
(1930) 07 MAD CK 0014
In the Madras High Court

The Official Assignee of Madras	APPELLANT
Vs	
Frank Johnson Sons and Co. Ltd. and Another	RESPONDENT

Date of Decision : 28-07-1930

Acts Referred:

Citation : AIR 1931 Mad 65 : (1931) ILR (Mad) 409 : (1930) 32 LW 523 : (1930) 59 MLJ 839

Hon'ble Judges : Bhashyam Aiyangar, J

Bench : Division Bench

Judgement

Bhashyam Aiyangar, J.—This is an appeal by the Official Assignee and as such the assignee of the estate and effects of one Kancherla

Krishna Rao, an insolvent, against an order of Waller, J., dismissing an application made by him in the said insolvency, for an order directing both

or either of the two respondents, namely, Frank Johnson Sons & Co., Ltd. and the United Refineries, Burma, Ltd., to pay him damages for breach

of agreement. The United Refineries, Burma, Ltd., the 2nd respondent, was an incorporated Company formed in 1920 by the Indo-Burma

Oilfields, Ltd. and Yomah Oil Co., Ltd., who were both engaged in the production of crude oil in Burma, for erecting, maintaining and operating a

refinery for crude petroleum oil and marketing the products of such refinery, and it had its registered office in Burma. Frank Johnson Sons & Co.,

Ltd., the 1st respondent, who apparently did business both at Rangoon and Calcutta, had been appointed the sole selling agents in India of the

petrol and other products which might be produced by the 2nd respondent. The agreement which we have to consider was in writing and entered

into on the 12th of December, 1921, between the present insolvent and the 1st respondent, the latter acting as selling agents of the 2nd

respondent. It consisted of two memoranda, by the first of which Kancherla Krishna Rao undertook to purchase debenture stock in the Indo-Burma Oilfields for ₹20,000, and the 1st respondent, in consideration thereof, appointed him as the sole distributing agent for the sale of the products of the 2nd respondent, in the Presidency of Madras, including its Native States, French Possession and the Colony of Ceylon, for a period of ten years. The second memorandum laid down and defined the terms of this agency and fixed the rights and liabilities of the parties thereto in detail. It is common ground that Kancherla Krishna Rao paid for the debentures undertaken to be purchased by him, but no products of the 2nd respondent were sent to him for sale. It was alleged on behalf of the 2nd respondent and not disputed by the appellant, that, for some reason, the 2nd respondent was unable to produce and did not produce any petrol or other products on any commercial scale. The question now emerges and it is the only one argued before us, whether Kancherla Krishna Rao was, and the appellant, who now represents him, consequently is, entitled to hold both or either of the respondents liable in damages for their omission or failure to supply him with the product's for the sale of which he obtained the sole agency.

2. Now, the primary question of liability undoubtedly turns on the construction of the written agreement above referred to. And that agreement", notwithstanding its formal and detailed nature, does not contain any clause imposing any obligation on either respondent to supply any products to Kancherla Krishna Rao, the agent for sale. If there was no undertaking or promise by the respondents to supply goods or products, it is obvious that no damages could be claimed by Kancherla Krishna Rao, or, the appellant, against the 1st respondent or, much less, the 2nd respondent, for any omission or failure to supply them. The learned Advocate for the appellant has contended that, although the written agreement is silent on the point, a promise for the supply of products should be read into it by implication under the circumstances of this case. When he was pressed to particularise the promise which he wanted to have implied in the agreement, with reference to the quantity of the various products and the time of their supply, he could only say that a reasonable quantity of the products produced by the 2nd respondent should have been supplied to Kancherla

Krishna Rao.

3. Whether an implication should or should not be made in a particular case depends on and must be answered with reference to the special facts

and circumstances thereof, but the principles which should guide us in the matter have been laid down in several leading cases. The judgment of the

learned Trial Judge refers to the most important of them. The principle is well settled that a stipulation not expressed in a written contract should

not be implied merely because the Court thinks that it would be a reasonable thing to imply it. Such an implication can be made only if, on a

consideration of the terms of the contract in a reasonable and business manner, the Court is satisfied that it should necessarily have been intended

by the parties when the contract was made. See *Hamlyn & Co. v. Wood* (1891) 2 Q.B. 488 and *Lazarus v. Cairn Line of Steamships, Ltd.*

(1912) 106 L.T.R. 378. Is it possible in the present case to say that, when the present insolvent and the 1st respondent entered into the contract in

question, the former necessarily bargained for, or the latter held out, any definite obligation that the 2nd respondent should refine and send out to

the insolvent any products of the kind referred to in the agreement? It seems impossible to answer this question in the affirmative. It will be

observed that the implications sought for will be inconsistent and collide with one of the important terms in the agreement, namely, that either party

was at liberty to cancel or terminate the agency by merely giving three months' notice in writing. The agreement must, no doubt, have proceeded

on the expectation that the 2nd respondent would produce a large quantity of refined products and be in a position to supply Kancherla Krishna

Rao with any required quantities thereof for commission sale, but the question is whether there was any and what bargain on these matters. It is not

suggested that there was any negotiation or understanding as to the quantities of the products which the 2nd respondent should supply or the

present insolvent should receive, or as to any other particulars regarding their consignment. This omission, no less than the absence of any

stipulation in the formal agreement on such an important point, clearly cuts at the root of the implication urged on behalf of the appellant.

4. Going to the authorities, it may at once be mentioned that *Ogdens, Ltd. v. Nelson* (1904) 2 K.B. 410 cited by the learned Advocate for the

appellant does not really help us. The facts of that case were essentially different and, although there is a reference to the principle of implication in

the judgment of Collins, M.R., in the Court of Appeal, the decision really turns on the construction of an express stipulation, as explained, and

made clear by the judgments delivered by the House of Lords in the same case on further appeal. See (1905) A.C. 109. Damages were granted in

that case only for the breach of an express stipulation.

5. The other material cases are *Turner v. Goldsmith* (1891) 1 Q.B.D. 544. and *Rhodes v. Forwood* (1876) 1 A.C. 256. It was argued for the

appellant that the facts of the present case more nearly resemble those in *Turner v. Goldsmith* (1891) 1 Q.B.D. 544 which the Trial Judge has

distinguished in his judgment, than *Rhodes v. Forwood* (1876) 1 A.C. 256 which has been followed by him, but we are not prepared to accept

this argument. It seems to us that the present case is entirely on all fours with *Rhodes v. Forwood* (1876) 1 A.C. 256. Here, as there, the contract

was one of sole agency; the agency was confined to a specified area; the agent was to sell for commission, the contract was for a fixed period

determinable earlier by either party on notice and there was no express term obliging the principal to send any goods to the agent for sale in his

area. The House of Lords held under these circumstances that no implied contract binding the principal to supply the agent with goods could be

discovered. In the other case, *Turner v. Goldsmith* (1891) 1 Q.B.D. 544 the facts are materially different. In the first place the relationship

between the principal and the agent appears to have there approximated more to that of an employer and a servant than a manufacturer and a local

commission agent for sale. Compare the observations of Phillimore, J., in *Northey v. Trevillion* (1902) 18 T.L.R. 648. Secondly, although the

contract in that case resembles that in *Rhodes v. Forwood* (1876) 1 A.C. 256 and the present case in being for a fixed term of years, there is this

essential difference that, whereas in the latter the parties provided for the termination of the agency by notice even within the prescribed period,

there was no such provision in the former and the contract was terminable by notice only as from the expiry of the period. Thirdly, the principal in

Turner v. Goldsmith (1891) 1 Q.B.D. 544 employed the agent for sale not merely of the goods manufactured by him but of those which he could

have procured by purchase or otherwise for, sale. It appears to us, therefore, that the present case is dissimilar to *Turner v. Goldsmith*⁴ and falls

within the scope of the decision in *Rhodes v. Forwood* (1876) 1 A.C. 256.

6. It was pressed on behalf of the appellant that the purchase of the debentures of the Indo-Burma Oilfields, Ltd., for 20,000 which is recited in

the agreement in question as consideration for the appointment of the present insolvent as agent makes an essential difference, but we think it has

no bearing as to whether or not a stipulation to supply goods should be implied. Whether a stipulation should or should not be implied is a question

relating to the construction of the agreement and does not depend on the nature of its consideration.

7. It must be held in the result that the order appealed against" is right. The appeal is dismissed with costs (one set).