

(1944) 07 MAD CK 0004
In the Madras High Court

P.K. Chinnaswami

APPELLANT

Vs

C. Doctor and Co., by managing proprietor Vadilal

RESPONDENT

Date of Decision : 11-07-1944

Acts Referred:

Citation : AIR 1944 Mad 546 : (1945) ILR (Mad) 338

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The plaintiff in this suit is a commission agent. In 1937 and 1938 the defendants were acting as the agents of a German firm,

named Rich Hartmann, whose business was the manufacture of cotton machinery at Chemnitz in Germany. The defendants employed the plaintiff

to introduce them to the management of the Kumaran Mills, Ltd., a company carrying on business at Coimbatore. As the result of the plaintiff's

introduction to the management of the Kumaran Mills, Ltd., a contract was entered into under which the firm of Rich Hartmann were to sell and the

Kumaran Mills, Ltd., were to buy two sets of cotton spinning machinery at the price of ₹24,400 packed and delivered f. o. b. Hamburg. The

contract further provided that confirmation should be obtained from the manufacturers on which event the buyers were to pay to the defendants

Rs. 25,000 and the balance of the ₹24,400 against delivery of the shipping documents. On the same day (80th November 1937) the

defendants' manager wrote to the plaintiff this letter:

Allow me to tender my heartfelt thanks for your valuable assistance in my booking the order for Messrs. Kumaran Mills, Ltd., and as a token of

my appreciation, I hereby undertake to pay a sum of Rs. 6000 (rupees six

thousand) after the satisfactory expiry and conclusion of the Kumaran business.

The next day Kumaran Mills, Ltd., deposited with the defendants Rs. 10,000 on account of the Rs. 25,000 which was to be paid on confirmation of the contract being received from the manufacturers. The confirmation was in fact received on 17th February 1938. On 4th March 1938, the buyers made a further payment of Rs. 5000. They did not pay the balance of Rs. 10,000 and apparently were not in a position to do so. As the result of further negotiations, a fresh contract was entered into, under which the manufacturers were to supply only one set of cotton spinning machinery, the price being ₹12,873-10-0. This contract was fulfilled.

2. The plaintiff then instituted a suit in the Court of the Subordinate Judge of Coimbatore to recover the sum of Rs. 6000 which he alleged he was entitled to under the letter written to him by the defendants on 30th November 1937. The Subordinate Judge held that as the original contract had not been fulfilled he was not entitled to Rs. 6000, but he gave him a decree for Rs. 3000 in respect of the second contract. This amount was based on the fact that the second contract represented only half the value of the first contract. The plaintiff has appealed. He says that as much as he introduced the defendants to the Kumaran Mills, Ltd., and a contract for the supply of two sets of cotton spinning machinery was entered into he is entitled to the full amount of Rs. 6000. The defendants resist this claim. They say that the words "after the satisfactory expiry and conclusion of the Kumaran business" must be construed as meaning that he was to get the Rs. 6000 only in the event of the first contract being carried through, that is, delivery of the machinery by the manufacturers and payment for it by Kumaran Mills, Ltd. The defendants have not in this Court challenged the correctness of the Subordinate Judge's finding that they are liable for Rs. 3000.

3. Before examining the meaning to be attached to the words "after the satisfactory expiry and conclusion of the Kumaran business" we will refer to certain of the authorities which have been quoted in the course of the arguments, as these are helpful. In *Luxor (Estbourne), Ltd. v. Cooper* 1911

A.C. 108 Viscount Simon L. C. discussed the various classes of cases relating to the remuneration of commission agents. The first class is that in

which the agent is promised a commission by his principal if he succeeds in

introducing to his principal a person who makes an adequate offer, usually an offer of not less than the stipulated amount. The second class is that in which the property is put into the hands of the agent to dispose of for the owner, and the agent accepts the employment and expends money and time in endeavouring to carry it out. The third class is that where, by the express language of the contract, the agent is promised his commission only upon completion of the transaction which he is endeavouring to bring about between the offerer and his principal. The plaintiff contends that this case falls within the first class. The defendants contend that it falls within the third category, If the case falls within the first class, there can be no doubt that the plaintiff will be entitled to succeed in the appeal, but otherwise, if it falls within the third class. The Privy Council pointed out in the recent case in AIR 1943 159 (Privy Council) that a broker who is employed by a seller to introduce him to a prospective purchaser is entitled to be paid whatever is in the circumstances the usual commission on all contracts resulting from the introduction. This statement of the law, of course, implies that there is no contract to the contrary. If the case falls within the third category, the plaintiff must fail because the authorities show that the word ""completion"" must be taken to mean the performance of the contract, that is, the delivery of the goods and the payment for them. In *Chapman v. Winson* (1905) 91 L.T. 17, the contract between the principal and the commission agent was couched in these terms:

If your friend is named and introduced within one week, and becomes the purchaser of the above hotel, you shall be paid as and by way of commission a sum of ₹1½50 when and if the purchase is completed by private treaty.

The Court of appeal, reversing the decision of the Divisional Court, held that the word ""completed"" meant completed in the legal sense by the payment of the purchase money. The buyer did not pay the purchase money and the contract fell through. Consequently it was held that the agent was not entitled to the commission. Collins M. R. said that the word ""completed"" meant an introduction and agreement resulting in completion, which involved the payment of the purchase money. The judgment in that case is in accordance with the judgment of the Court of appeal in *Battams v. Tompkins* (1892) 8 T.L.R. 707 and *Lott v. Outhwaite* (1893) 10 T. L.R.

76. In *Martin v. Perry and Daw* (1931) 2 K.B. 310 the

plaintiff engaged the defendants as agents to find a purchaser for his business, commission being payable "on a sale being effected." The purchaser

did not complete the contract. It was there held that a sale is not effected unless (a) one introduces a purchaser who pursues the matter to

completion, or (b) one introduces a purchaser who at all times and at the proper time is ready, able and willing to execute the contract into which

he enters.

4. It follows that if the words "after the satisfactory expiry and conclusion of the Kumaran business" contained in the letter of 80th November 1937

mean payment only on the completion of the contract, the plaintiff is not entitled to the balance of Rs. 3000. In our opinion this is the only meaning

which can reasonably be given to these words. "The Kumaran business" was the contract which the Kumaran Mills Ltd., had entered into with the

agents of the firm of Rich Hartmann to buy two sets of cotton spinning machinery at the price of ₹24,400, and the "satisfactory expiry and

conclusion" of that contract would only take place after the goods had been shipped and the buyers had paid for them against delivery of the

shipping documents, or of the goods. As that contract was not fulfilled, the plaintiff by reason of his own contract of agency was not entitled to Rs.

6000. The appeal fails and is dismissed with costs.