

## **PRIVY COUNCIL**

Morarji Goculdas and Co.

Vs.

Sholapur Spinning and Weaving Co.Ltd.

P.C.A.No.39 of 1942

(Lords Atkin, CJ. Thankerton, Porter J. Clauson and Sir George Rankin. JJ.)

21.10.1943

### **JUDGMENT**

#### **LORD THANKERTON J.**

1. The appellants, who are a merchant firm carrying on business in Bombay, seek to recover damages from the respondents in respect of the alleged wrongful termination of their employment as managing agents of the respondent company. By judgment and decree dated 12th October 1938, the High Court of Judicature at Bombay, in its civil appellate jurisdiction, affirmed the judgment and decree of that Court in its original civil jurisdiction, dated 15th February 1938, by which the suit of the appellants was dismissed with costs.

2. The respondent company is a joint stock company carrying on business at Bombay as spinners and weavers of cotton, jute and other fibres; the individual respondents, along with two other original defendants now deceased, were the directors of the respondent company who passed the resolution, dated 27th January 1933, which terminated the employment of the appellants as managing agents of the respondent company. The respondent company was formed in 1874, and by clause 6 of the memorandum of association it was provided as follows:

"That the firm of Morarji Goculdas and Co. of Bombay Merchants or whatever member or members that firm may for the time consist of, shall be the agents of the company, so long as the said firm shall carry on business in Bombay or until they shall resign, and they shall receive a commission of ? anna per lb. on all the yarns and other material manufactured and sold by the company; should however the company during any one year be unable to declare a dividend of 4 per cent. owing to their profits being less than that amount, the agents shall only be paid one-third of the above commission."

3. In 1931 important changes were made in the partnership of the appellant firm, out of which arose the troubles which caused the termination of their managing agency. The account of these changes may be conveniently taken from the judgment of the learned Chief Justice:

"The circumstances in which the present plaintiffs were appointed to, or assumed, the position of managing agents of the company are as follows :- In 1930 the Company was in financial difficulties, and a petition to wind up was presented by a creditor. In order to get out of their difficulties, it was essential for the Company to secure further finance, and the usual practice in this country is for finance to be provided for the joint stock companies by their managing agents. So the Company approached Morarji Goculdas and Co., to see whether they could provide the finance. At that time there were three partners in the firm, Ratansey, Tricumdas and Shantikumar. They were not able to provide the money themselves, but they entered into negotiations with two Calcutta firms known as the Jhahharias and Dhandhanias, and eventually it was agreed that these two Calcutta firms should be admitted as partners in the firm of Morarji Goculdas and Co., that they should advance 12 lacs of rupees to the Company, and that they should also be appointed as selling agents of the Company. Those negotiations were completed early in 1931, and on 19th February 1931, three documents were executed, first, an agreement between the existing partners in Morarji Goculdas and Co. of the one part and these two Calcutta firms of the other part, by which the two Calcutta firms were admitted as partners in Morarji Goculdas and Co. I will refer more particularly to that agreement hereafter. Then there was a second agreement, an hypothecation agreement, between the Company and the two Calcutta firms, by which the Calcutta firms agreed to advance 12 lacs of rupees to the Company on certain security, and there was further an agreement between the Company and the Calcutta firms by which the firms were appointed selling agents. There was no actual agreement between the Company and Morarji Goculdas and Co., appointing the new firm of Morarji Goculdas and Co. as managing agents of the Company."

4. It should be added that under clause 8 of the first of these agreements, by which the two Calcutta firms were admitted as partners of the appellant firm, it was provided that so long as moneys remained due by the Company to the two Calcutta firms, under the hypothecation agreement, the two Calcutta firms should act as managing partners. It was not long after February 1931, that differences began to arise between the Jhahharias, as represented by their principal partner, Ramdhandas, and the

Dhandhanias, as represented by their principal partner, Lokenathprasad, and these differences undoubtedly led to the passing of a resolution by the directors of the company, at a board meeting on 27th January 1933, which was in the following terms:

"That the agreement of the employment of Messrs. Morarji Goculdas and Co., as managing agents of the Company and the employment of Messrs. Morarji Goculdas and Co., as managing agents of the Company, be determined."

5. On 8th March 1933, the present suit was filed by the appellants in the High Court of Bombay, in which they claimed as relief, in the first instance, declarations of the invalidity of the resolution of 27th January, and of the continued subsistence of their managing agency agreement with the company, and asked for relative injunctions; alternatively, they asked for damages for wrongful termination of their said agreement and employment as managing agents of the company. The alternative claim for damages is the only one now insisted in by the appellants.

6. The termination of the appellants' employment was justified by the respondents on the ground of misconduct, and it is clear that the employment of the appellant firm as managing agents not being in dispute, the exact form of the contract of employment or its duration need not be considered, the only issue being whether the appellants were guilty of misconduct sufficient to justify the termination of the contract. In answer to a demand for further particulars, the respondents filed particulars of specific instances of neglect, mismanagement and misconduct in 13 paragraphs. The specific charges have all failed or been withdrawn, and need not be considered; and the question really rests upon the existence of quarrels between the partners of the appellant firm of such a nature and duration as to seriously impair their capacity to discharge their duty to the company as managing agents and to prejudicially affect the interests of the company. On this question the learned trial Judge held, on the evidence, that the quarrels between the partners were such as to be detrimental to the interests of the company and to justify the termination of the employment. On appeal, this finding has been concurred in by the High Court, in its appellate jurisdiction. These concurrent findings of fact were challenged before their Lordships on two familiar grounds, viz., (1) that there was no sufficient evidence to justify the findings, and (2) that the learned Judges had misdirected themselves in law as to the misconduct necessary to justify the termination of the appellant firm's employment as managing agents of the company.

7. On the first contention, it is sufficient to state that in the opinion of their Lordships there was ample evidence to justify the findings; a perusal of the judgments makes this abundantly clear. The admissions of Ramdhandas would have been sufficient by

themselves.

8. On the second contention, the appellants' main contention, as their Lordships understood it, was that the same principle did not apply to agents in the position of the appellant firm as in the case of master and servant, and that the principles applied in *Pearce v. Foster* did not apply in this case. In the opinion of their Lordships, this involves a wrong approach to the question. In each case the question must be whether the misconduct proved, or reasonably apprehended, has such a direct bearing on the employer's business, or on the discharge by the employee of that part of the employer's business in which he is employed, as to seriously affect or to threaten to seriously affect the employer's business or the employee's efficient discharge of his duty to his employer. The nature of the particular business, and the nature of the duties of the employee, will require to be considered in each case in order to arrive at a just conclusion on the question, but the principle remains the same, and their Lordships are unable to find that the Courts below, in the present case, have failed to apply the correct principle. Their Lordships, accordingly, are of opinion that the present appeal fails and should be dismissed with costs, and they will humbly advise His Majesty to that effect

Appeal dismissed.

Cases Referred.

(1886) 17 QBD 536 : 54 LT 664:55 LJ QB 306 : 34 WR 602 : 51 JP 213,