
(1946) 03 MAD CK 0026
In the Madras High Court

Vastiram Manmal and Co.

APPELLANT

Vs

T.S. Ramaswamy Iyer and Brothers Ltd.

RESPONDENT

Date of Decision : 28-03-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21

Citation : AIR 1947 Mad 99 : (1946) 59 LW 551 : (1946) 2 MLJ 270

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant filed a suit for the recovery of a sum of money being the total of the sums advanced by him to the defendant's

agent and for incidental expenses, on the ground that he had made an offer to the defendant which had been cancelled before it was accepted and

that he was therefore entitled to the refund of the money advanced by him. The defendant raised the objection that the Bellary District Munsiff, in

whose Court the suit was filed, had no jurisdiction to try the case; because the parties had agreed that all disputes arising between them should be

decided in the Courts at Madras. The plaintiff admitted that condition No. 10 of a form which he had signed was to the effect that any legal

proceedings in respect of or arising out of the contract over-leaf should be instituted in the Madras Courts; but he argued that since the offer had

not ripened into a contract, this condition did not apply and that he was therefore entitled to file his suit in any Court having jurisdiction. The District

Munsiff went into the question whether there was a completed contract or whether, there was only an offer, and held that there was no completed

contract. He then accepted the argument of the plaintiff that condition No. 10 did not apply to offers and decreed the suit. In appeal, the learned

Judge did not consider the questions of fact, but held that on a reasonable interpretation of condition No. 10 the parties were bound to have this

dispute decided by the Madras Court, whether there was a completed contract or not.

2. The learned advocate for the appellant has raised three points. The first is that the learned District Judge should not have directed the plaintiff to

file his suit in another Court unless, in the terms of Section 21 of the Civil Procedure Code, there was a failure of justice on account of the

plaintiff's filing it in the wrong Court. The second objection was that the condition No. 10 on the reverse of Ex. P. 1 must be interpreted to mean

what it actually says, i.e., that legal proceedings arising out of contracts and contracts alone should be instituted in Madras Courts. Thirdly, he

argued that since no part of the cause of action arose in Madras, the stipulation in condition No. or was illegal.

3. It is unnecessary for me to express any opinion on the first and third points. Some cases dealing with the first point have been referred to by the

learned Counsel for the respondent; but since the matter has not been fully argued and it is sufficient for the disposal of this appeal to consider the

second point, I shall not express any opinion on the first point. With regard to the third point, it is argued that since the respondent was resident in

Madras a suit could have been brought in the Madras Court and that therefore even if we follow the decision in *Crawley v. Luchmee Ram I Agra*

129, approved of by Madhavan Nair, J., in *Achratlal Kesavlal Mehta and Co., by Proprietor Achratlal and Kesavlal Vs. Vijayam and Co.*, the

Madras Courts would have jurisdiction. As this is a question of fact, it is not desirable that I should express any opinion on that point either.

4. When parties enter into an agreement restricting their rights to institute Suits except in particular courts, it must be strictly proved that the the

restriction applies to the proceedings under consideration. It may be true that the respondent was anxious to have all matters arising out of offers as

well as contracts decided in Madras Courts for reasons of convenience; but the question is whether the appellant also understood that the

restriction applied to offers as well as contracts. In deciding whether this condition prevents the plaintiff from filing a suit in the District Munsiff's

Court, we must have regard to the actual wording used. The respondent was not unaware of the distinction between an offer and a contract, as will

be evident from the fact that on the reverse of the conditions is a space for noting the number of the offer as well as a space for noting the number

of the contract. We must therefore conclude that the parties intended what is stated clearly in the condition itself, namely, that legal proceedings

arising out of contracts shall be instituted in the Madras Courts. If so, then the learned District Munsiff was right in holding that if there was only an

offer, then the jurisdiction of the Bellary District Munsiff's Court was not ousted.;

5. The appeal is therefore allowed and A.S. No. 59 of 1944 remanded to the District Judge of Bellary for disposal on the merits. The costs of this

appeal will be costs in the cause. The civil revision petition does not arise and is dismissed without costs.