

(1963) 02 KL CK 0012

In the High Court Of Kerala

Case No : Second Appeal No's. 1131 and 1132 of 1960

The Valapad Co-operative Stores Ltd.

APPELLANT

Vs

K.H. Srinevasa Iyer Brothers, Palghat

RESPONDENT

Date of Decision : 18-02-1963

Acts Referred:

Contract Act, 1872 — Section 186, 187, 188

Citation : AIR 1964 Ker 176 : (1963) 7 KLJ 679

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : K. Kuttykrishna Menon and V. Balakrishna Eradi, for the Appellant;
C.V. Narayana Iyer, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Mahilw, J.—These appeals arise from the decrees in O. S. 477 of 1955 and 495 of 1955 respectively on the me of the Munsiff's Court, Palghat. Both these cases were tried together and the evidence was taken in O.S. 477 of 1355. The Valappad (Co-operative Stores Ltd., a society registered under the Madras Co-operative Societies Act (Act VI of 1932) hereinafter called the Society is the defendant in both cases. The two suits were instituted tor recovery or money by the two different plaintiffs for the purchase of goods by the Society from them. The bills on which the claim of the plaintiff in O.S. 477 of 1955 was based are Exts. B-1 to B-3 dated 11-4-1955 and those on which claim of the plaintiff in O.S. 495 of 1955 was based are Exts. B-35 to B-37 dated 9-3-1955. The case of the plaintiffs was that the Society purchased goods from them and was Indebted for the amounts claimed in the respective plaints.

2. The substantial defence raised by the defendant was that the Secretary of the Society was entrusted with funds for purchasing the goods, that he had no authority to purchase the goods on credit, that the secretary had misappropriated the funds entrusted by the society for purchasing goods and that as the secretary was not authorised to purchase the goods on credit the

defendant was not liable for the purchase price claimed.

3. The trial court dismissed the suits finding that the Society did not authorise the secretary to purchase goods on credit and that the Society had not held out that the secretary had authority in the ordinary course of his employment, to purchase goods on credit from the plaintiffs. In appeal, the lower appellate Court came to the conclusion that the purchases made by the secretary were within the scope of his authority and that the society was bound by the act of its authorised representative and therefore decreed the suits. It is against these decrees that the present appeals have been filed by the defendant.

4. The submission made before me by counsel for the appellant was that the secretary of the society had no authority to purchase the goods on credit. The practice of the society, he urged, was to entrust the funds necessary for the purchase of goods to the secretary in advance, and therefore the society was not bound to honour the bills in respect of goods purchased by the secretary on credit, in order to decide the question raised in these appeals, it is necessary to find out what exactly was the authority of the secretary under the constitution of the society. Ext. B-6 is a book containing the bye-laws of the society, and the material clauses there are clauses 14 and 23. Clause 14 says that the Society is not competent to borrow money except from another co-operative society. Clause 23(a) runs as follows:

"The Board shall appoint a paid secretary preferably from among the qualified candidates who have undergone training in any one of the co-operative framing institutions and shall fix the condition of his service including the security to be offered by. He shall not be fined or otherwise punished except by the Board. In addition to such powers and duties as may be entrusted to him by the Board he shall be responsible for the carrying on of the day-to-day work of the stores on sound line (B) for checking the stock as often as possible and at least once in a month. For seeing that the accounts are maintained properly and all the books are written tip and posted upto date and for the safe custody of the stock in double lock".

The respondent contended that under Clause 23(a) the secretary being responsible for carrying on of the day-to-day work of the stores on sound lines, it was open to him to purchase goods on credit and if he so purchased, it was binding on the defendant. I think that the contention is sound. A person having the responsibility to carry on the business of the Store and its day-to-day work on a sound line and who is also entrusted with the executive business of the Society must be deemed to have implied authority to purchase goods on credit.

The authority of an agent to bind the principal depends upon the question whether the agent was acting in the ordinary course of his employment. In this case the Society having entrusted the running of the business of the stores to the secretary, it must be taken that the secretary was entrusted with such powers as were necessary and usual for the carrying on of that business and it

cannot be said that the secretary was acting outside the scope of his authority when he purchased the goods on credit. It is immaterial that the Society had furnished sufficient funds to the secretary for purchasing goods because there is no evidence to show that the plaintiffs were aware of this fact. If there is any secret limitation on the usual and implied authority of an agent a third party acting in good faith will not be found by that secret limitation.

In this case as the bye-laws authorised the secretary to carry on the business of the Stores and as the plaintiffs in selling the goods on credit had no reason to suspect that the society had advanced funds to the secretary with which to purchase goods, the Society was bound by the act of the secretary. Even if it be assumed that the secretary was committing a fraud off the society, the society will be bound provided the secretary was acting in the ordinary course of his employment and that the plaintiffs had no knowledge of the fraud.

5. It was contended by the appellant relying on the ruling reported in *Fleming v. Hector* (1836) 150 ER 716, at pp. 720 and 723 that it is for the person who wants a decree against the principal to prove that the agent had authority to bind the principal. I agree that it is so. But I think the bye-laws make it clear that the secretary had the implied authority, to bind the principal in purchasing the goods on credit

Bye-law 23(a) authorises the secretary to carry on the business of the Stores. It is difficult to imagine how the business of the Stores can be carried on on sound lines except of course with an authority at the appropriate time to purchase goods on credit. It might be that the Society may not be able to command the necessary funds at a particular time and still a purchase of goods at that time may be advantageous, nay, necessary to carry on the business of the Stores and unless a power in that behalf is implied, it is difficult to see how the secretary can conduct business on sound lines.

6. Counsel for the appellant contended that the secretary had no actual authority to purchase the goods on credit although under the bye-laws of the Society he has been authorised to carry on the business of the stores on sound lines. It was contended that as there was no actual authority to purchase the goods on credit the only way to make the principal liable is to establish that the agent had apparent authority to purchase the goods on credit and that there can be no apparent authority unless there was a representation by word or act by the principal that the agent had authority and a reliance thereon by the party dealing with the agent; counsel added, that it is also necessary that the representation should have been made to the party dealing with the agent or to a class of persons of whom he was one.

7. In the case of an apparent authority, one has first of all to find out in respect of what transaction an agent has apparent authority and towards whom. That the apparent or the ostensible authority is no authority at all as between the principal and the agent and that it is different from express or implied authority

is clear from the following statement of law by Mr. J. H. Watts, the learned editor of Smith's Mercantile Law:

"There is a clear distinction between the proper use of the two expressions "implied authority" "ostensible authority." The former is a real authority, the exercise of which is binding not only as between the principal and third parties, but also as between principal and agent. It differs only from an express authority in that it is conferred by no express words in writing, but is to be gathered from surrounding circumstances. The term "ostensible authority, on the other hand, denotes no authority at all. It is a phrase conveniently used to describe the position which arises when one person has clothed another with, or allowed him to assume, an appearance of authority to act on his behalf, without actually giving him any authority either express or implied, by which appearance of authority a third party is misled into believing that a real authority exists. As between the so-called principal and agent such "ostensible authority" is of no effect. As between such principal, however, and the third party it is binding, on the ground that the principal is estopped from averring that the person whom he has held out and pretended to be his agent is not in fact so." (Smith and Watts' Mercantile Law 8th Ed. 1924, p. 177, note (s).)

8. If that is so, then the question will arise whether the act of the secretary in purchasing the goods on credit was an act within the apparent authority of the secretary, as agent of the Society. From the evidence in the case, it is clear that the plaintiffs in both cases had no actual knowledge of the bye-laws of the society and hence they were ignorant of the provision which authorised the secretary to carry on the business of the Stores. Therefore, the plaintiffs could not have been misled by anything contained in the bye-laws as regards the authority of the secretary in respect of the transactions entered into by him in carrying on the business of the Stores. If the plaintiffs had no actual knowledge of the bye-laws of the Society which authorised the secretary to carry on the business of the Stores and to purchase goods in the course of that business then on principle, it may not be open to the plaintiffs on one view of the matter to rely upon the authority given to the secretary under the bye-laws. (See *Houghton and Co. v. Northard Lowe and Wills Ltd.*, 1927 1 KB 24). The question is further complicated by the doctrine that a person dealing with a corporation -- and in this case the Society is a corporation -- shall be deemed to have notice of that bye-laws or other organic instruments defining its objects and powers of its agents whether he has actually read it or not.

"The company holds out its officers as having the powers set out in the articles, and consequently is bound by acts falling within the scope of those powers. But there must be a reliance on the holding out: it is not enough that the principal who holds out is in the same position where there is no reliance as where there is reliance. There must be reliance before the doctrine of estoppel can be invoked. The person who professes to set for the company makes an implied representation that he has authority so to do, and this involves a statement as to

the existence of such an article (i.e. an article conferring authority). In such a case the other party to the contract will run the risk of mere being no article; but, if there is an article, surely the company cannot complain if he relies on an accurate statement of the contents of the article". (See the article in 50 Law Quarterly Review p. 224 at 241 by Mr. J. L. Montrose). This view is not in accordance with the view taken by the Court of Appeal in two cases i. e. 1927 1 KB 246 and Kredit-bank Cassel G.M.B.H. v. Schenkers Ltd. 1927 1 KB 626 at p. 844. In the above two cases the view was taken that the corporation was not bound in such a case because the man could not rely on a document he had never seen. (See the view taken by Dr. Stibel in 49 Law Quarterly Review page 350 at p. 354 and also the view taken by John Section Ewart in the article entitled "Estoppel, Principal and Agent", 16 Harvard Law Review page 186.) The line of reasoning suggested by Mr. J. L. Montrose in 50 Law Quarterly Review 224 was accepted in Hambro v. Burnand, 1964-KB 10.

9. The facts of the case there were:

"A was as underwriter at Lloyd's. He was also a director of X Co. P consisted of certain other underwriters who authorised A by a power of attorney to underwrite insurance policies in the names of A and P. In the names of A and P. A underwrote 3 policy guaranteeing the bills of X Co. T accepted a bill drawn by X Co. When the bill fell due, X Co., defaulted. T sued P and A upon the guarantee policy. T had never seen, and did not know of, the power of attorney given, to A. It was proved that the underwriting or guarantee policies was within the ordinary course of business, i. e. the usual authority, of a Lloyd's underwriter. Held: P was liable on the policy".

In the course of the judgment Romer LJ., made the following observation at page 23:

"Consider how the case would have stood if the plaintiffs in this case, who accepted the guarantee policies, had not relied merely on the representation which Burnand necessarily made to them by professing to sign the policies on behalf of his co-defendants. The utmost which, it appears to me, they need have done, as between themselves and the principals of the agent, was to ask the agent to produce his written authority, if he had any. Had they done that, and had that authority been shown to them, it would have been hopeless, in my opinion, for the principals of the agent afterwards to say that they were not bound by the written authority so inspected because the agent had acted in bad faith towards them in acting upon that authority. As a matter of principle this appears to me so clear that I will not further consider the point, men does it make any difference that in point of fact the plaintiffs did not inspect the authority? I think not, for this reason. By not inquiring for the written authority, they no doubt ran a certain risk. What was that risk? The agent represents that he has authority by reasons of the fact that he signs the policy in the names of his co-insurers. If the plaintiffs do not ask to see his authority, upon what are they relying? They rely--and that is the only risk which they run -- upon his

representation that he has authority to enter into the contract. How can it be argued that the principals are not liable on the contract when it turns out that, to the extent to which the plaintiffs trusted the agent, they were justified in trusting him, and that to the extent to which he made a representation of authority, no was justified in making such a representation? it seems to me that the plaintiffs are really in the same position as if they had asked to see the written authority and it had been produced to them. It is said that the existence or the written authority not being known to the plaintiffs was immaterial, and that Burnand, having been capable in this case of fraud and misconduct towards his principals, would have been equally capable of representing that he had authority, even if he had not had it."

10. If there was an implied representation by the secretary of the existence of the provision in question in the bye-laws of the Society which authorised him to carry on the business of the Stores, then the only question for consideration is whether that authority carried with it we power to purchase goods on credit. In this view of the matter the question whether a person dealing with a corporation has constructive notice of the bye-laws or other organic instruments which fixes him with knowledge at the powers of the agents of the corporation under those documents even though he has not read them need not be discussed. Nor is it necessary to pursue the further refinements of that doctrine as to whether it will operate only against the person who failed to inquire and not in his favour. (See the full discussion of the question in 1952 QB 147 at p. 149 and also in 1927 1 KB 245 affirmed in 1928 AC 1).

11. As I said, this case has to be decided on the basis of the actual authority of the agent as evidenced fly the bye-laws of the Society. I think the situation in this case is that the agent had authority to carry on the business. Whether the existence of that authority was known to the person dealing with the agent or not, the agent must be deemed to have made a representation that he has authority under the bye-laws to carry on the business and purchase the goods on credit. That he had authority to carry on the business is clear from the bye-laws of the Society, but that he had authority to purchase goods on credit is not clear. It is not mentioned in the, bye-laws. Therefore the question is whether a person authorised to carry on the business of the Stores has got implied authority to purchase goods on credit. It depends upon the circumstances of the case whether in the-carrying on of a business of this type the agent has got implied or the usual authority to purchase goods on credit. (See Section 188 of the Indian Contract Art).

The fact that on some previous occasions at least the principal had not supplied the money necessary for purchasing the goods and the purchase of goods on credit on those occasions were not only not objected to but were acquiesced in, and the price paid by the Society reinforces the conclusion that there was an implied authority in the agent to purchase goods on credit, and that the principal is estopped from disputing it.

12. In *Pazhaniappa v. S. I. P. and I. Co., Ltd.* AIR 1953 TC 161 the Travancore-Cochin High Court considered the question whether an agent who was authorised to sell goods has implied authority to sell goods on credit, and it was held that he has authority to sell on credit. *Paboodan v. Miller* AIR 1938 Mad 956 was relied on by counsel for the respondent for the proposition that if by the act of the agent the principal has been benefited, it is open to the person at whose expense the principal has been benefited to recover an amount to the extent of the benefit, even if the agent was acting in excess of his authority. At p. 970 Varadachariar J., observed:

"It is only when the contract as such cannot be enforced against the principal, that the lender has to fall back on the equitable rule founded on the theory of 'unjust enrichment'. Though the authorities have not been uniform as to the precise basis of the rule, the rule itself is now well-established that, where by any wrongful or unauthorized act or an agent the money or property of a third person comes to the hands of the principal or is applied for his benefit, the principal is liable jointly and severally with the agent to restore the amount or the value of such money or property. See *Bowstead*, Article 103. In some cases, the plaintiff's right was based on the count for money had and received or the theory of failure of consideration, and sometimes on the analogy of the count for money paid to the use of the defendant. Again the theory of subrogation was at one time suggested as the analogy but it was later on pointed out that the analogy was not true. In *re Wrexham Mold and Connah's Quay Rly. Co.*, 1899 1 Ch. 440. It was also suggested that in such case, there was really no borrowing at all, because there was no addition to the principal's total liability, but merely a substitution of liability to one person (the lender) in place of the pre-existing liability to another (the person paid off). Other cases have supported the claim only on grounds of equity; and in 1899) 1 Ch. 440 two of the Lords Justices observed that the effect of the rule was to make the borrowing valid to the extent to which the principal has received the money or the benefit of its application. For a discussion of the theoretical basis, see Keener on Quasi Contracts pages 329, et seq."

13. I need not pause to consider whether the principle enunciated by Varadachariar J., will apply to the facts of this case, as I would prefer to decide it on the basis of the implied or usual authority of the agent in carrying on a business of this type. There is no evidence to show that the plaintiffs were aware of the limitation on that implied or usual authority, and therefore I hold that the principal is bound by the act of the agent.

14. Wills J., said in *Watteau v. Fenwick* 1893 1 Q. B. 346:

". . . .once it is established that the defendant was the real principal, the ordinary doctrine as to principal and agent applies--that the principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitation, as between the principal and the agent, on that authority."

I therefore come to the conclusion that the judgments and decrees of the lower appellate court are correct and have to be confirmed.

15. in the result, the appeals are dismissed with costs.