel argued that such being the position, the learned Single Judge ought to have ignored the evidence led by the respondent in said regard.

21. We begin our discussion by noting the contents of the letter dated November 05, 1996 Ex. P-24 appointing Renu Gupta as the Marketing Executive. It reads:-

Dear Ms. Renu Gupta

REF: APPOINTMENT OF MARKETING EXECUTIVE

In continuation of the discussion you had with us, we have pleasure in offering you the position of MARKETING EXECUTIVE in our organization with effect from November 01, 1996 under the following terms and conditions:-

A. SALARY

1. Your consolidated salary from date of appointment will be Rs. 10000/- (Rupees Ten Thousand Only) per month. Increments are dependent on individual performance and based on the merit so as to recognize outstanding job performance.

....

D. LOCATION

You will be based at New Delhi

22. Ex. PW-1/23, which is a hand written document and bears the signatures of Mr. Jacob Thomas, which signatures are not denied by contents denied reads as under:-

STATEMENT

I, Jacob Thomas, son of Shri M.C. Thomas, resident of F-285, Pandav Nagar, Delhi - 91 authorized signatory of M/s. Rubfila International Ltd. F-11, Pandav Nagar, Delhi - 91 do hereby state and declare as under:

1. I have started business in re selling of HRLRT (Heat Resistant Latex Rubber

Thread) with effect from November 01, 1996 in local and central trade.

3. That, prior to the start of Delhi Branch, the company is engaged in manufacturing and reselling of HRLRT in the State of Kerala at New Industrial Development Area, Menopara Road, Kanjikode, Palakkad - 678 621.

4. The area of business premises is approx. 300 sq. ft.

5. This Business premises is taken on rent from Shri Alok Gupta at the rate of Rs. 500/- per month.

6. Investment made in this company, by transfer from Head Office is Rs. 30,000/-

(Emphasis Supplied)

23. Ex. PW-1/24 being the minutes of the meeting held on October 01, 1997 which bears the signatures of Mr. R.J. Menon, a Marketing Manager of the appellant, which document has been denied by the appellant, reads as under:-

MINUTES OF THE MEETING HELD AT RIL, PALAKKAD, ON October 01, 1997

PARTICIPANTS

MR. J.R. RASIAH

MR. R.J. MENON

MR. JACOB THOMAS

MRS. RENU GUPTA

1. It was discussed that the sales prior to entry of Mrs. Renu Gupta and Mr. Jacob Thomas were about 17 tonnes out of the total market of 65 tonnes per month as per the records and from December, 1996 onwards this average improved to 33 tonnes per month and is intended to improve further to 40 tonnes.

2. Sales Commission payable to Mrs. Renu Gupta, Marketing Executive as an incentive would be given on slab wise sale of entire Northern Region as given below as per turnover based on the basic sale price. There will be no other reimbursement expenditure towards maintenance of office, including telephone expenses etc.

Upto 40 Lacs - 1.5%

Next 20 Lacs - 2.0%

Next 10 Lacs and above - 2.5%

3. F-11, Pandav Nagar to remain as RIL office and premises hired by Mr. Thomas to be vacated at earliest.

4. Average Price of 38, 52 & 90 (both Spool and Ribbon) Count would have to be maintained which is to be notified. For the month of October the rates are as follows:

This is the basic price without Excise Duty, Sales Tax, Insurance and Freight. This price you will have to realize on an average Countwise in North.

5. Sales Tax and Excise Registrations to be maintained at the same premises.

6. Modalities for stock transfer on a branch transferor or consignment transfer to be worked out, so that sales tax benefit can be accrued to RIL.

7. Papers for credit notes to be completed within 15 days and to be signed by Mrs. Renu Gupta, Mr. Jacob Thomas and Mr. R.J. Menon.

8. The new set up to begin operation from 1st November, 1997. The Sales commission to the Marketing Executive will become operative with effect from 1.11.1997.

9. Rate of Commission from November, 1996 upto October 1997 to be settled soon. It was mentioned that RIL agreed with Marketing Executive Mrs. Renu Guptha, a sales commission @1% of the basic price. However based on actual expenditure it will be considered.

(Emphasis Supplied)

24. Ex. PW-1/28, being the minutes of the meeting dated July 27, 1998 which bears the signatures of Mr. R.J. Menon, the Marketing Manager of the appellant, which signatures are admitted by the appellant, but contents of the document denied, reads as under:-

MINUTES OF THE MEETING HELD AT MAURYA SHERATON ON 27TH JULY 1998.

Participants were:-

1. Mr. J. Jayabalan, Mg. Director, Rubfila Sdn. Malaysia,

2. Mr. J.R. Rasiah, Mg. Director, Rubfila International Ltd., Palghat,

3. Mr. S. Sriram, Gen. Manager, Rubfila International Ltd., Palghat,

4. Mr. R.J. Menon, Marketing Manager, Rubfila International Ltd., Palghat,

5. Mr. Jacob Thomas, Marketing Executive, Rubfila International Ltd., Palghat,

6. Mrs. Renu Gupta, Marketing Executive, Rubfila International Ltd., Delhi,

7. Mr. Alok Gupta, Proprietor, Alok Enterprises, Delhi.

Note: Rubfila International Ltd., will be denoted as RIL hereafter in the following text for convenience.

It has been agreed in the meeting that:-

1. M/s. Alok Enterprises will be supplied two trucks of the product HRLRT of various gauges, as per party''s order. One truck will be of 1st choice matl and the other truck, medium choice matl meant for distribution to only Radhufil, Filatex customers. M/s. Alok Enterprises will give a list of such customers to RIL.

2. Rate for the first choice material is decided as Rs. 105/kg basic (18% excise duty, 2% CST, transit insurance, freight extra) for July dispatches. This will be billed at a special rate of Rs. 70/kg basic, and over and above this, Rs. 35/kg will be deposited to RIL a/c maintained at SBT, Karolbagh, or will be sent as demand draft to RIL directly, immediately, after the dispatch. As a special case for July, only, 50% of Rs. 35/kg will be deposited immediately and balance 50% within 45 days from date of dispatch.

3. M/s. Alok Enterprises will not be paid any commission for the goods purchased in their name. They will be given a margin of Rs. 5/kg on all purchases and 2% commission on all other customers of entire northern region.

4. M/s. Alok Enterprises''s claims for rejection will be attended to, after analysis of samples received at RIL. These samples should be collected countwise, colorwise, and different batch wise, with all box details such as carton no., net wt/ gr wt etc.

5. C90 (B) samples are to be collected again from different parties, and must be sent to RIL for testing. Test results along with fresh samples will be sent to Delhi for references.

6. M/s. Alok Enterprises promised to work for only RIL.

7. Filatex average rate is Rs. 125/kg now.

8. MD agreed to send a technician to Delhi for attending customer complaints.

9. Box labels sometimes gets wiped off during transit to Delhi. Quality of label will be improved.

10. Overloading of cartons will be checked.

11. Shrink wrapping cost will be worked out.

12. Tare wt of both coarser and finer counts boxes will be checked.

13. In order to maintain individual customer ledges, all invoice photocopies will be sent to RIL Delhi office.

14. M/s. Alok Enterprises will hand over cheque for Rs. 8 lacs of June dispatch today itself, and more over, 2 payments of Rs. 4 lacs each promised for Aug 1st & 2nd weeks respectively will be honored.

15. If M/s. Alok Enterprises shows excellent performance and clears all pending dues by Aug end, they can be considered for a sole selling agent from 1st Sept. onward.

16. Swastik Technofab Ltd.:- Old cheques of June & July 98 will be deposited immediately, after discussing with the party

25. The minutes of the meeting dated November 04, 1996, Ex. PW-1/36, which bear the signatures of Mr. R.J. Menon, the Marketing Manager of the appellant,

signatures and contents whereof are denied by the appellant reads as under:-

Minutes of the meeting held at RIL Palakad on November 4, 1996

Participants

1. Mr. J.R. Rasaih

2. Mr. R.J. Menon

3. Mr. Alok Gupta

4. Mrs. Renu Gupta

1. It was discussed that Alok Enterprises to appointed as an agent for the company with effect from 1st November, 1996 for entire Northern Region.

2. Mrs. Renu Gupta be appointed the marketing executive of RIL to whom a monthly salary @ Rs. 10,000/- be paid.

3. F-11, Pandav Nagar, Delhi - 110091, premises owned by M/s. Alok Enterprises be hired by M/s. Rubfila International Ltd. @ Rs. 5000/- per month and the same be registered with the sales tax and excise authorities.

4. Alok Enterprises be paid a commission of 1% basic price for all orders procured to be supplied directly by the company and all goods purchased by it for reselling.

5. All the expenses including the salary of Mrs. Renu Gupta, telephone and other office expenses be incurred by Alok Enterprises for RIL Delhi to be subsequently reimbursed by Rubfila International Ltd. Palakkad in addition to commission.

26. As evident from the aforesaid conspectus of facts, the case set up by the respondent is predicated upon the minutes of the meetings dated November 04, 1996 Ex. PW-1/36, October 01, 1997 Ex. PW-1/24 and July 28, 1998 Ex. PW-1/28 statedly held between the respondent, the wife of respondent Ms. Renu Gupta and officials of the appellant company.

27. Whereas the respondent contends that the minutes Ex. PW-1/36, Ex. PW-1/24 and Ex. PW-1/28 are genuine documents the appellant contends to the contrary.

28. Ex. PW-1/36 is the minutes of the meeting held between the respondent, the wife of respondent Ms. Renu Gupta and officials of the appellant on November 04, 1996. The said minutes are purportedly signed by Mr. R.J. Menon, the Marketing Manager of the appellant company. As per said minutes, it was decided between the parties that:-

(i) with effect from November 01, 1996 the respondent would act as an agent of the appellant company for the northern India; (ii) the wife of respondent Ms. Renu Gupta will be appointed to the post of Marketing Executive in the appellant company at a salary of Rs. 10,000/- per month; (iii) premises bearing Municipal

No. F-11, Pandav Nagar, New Delhi shall be let out by the respondent to the appellant company at a rent of Rs. 5,000/- per month; (iv) the appellant company shall pay a commission @1% to the respondent for all orders of supply procured by him and all materials purchased by him for reselling and (v) the appellant company shall reimburse the respondent for all the expenses of office of the appellant company at Delhi borne by him including the payment of salary made by him to his wife Ms. Renu Gupta. As already noted hereinabove, the appellant company has disputed the genuineness of said document.

29. In order to determine whether the minutes Ex. PW-1/36 is a genuine document we look at the documentary evidence led by the parties.

30. We first look at the letter dated November 05, 1996 Ex. P-24 issued by the appellant company appointing the wife of respondent Ms. Renu Gupta to the post of Marketing Executive at a salary of Rs. 10,000/- per month with effect from November 01, 1996. The appellant company has not disputed the genuineness of the letter Ex. P-24. The letter Ex. P-24 corroborates the minutes Ex. PW-1/36 which records that it was decided between the parties that the wife of respondent Ms. Renu Gupta will be appointed to the post of Marketing Executive in the appellant company at a salary of Rs. 10,000/- per month.

31. We then look to the statement dated February 03, 1997 Ex. PW-1/23 of Jacob Thomas, an employee of the appellant company. The statement Ex. PW-1/23 records that the appellant company had leased out the premises bearing Municipal No. F-11, Pandav Nagar, New Delhi from the respondent at a rent of Rs. 5,000/- per month. The appellant company had admitted that the statement Ex. PW-1/23 contains the signatures of Jacob Thomas but disputed the contents of said statement. It is not the case of the appellant company that the respondent had forcibly or fraudulently obtained the signatures of Jacob Thomas on the statement Ex. PW-1/23 or on blank papers. In that view of the matter, the statement Ex. PW-1/23 has to be taken as a genuine document. The statement Ex. PW-1/23 corroborates the minutes Ex. PW-1/36 which prescribe that it was decided between the parties that the respondent shall let out the premises bearing Municipal No. F-11, Pandav Nagar, New Delhi at a rent of Rs. 5,000/- per month.

32. Lastly, we note the extract of the statement of account Ex. DW-1/11 of the appellant company for the period from April 01, 1996 to March 31, 2001. As per said statement, sums of Rs. 2,32,825/- and Rs. 1,40,914/- were credited by the appellant company in the account of the respondent towards "DELHI OFFICE EXP. A/C." and "COMMISSION PAYABLE FOR 1996-1997" respectively. Yet again, the statement of account Ex. DW-1/11 of the appellant company corroborates the minutes Ex. PW-1/36 which prescribe that the appellant company shall pay commission to the respondent and reimburse the appellant for the expenses of the office of the appellant company at Delhi borne by him.

33. In view of the fact that the letter dated November 05, 1996 Ex. P-24,

statement Ex. PW-1/23 and statement of account Ex. DW-1/11 corroborates the minutes Ex. PW-1/36, it can safely be concluded that the minutes Ex. PW-1/36 is a genuine document.

34. Nothing much turns on the argument advanced on behalf of the appellant predicated upon the address contained in the minutes Ex. PW-1/36 for it is quite possible that the parties got prepared the letter head as per the understanding arrived between them soon after the meeting dated November 04, 1996 and the minutes of said meeting were typed on the newly prepared letter head or it is possible that oral agreement was arrived at a little earlier. The letter heads were got printed in advance and one leaf was used to type out Ex. PW-1/36.

35. Once it has been held that the minutes Ex. PW-1/36 is a genuine document it has to be further held that the appellant company is liable to:-

(a) Pay rent to the respondent for the premises bearing Municipal No. F-11, Pandav Nagar leased by it:- The respondent has claimed Rs. 5,000/- x 34 months = Rs. 1,70,000/- for the rent of the premises in question for the period from November, 1996 to August, 1999. The learned Single Judge has rightly held that the appellant company is liable to pay said amount to the respondent.

(b) Reimburse the respondent for the salary paid by him to his wife Ms. Renu Gupta: - The respondent has claimed a sum of Rs. 2,18,666/- as the reimbursement of the salary paid by him to his wife Renu Gupta. The learned Single Judge has rightly held that the appellant company is liable to pay said amount to the respondent more so for the reason the appellant has led no evidence to prove that it had directly paid the salary to Renu Gupta.

As regards the argument advanced by the appellant company that the respondent had no locus to claim the salary payable to his wife suffice would it be to state that the respondent has not claimed the salary which was payable to his wife but the reimbursement of the salary paid by him to his wife as per the agreement arrived between the parties in the meeting held on November 04, 1996.

(c) Reimburse the respondent for the expenses of office of the appellant company at Delhi borne by him: - The respondent had claimed a sum of Rs. 6,32,010/- as the reimbursement of the expenses of office of the appellant company borne by him. The memo Ex. PW-1/5 coupled with the statement of account Ex. DW-1/11 of the appellant company and the credit note Ex. PW-1/51 establish that the expenses in sum of Rs. 2,32,825/- and Rs. 3,99,906/- respectively were borne by the respondent. The learned Single Judge has rightly held that the appellant company is liable to pay said amount to the respondent.

36. As regards commission @ 1%, the learned Single Judge has correctly opined that the respondent had to establish orders booked by him between November 01, 1996 till September, 1997 inasmuch as it was the case of the respondent that evidenced by Ex. PW-1/24 the sales commission and terms were changed and

thus the period November 01, 1996 till September, 1997 had to be treated as a distinct segment period. He not having established orders procured by him, the learned Single Judge correctly relied upon the appellant''s statement of account Ex. DW-1/11 which showed appellant having acknowledged commission in sum of Rs. 1,40,914/- payable to the respondent.

37. Learned counsel for the appellant had nothing to explain with respect to Ex. DW-1/11, and thus we hold that apart from the three sums noted by us in sub-paras (a), (b) and (c) of para 36 above, the appellant would be liable to pay to the respondent Rs. 1,40,914/- towards commission.

38. For the period thereafter, the minutes of the meeting dated October 01, 1997 Ex. PW-1/24 records that ''Sales Commission payable to Mrs. Renu Gupta, Marketing Executive as an incentive would be given on slab wise sale of entire Northern Region as given below as per turnover based on the basic sale price. There will be no other reimbursement expenditure towards maintenance of office, including telephone expenses etc.'' The decision arrived between the parties in the meeting held on October 01, 1997 was to take effect from November 01, 1997.

39. The minutes Ex. PW-1/24 purportedly bear the signatures of Mr. R.J. Menon, the Marketing Manager of the appellant company. The appellant company has denied that the minutes Ex. PW-1/24 bears the signatures of Mr. R.J. Menon.

40. A very interesting thing has happened. We have noted herein above that the appellant had examined as DW-2 Pandit Ashok Kashyap to disprove R.J. Menon''s signatures on Ex. PW-1/36 and interestingly the expert witness, at the asking of the appellant has treated R.J. Menon''s signatures on Ex. PW-1/24 as the sample, meaning thereby the signatures to be genuine, and if for no other reason, it has to be held against the appellant with respect to its plea qua R.J. Menon''s signatures on Ex. PW-1/24.

41. Now, as per the document, the commission has to be paid at a slab rate to the wife of Alok Gupta and not to him. As against his claim and proof that at the asking of the appellant he was paying salary to his wife requiring the same to be reimbursed to him by the appellant and likewise at the asking of the appellant he was bearing the office expenditure requiring the same to be reimbursed, it is not his case that he was paying the commission agreed upon as per Ex. PW-1/24 to his wife at the asking of the appellant, requiring the same to be reimbursed and thus we must differ from the view taken by the learned Single Judge, who has ignored as aforesaid for the reason it was for Renu Gupta to have made such claim.

42. After October 01, 1997, a meeting was held between the respondent, wife of respondent Ms. Renu Gupta and officials of the appellant company on July 27, 1998.

43. The appellant company had admitted that the minutes of the meeting dated

July 28, 1998 Ex. PW-1/28 contain the signatures of its Managing Director J.R. Rasiah and employees R.J. Menon and Jacob Thomas. Yet again, it is not the case of the appellant company that the respondent had forcibly or fraudulently obtained the signatures of said persons on the minutes Ex. PW-1/28 or some blank papers. Such being the position, the minutes Ex. PW-1/28 has to be taken as a genuine document.

44. As per the respondent, in terms of Ex. PW-1/28 he was to be paid commission for all sales made in the Northern region and in respect of the claim, the learned Single Judge has held that the amount of commission payable to the respondent for the period from July 27, 1998 to August, 1999 cannot be worked out ''unless the amount of sale made by the defendant to all customers other than the plaintiff, in the entire northern region is known'' and thus the appellant company is liable to render accounts to the respondent for the sales made by it during the said period. In so concluding, the learned Single Judge has proceeded on the premise that the respondent was the sole agent of the appellant company for the northern region during said period.

45. We are afraid, this was not the case. The learned Single Judge failed to note clause 15 of the minutes Ex. PW-1/28 which prescribe that ''if M/s Alok Enterprises shows excellent performance and clears all pending dues by August end, they can be considered for a sole selling agent from 1st Sept. onward.'' Clause 15 of the minutes Ex. PW-1/28 coupled with the fact that in the pleadings in the plaint the respondent had never claimed himself to be the sole agent of the appellant company makes it clear that the respondent was not entitled to any benefits as the sole selling agent for the reason Ex. PW-1/28 made it contingent upon respondent clearing pending dues and showing excellent performance of his being made the sole selling agent for the entire northern region.

46. The respondent has not furnished any details whatsoever of the persons introduced by him to the appellant company or the orders procured by him for the sale of the goods of the appellant company. Such being the position, nothing would come out of sales figures of the appellant company for the said figures would include the sales made at the instance of the respondent as also other agents of the appellant company and there would be no means to ascertain the number of the sales which were made at the instance of the respondent. Thus, we hold that no commission is payable to the respondent for the period of July 27, 1998 to August, 1999.

47. Before proceeding further, we note the decision of the Supreme Court reported as Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another, wherein the right of an agent to sue the principal for accounts was dealt in the following terms:-

The first question presented for determination in these appeals is whether the plaintiff is entitled to sue for accounts, he being the agent and defendant- Surat firm being the principal. Section 213 of the Indian Contract Act specifically provides that an agent is bound to render proper accounts to his principal on demand. The principal''s right to sue an agent for rendition of accounts is, therefore, recognized by the statute. But the question is whether an agent can sue the principal for accounts. There is no such provision in the Indian Contract Act. In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right.

....

In our opinion, the legal position in India is not different. Though an agent has no statutory right for an account from his principal nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for commission against his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into.

48. The respondent has claimed himself to be an agent of the appellant company. As far as payment of commission to the respondent for the period from November 01, 1996 to October 31, 1997 is concerned, it is noteworthy that the minutes Ex. PW-1/36 prescribe that the appellant company shall pay commission @1% to the respondent for all the orders procured by him and the materials purchased by him for re-selling. No special circumstances exist which render it equitable that the appellant company should render accounts to the respondent for the period from November 01, 1996 to October 31, 1997 inasmuch as it is not the case that the all the accounts were in the possession of the appellant company or that amount of commission payable to the respondent could have been determined without looking into the accounts of the appellant company. Thus in view of the law laid down by the Supreme Court in Narandas''s case (supra), the relief of rendition of accounts claimed by the respondent in respect of payment of commission to him for the period from November 01, 1996 to October 31, 1997 is not even maintainable.

49. Lastly, we deal with the argument advanced by the appellant company relating to the finding of the learned Single Judge that the respondent has successfully established that it had paid a sum of Rs. 15,70,640/- to the appellant company for the goods purchased by him.

50. The respondent had produced the receipt dated August 30, 1999 Ex. P-3 issued by the appellant company to the respondent and vouchers dated August 05, 1998 Ex. PW-1/6 and July 22, 1998 Ex. PW-1/7 to establish that he paid the sums of Rs. 2,78,640/-, Rs. 6,98,000/- and Rs. 5,94,200/- respectively to the appellant company for the goods purchased by him.

51. As already noted hereinabove, the appellant company admitted the receipt dated August 30, 1999 Ex. P-3 as a genuine document. The appellant company had also admitted that the vouchers dated August 05, 1998 Ex. PW-1/6 and July 22, 1998 Ex. PW-1/7 contain the signatures of its employee Jacob Thomas but disputed the contents of the same. It is not the case of the appellant company that the respondent had forcibly or fraudulently obtained the signatures of its employee Jacob Thomas on vouchers Ex. PW-1/6 and Ex. PW-1/7 or some blank papers. In that view of the matter, it does not lie in the mouth of the appellant company to dispute the contents of the vouchers Ex. PW-1/6 and Ex. PW-1/7.

52. It is trite that the respondent had not averred in his pleadings about the aforesaid payment(s) made by it to the appellant company. The plaint filed by the respondent is an inartistically drafted plaint. The fact of the matter is that the evidence on record clearly establishes that the respondent had made aforesaid payment(s) to the appellant company. It would be unjust to penalize the respondent for the laxity of his counsel in drafting the plaint in question. The interests of justice require that it should be held that the respondent had made the payment of Rs. 15,70,640/-to the appellant company for the goods purchased by him. As regards sales made by the appellant to the respondent, though in the pleadings denied by him, but admitted during cross-examination the invoices Ex. P-1/D-1 to Ex. P-1/D-21 evidence he having received goods worth Rs. 27,65,840/- from the appellant. The sales are on principal to principal basis. Thus inter se adjustment has rightly been granted by the learned Single Judge.

53. The net result of the above discussion is that the impugned judgment and decree dated December 22, 2010 passed by the learned Single Judge insofar it had awarded a sum of Rs. 33,933/- to the appellant company together with pendente lite and future interest @12% per annum is affirmed. The impugned judgment insofar it has passed a decree of rendition of accounts in favor of the respondent is set aside.

54. The impugned judgment and decree dated December 22, 2010 passed by the learned Single Judge is modified in terms of para 54 above. The suit filed by the respondent against the appellant is dismissed and the counter claim filed by the appellant is decreed in sum of Rs. 33,933/-. Since both parties have spoken half lies and half truth, they shall bear their own costs all throughout.

