

## **BOMBAY HIGH COURT**

Laxmidas Ranchhoddas

Vs.

Savitabai Hargovindas Shah

O.C.J. Appeal No. 86 of 1954

(Chagla, C.J. and Desai, J.)

31.03.1955

### **JUDGMENT**

#### **Chagla, C.J.**

1. This appeal raises a rather important question as to the authority of counsel to enter into a compromise on behalf of his client. The plaintiffs filed a suit, in which the compromise is alleged to have been arrived at, to eject the defendant who they alleged was a licensee. The suit appeared as a short cause before Coyajee, J. This was on 22-6-1954. Before the suit reached hearing terms of settlement, were discussed between the defendant and her husband and the solicitors on the two sides, and it was agreed that the suit should be placed at the bottom of the list so that the consent terms may be handed in.

At 4 p.m. the suit reached hearing and counsel for the plaintiffs, Mr. Laud, and counsel for the defendant, Mr. Bhat, applied to the Court that the suit should be placed at the bottom of the list as negotiations were going on. The learned Judge was not prepared to place the suit at the bottom of the list and asked the parties to discuss the matter in Court.

Thereupon the plaintiffs and the defendant and her husband and the attorneys discussed the matter further in the corridor of the Court and the solicitors of the plaintiffs informed Mr. Laud as to what the consent terms were which had been arrived at, and the consent terms were that time was to be given to the defendant to vacate upto 31-3-1955, that the compensation payable up to the end of May, 1954, was Rs. 1,200 and the same was payable by monthly installments, and future compensation was to be payable at the rate of Rs. 150 on the 10th day of every month, and it was further agreed that there was to be a clause for possession, a default clause, and a clause with regard to payment of costs.

Mr. Laud mentioned to the Court that these were the terms agreed upon and he also asked the learned Judge that the suit should be placed the following day on board for a consent decree. The two solicitors then met and drew up more fully the terms of settlement and the two solicitors and Mr. Bhat counsel for the defendant asked Mr. Laud to draw up these terms in a proper formal

shape. It was then agreed that Mr. Bhat and the solicitors should attend Mr. Laud's chambers, which are in the High Court, at 6 p.m. to look through the terms which were to be drafted by Mr. Laud.

2. The terms which were handed over to Mr. Laud, and it should be noted handed over by the plaintiffs' solicitors, defendant's solicitors and the defendant's counsel, contained, besides the terms already mentioned to Court, a specific term that the defendant should pay the costs of the suit fixed at Rs. 300 and also a default clause that in default of payment of two compensation amounts the decree for ejectment was to be executed immediately. Mr. Laud drew up the terms and Mr. Bhat attended his chambers and the final consent terms were approved by Mr. Bhat on behalf of his client. These terms were engrossed and a copy of the terms was sent to the solicitors of the defendant. When the suit was called out before Coyajee, J. on 23-6-1954, for the taking of a consent decree, a new counsel appeared on behalf of the defendant, Mr. M.R. Mody, and he informed the Court that the defendant was not agreeable to the consent terms which had been forwarded to the defendant's attorneys. Thereupon Coyajee, J. directed the plaintiffs to take out a notice of motion for recording the compromise. Accordingly a notice of motion was taken out, and the learned Judge has dismissed the notice of motion, and the plaintiffs have now come in appeal.

3. Now, the defendant does not dispute that the terms with regard to the amount of compensation in arrears and the compensation to be paid in future were agreed to by her. She says that the time within which she had to vacate was not agreed to by her and that she also had not agreed to the default clause provided in the consent terms. In the final consent terms, it may be mentioned, there is one other term and that is that the defendant has to pay electric charges in respect of the premises. We may dispose of this question with regard to this term shortly because it is clear that if the defendant was to continue as a licensee she would be under an obligation to pay the electric charges. Therefore, this obligation was implicit in the consent terms which were handed over to Mr. Laud by Mr. Bhat and the solicitors. Therefore, even if this term was not incorporated in the formal consent terms, there would have been an obligation in law upon the defendant to pay the electric charges. Therefore, all that can be said about this term is that what was implied in the original consent terms was made express in these formal consent terms.

4. The case of the defendant in her affidavit is that she saw her attorneys at 5-30 p.m. on June 22 and her attorneys informed her of the terms that had been agreed upon and she informed her attorneys that the same were not acceptable to her, and Mr. Bhabha for the defendant relies on this averment in the affidavit for the contention that at 5-30 p.m. the authority of the counsel to settle had been withdrawn and therefore the consent terms arrived at 6 p.m. were not binding upon the defendant. We should like to point out that it is indeed surprising that if the attorneys for the defendant were informed at 5-30 p.m. that the defendant was not willing to accept the consent terms, they should not have informed either Mr. Laud in his chambers or the plaintiffs' attorneys. Mr. Laud's chambers and the plaintiffs' solicitors' office are within a stone's throw of the

defendant's solicitors' office, and as far as the plaintiffs' solicitors were concerned, as far as Mr. Laud was concerned, and even as far as Mr. Bhat himself was concerned, they were completely ignorant of the fact that the defendant, had at 5-30 p.m. suddenly changed her mind and withdrawn the authority given to her counsel to compromise the matter. It was only when the suit reached hearing before Coyajee, J. on 23-06-1954, that a statement was made by Mr. Mody that his client was not willing to agree to the terms which had been arrived at and to which her counsel Mr. Bhat was a party.

5. On the facts just narrated, in the first place, it is clear that the compromise was arrived at not at 6 p.m. in Mr. Laud's chambers but at about 4-15 p.m. when the consent terms which were handed over to Mr. Laud were agreed to by Mr. Bhat on behalf of his client.

The consent terms, which were handed over to Mr. Laud so that they should be put in a formal shape, contained all the terms which were ultimately reproduced in the engrossment, and therefore what we have to consider is not whether the compromise arrived at 6 p.m. in Mr. Laud's chambers was binding upon the defendant, but whether the compromise arrived at 4-15 p.m., was binding upon the defendant. It is clear that no limitation or restriction was put upon counsel's authority till 5-30 p.m. Therefore the question that we have to consider is what was the authority of counsel at 4-15 p.m. when he settled the suit on behalf of his client.

6. Now, both in India and in England it is well recognised that it is impossible for a member of the Bar to do justice to his client and to carry on his profession according to the highest standards unless he has the implied authority to do everything in the interests of his client. This authority not only consists in putting forward such argument as he thinks proper before the Court, making such admissions as he thinks proper, but also to settle the client's litigation if he feels that a settlement will be in the interests of his client and it would be foolish to let the litigation proceed to a judgment. This implied authority has also been described as the actual authority of counsel or an advocate practicing in India. This authority may be limited or restricted or even taken away. After all, an advocate is the agent of his client and it is open to the client to tell his advocate that he has no right to settle a suit without his consent or that he should only settle it on certain terms which he may indicate. If such a limitation is put upon his authority, then the implied or the actual authority of the advocate disappears or is destroyed. Then he has only an ostensible authority as far as the other side is concerned because it may be that although a limitation is put upon his actual authority the other side does not know of that limitation and the other side may still proceed on the assumption that the advocate appearing for the other side has the actual authority which every advocate has. But in cases like this the Courts have taken a lenient view as far as the rights of the parties are concerned as against the rights of the profession. When the actual authority is destroyed and merely the ostensible authority remains, the Courts have said that although the other side did not know of the limitation put upon the authority of an advocate, the Court will not enforce a settlement when in fact the client had withdrawn or limited the authority of his advocate. It will be clearly noticed that in this case the actual authority of the advocate to settle was never limited or restricted till at best 5-30 p.m. on June 22. Therefore,

when Mr. Bhat agreed to the consent terms at about 4-15 p.m., he had the implied authority to settle his client's suit on such terms as he thought proper. But Mr. Babha goes a step further and he says that even if Mr. Bhat had the actual authority at 4-15 p.m. to settle on behalf of his client, if the Court is satisfied that at 5-30 p.m. that authority was withdrawn, the Court in the interests of justice will not force the settlement upon the client. That raises a very serious question as to the rights of the Bar and also the sanctity of a contract arrived at through the instrumentality of advocates by the litigants. Is the position in law this that although two advocates appearing respectively for their parties, having the authority to settle a litigation, settle that litigation, and if either party subsequently wishes to resile from that settlement is the Court entitled, even in the interests of justice, not to enforce that contract and allow one party to go back upon what his advocate on his behalf with full authority has agreed to.

7. In support of this proposition Mr. Bhabha has relied on a decision of the House of Lords in - '*Neale v. Gordon Lennox*<sup>1</sup>', , and there is a very strong passage in the judgment of Lord Halsbury which at first blush may seem to support the view contended for by Mr. Bhabha. At page 469 the learned Lord Chancellor says this :

"My Lords, as I said, I will not go through the cases, because to my mind there is a higher and much more important principle involved. The Court is asked for its assistance - and I entirely repudiate the technical distinction between what is called an application for specific performance and an order to be made that such and such things should be done - the Court is asked for its assistance when this order is asked to be made and enforced that the trial of the cause should not go on; and to suggest to me that a Court of justice is so far bound by the unauthorized act of learned counsel that it is deprived of its general authority over justice between the parties is, to my mind, the most extraordinary proposition that I ever heard".

It will be noticed that what Lord Halsbury is shocked about is a suggestion that a Court of justice is bound by the unauthorized act of learned counsel and not by the authorized act of counsel, and when we turn to the facts of this case it is clear that counsel in this case was expressly told by his client not to agree to a settlement except with certain limitations and counsel agreed to the settlement ignoring the limitations laid down by his client, and it was that settlement which was entered into unauthorized by counsel which was attempted to be enforced and with regard to which Lord Halsbury made these strong observations.

8. Now, this case has often been considered as a leading case on this part of the law. A subsequent judgment of the English Court in - '*Shepherd v. Robinson*<sup>2</sup>', has thrown some light on the proper interpretation of this case. The facts of this case are rather striking. The defendant had given instructions to her solicitors that the case was not to be settled. Neither her counsel nor the counsel of the plaintiff knew anything about it and the action was settled, and the question that arose was whether the settlement was binding, and the Court of Appeal held that the settlement

was not binding. Lord Justice Bankes points out that there are two distinct lines of authority. One line is where counsel has acted within his apparent authority and that line of authority clearly lays down that the client will be bound by the agreement made by his counsel and embodied in some order or judgment of the Court. The second line of authority is where the compromise is entered into by counsel under a misapprehension. In such class of cases the Court will not lend its authority to compel observance of an agreement arrived at through a mistake. Lord Justice Warrington makes it clear that nothing he was about to say was intended to impair the authority of counsel to settle an action on behalf of his client, and again at page 480 Lord Justice Warrington makes it clear that in the present case if the Court had known the facts that the authority of counsel was limited and the counsel thought it was unlimited, the consent order would never have been made. Therefore, the class of cases to which the principle laid down in *'Neale v. Gordon Lennox*, applies are class of cases where in fact counsel's authority has been limited but counsel appearing for the client does not know that in fact his implied authority has disappeared and under a misapprehension or a mistake proceeds to settle the client's litigation.

<sup>1</sup>1902 AC 465

<sup>2</sup>(1919) 1 KB 474

9. But the position is made clearer still by two decisions of the Privy Council. The first is reported in - *'Sourendra Nath v. Tarubala Dasi'*<sup>3</sup>, At page 161 their Lordships of the Privy Council say that they regard the power to compromise a suit as inherent in the position of an advocate in India, and they with respect very properly point out that it is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client, to make possible the duties imposed upon the advocate by his acceptance of the cause of his client and they go on to point out what every member of the Bar should remember (p. 161) :

".....The advocate is to conduct the cause of his client to the utmost of his skill and understanding. He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that; he must make the final decision whether evidence is to be given or not on any question of fact; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise; one point is given up that another may prevail.

But, in addition to these duties, there is from time to time thrown upon the advocate the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liability. Often the decision must be made at once. If further evidence is called or the advocate has to address the Court the occasion for settlement will vanish. In such circumstances, if the advocate has no authority unless he consults his client, valuable opportunities are lost to the client."

And in - *'Sheonandan Prasad Singh v. Abdul Fateh Mohammad'*<sup>4</sup>, their Lordships of the Privy Council considered when the implied authority of the advocate is impaired or restricted and what are the consequences of such impairment or restriction. At page 121 Lord Atkin delivering the

judgment of the Board points out :

"As was laid down by this Board in '*Surendra Nath v. Tarubala Dasi*', (i.e. the case just referred to) "counsel in India have the same implied authority to compromise an action as have counsel in the English Courts. But if such authority is invoked to support an agreement of compromise, the circumstances must be carefully examined. In the first instance the authority is an actual authority implied from the employment as counsel.

It may, however, be withdrawn or limited by the client : in such a case the actual authority is destroyed or restricted; and the other party, if in ignorance of the limitation, could only rely upon ostensible authority. In this particular class of contract, however, the possibility of successfully alleging ostensible authority has been much restricted by the authorities such as '*Neale v. Gordon Lennox*', and '*Shepherd v. Robinson*', which make it plain that if in fact counsel has had his authority withdrawn or restricted, the Courts will not feel bound to enforce a compromise made by him contrary to the restriction even though the lack of actual authority is not known to the other party." Therefore, in clear terms the Privy Council points out that the Courts will not feel bound to enforce a compromise only when in fact the authority of the advocate is withdrawn or restricted.

<sup>3</sup> AIR 1930 PC 158

<sup>4</sup> AIR 1935 PC 119

10. In our opinion, therefore, applying the principle emerging from these decisions to the facts of this case, Mr. Bhat had complete authority to settle his client's litigation in any manner that he thought proper and any settlement arrived at by Mr. Bhat was binding upon his client. As Mr. Bhat in our opinion on the facts of this case did arrive at a settlement which settlement was ultimately embodied in a formal document, that settlement was binding upon the defendant. Even assuming that the defendant is speaking the truth when she says that some time before the formal embodiment of the consent terms she had withdrawn the authority of her advocate, that withdrawal cannot enable the defendant to resile from the agreement which had already been arrived at.

11. The result is that the appeal must be allowed. The order passed by Mr. Justice Coyajee will be set aside. The notice of motion will be made absolute and there will be a decree in consent terms annexed as exh. C to the affidavit of Laxmidas Ranchhoddas, plaintiff 1 dated 2-7-1954.

12. The respondent must pay the costs of the appeal and of the notice of motion.

13. The Advocate General agrees not to execute the decree for possession till 30-6-1955. The defendant agrees to pay compensation at the rate of Rs. 150 till possession is handed over.

14. Liberty to the appellants' attorneys to withdraw the sum of Rs. 500 deposited in Court.  
Appeal allowed.

