PRIVY COUNCIL

Sobhagmal Gianmal

Vs.

Mukundchand Balia

Privy Council Appeal No. 1 of 1926
(Lord Chancellor, Lord Justice, J. Warrington and Chief Justice Anglin JJ.)

26.07.1926

JUDGMENT

LORD JUSTICE WARRINGTON J.

1.The question in this appeal is whether the contract between the appellant and the respondent, sought to be enforced in the suit, was a wagering contract, and, therefore, under the provisions of Section 30 of the Indian Contrast Act, void and incapable of being enforced.

2. The respondent (the plaintiff in the suit) carries on business in Bombay as a merchant and agent on commission.

3. The appellant (the defendant in the suit) is a merchant and at all material times resided in the Native State of Bhopal.

4. During the years 1914 and 1917 the respondent acted in the transactions in question as commission agent for the, appellant on what are known in Bombay on cutcha adatia terms, the appellant being his up-country constituent.

5. There is no dispute that as regards cutcha adatia transactions the course of business and the relative positions of the parties are as follows : When a cutcha adatia enters into transactions under instructions from and on behalf of his up-country constituent with a third party in Bombay he makes privity of contract between the third party and the constituent, so that each becomes liable to the other, but also he renders himself responsible on the contract to the third party. He does not ordinarily communicate the name of his constituent to the third party, but he informs the constituent of the name of the third party. The position, therefore, as between him self and the third party, is that he is agent for an unnamed principal with personal liability on himself. His

remuneration consists solely of commission, and he is in no way interested in the profits or losses made by his constituent on the contracts entered into by him on his constituent's behalf.

6. In pursuance of the course of business so described, the respondent, acting as cutcha adatia for the appellant, made forward contracts on his behalf for purchase and sale of Broach and Bombay cotton, and, he also had dealings on his behalf in options on Broach cotton, known as 'Teji Mandi" transactions. These various transactions resulted from time to time in losses which were paid by the respondent. The action is for the balance due to him on his agency account, including his commission :

> The contracts for sale and purchase of cotton were, so far as the third parties were concerned, genuine contracts, and not mere gambling transactions. As to the Teji Mandi transactions, there was no evidence to distinguish them in this respect from the forward contracts and the appeal Court has dealt with them on the same footing. Their Lordships think they were right in so doing. There is no presumption that such transactions are wagers (see *Manilal Dharamsi v. Allibhai Chagla* and in the absence of evidence to the contrary, they should be treated as genuine contracts.

7. The only circumstance on which reliance is placed in support of the contention that as between the appellant and the respondent their contract was a wagering contract, is that there was between them an understanding that the respondent would not call upon the appellant either to give or take delivery. In the Court of First Instance, Kemp, J., pronounced judgment in favour of the appellant and dismissed the suit.

8. This judgment was reversed on appeal by Shah, Acting Chief Justice, and Kincaid, J., who directed an account of what was due from the appellant to the respondent.

9. The appellant obtained the leave of the High Court at Bombay to appeal to H. M. in Council and the present appeal was presented accordingly.

10. In the opinion of this Board the decision of the appellate Court is correct.

11. The respondent, as the appellant's agent, and acting in accordance with his mandate, made genuine contracts on his behalf with third parties in Bombay. Under these contracts both the appellant and the respondent were bound to the third parties either to perform their obligations or to pay damages for their breach. The respondent having entered into these contracts as agent for the appellant, the latter was prima facia bound to indemnify the former against any liability incurred in respect of them.

He was, on the other hand, exclusively entitled to the benefit of them - a gain to the appellant would involve no loss to the respondent, nor would a loss to the appellant result in a gain to the respondent. The only remuneration to the respondent was his commission : See *Forget v. Ostigny* The understanding between them referred to above merely means that the respondent would, by covering contracts or otherwise, provide for or take the goods or pay the difference on the appellant's behalf. In all this there is not, in their Lordships' opinion, any element of wagering as between the two parties. As between them neither party stands to win from or lose to the other according to fluctuation of price or any other event. The very essence of a wager between them is thus absent.

12. Counsel for the appellant raised before this Board a new point founded on S3. 1 and 2 of the Bombay Act 3 of 1865 But once it is established that the contracts with the third parties are genuine contracts and not wagering transactions, the provisions of these sections have no application and the point therefore fails.

13. For these reasons, and for those more elaborately stated by the appeal Judges, this Board is of opinion that the appeal ought to be dismissed with costs, and will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

AIR 1922 Bombay 408 : 47 Bom. 263,

[1895] A. C. 318 : 64 L. J. P. C. 62 : 11 R. 474 : 72 L. T. 399 : 43 W. R. 590.