

(1967) 11 MP CK 0006

Madhya Pradesh High Court

Case No: Miscellaneous (F) Appeal No. 50 of 1963

Ballabhdas and another

APPELLANT

Vs

Firm Brindaban Puuwar,
Proprietor firm Shri Kamlapati

RESPONDENT

Date of Decision: Nov. 20, 1967

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1(a)

Citation: (1970) JLJ 186 : (1970) MPLJ 64

Hon'ble Judges: K. L. Pandey, J

Bench: Single Bench

Advocate: B. L. Seth and J. P. Agarwal, for the Appellant; A. P. Sen, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. L. Pandey, J.

This appeal under Order 43, rule 1 (a) of the CPC is directed against an order dated 4 April 1963 whereby the 2nd Additional District Judge, Jabalpur, held that it had no jurisdiction to entertain Civil Suit No. 23-B of 1960 and directed the plaint to be returned for presentation to the proper Court.

It is common ground that the plaintiffs carry on business at Jabalpur, that the defendant transacts its business at Mirzapur, that dealings between the parties started in 1952, that the plaintiffs used to send goods to Mirzapur to be sold in the commission agency of the defendant who charged therefor 1% commission and that, on the last occasion, 5 trucks loaded with zinc were thus sent to the defendant. The plaintiffs filed a suit for return of the goods as detailed in schedule C to the plaint or for the price of the goods amounting to Rs. 15,500. The defendant resisted the claim inter alia on the ground that the Jabalpur Court had no jurisdiction to try

the suit because the entire contract was made at Mirzapur and the whole money was payable at that station. On the basis of evidence led by the parties, the lower Court, by its order dated 4 April 1963, accepted this contention and returned the plaint for presentation to the proper Court. Being aggrieved, the plaintiffs have filed this appeal.

The plaintiffs pleaded that, about the time of Holt of the year 1953, the defendant was in Jabalpur and entered into a contract with the plaintiffs which expressly provided inter alia that-

(i) payments would be made at Jabalpur;

(ii) accounts would be settled at Jabalpur;

(iii) commission at 1% would be payable to the defendant on the price of goods sold; and

(iv) goods would be sold after taking approval of the plaintiffs. The defendant denied that he visited Jabalpur at that time or entered into any contract with the plaintiffs as alleged by them. According to the defendant, the contract was made at Mirzapur and the money was also payable there. The lower Court did not accept the evidence of Chaturbhuj P. W. 1 (plaintiff 1), Mohanlal P. W. 2 (his brother-in-law), Mannilal P. W. 3 (a neighbour) and Ballabhdas P. W. 4 (plaintiff 2) about the alleged oral contract said to have been made at Jabalpur in face of the contrary evidence of Kamlapati D. W. 1 (defendant), particularly when the dealings between the parties had started long ago and the plaintiffs had, as shown by their letters Exs. D-1, D-2, D-3, D-9, D-11, D-12, D-14 and D-15, sent to Mirzapur several consignments of goods for sale by the defendant. Ex. D-14 is a letter dated 24 February 1953 which indicates that a railway receipt relating to despatch of 12 bags of aluminium and 4 ganjs was sent by registered post and the plaintiffs sought information about the market rate of the aforesaid goods and some other information for which a request had been made earlier. Ex. D. 15 is another letter dated 19 March 1953 in which a grievance was made about neither acknowledging receipt of the goods mentioned in the letter dated 24 February 1953 although 23 days had passed nor giving the information sought. The lower Court was right in inferring from these two letters that, in between these two dates, the defendant had not visited Jabalpur on or about 1 March 1953. That inference contraindicates that there was, or could be, any contract made at Jabalpur on or about that date, as pleaded by the plaintiffs. In the circumstances, I affirm the lower Court's conclusion on the point.

On general principles, a suit against an agent can be laid at a place where the contract of agency was entered into or where the accounts were to be rendered and payment to be made by the agent. Where, however, the contract did not specifically provide that the accounts were to be rendered at a particular place, the intention of the parties should be gathered from the circumstances of the case. Finally, where the intention is not clear, the rule that the debtor must find the creditor will apply in

a suit for accounts by a principal against an ordinary agent. But this rule has no application in the case of a suit against a *pacca adatia* and commission agent: [Sunder Lal and Another Vs. Jai Narain and Others](#), . On the other hand, in the absence of a contract to the contrary, the general rule is that a suit for accounts against a commission agent must be filed at the place where the commission agent works because the presumption is that the accounting and the payment by an agent of this kind must necessarily be done at the place where the business is transacted: *Shah Ganpat Pasu and Co. v. Gulzarilal* ILR9 Lah. 465. The same view has been taken in a large number of cases by other High Courts. I may only mention *Bhamboo Mal v. Ram Narain* ILR 9 Lah. 465; [Prem Nath Vs. Kaudoomal Rikhiram and Another](#), ; *Tika Ram v. Daulat Ram* A I R 1924 All. 530 : I L R 46 All. 465; [Mahomed Haji Hamed Vs. Jute and Gunny Brokers Ltd.](#), and [Firm Kani Ram-Hazari Mall Vs. Sitaram Agarwala](#), . It is, however, argued that the defendant admitted in paragraph 4 of the written statement that he used to send the account of each lot of goods sent for sale as also the money payable therefor to the plaintiffs at Jabalpur and, therefore, it must be inferred that the defendant had by implication agreed to render accounts and pay money at Jabalpur. I am unable to accept this contention for the reason that, in such cases, what is material is not where the account was in fact rendered or the money actually paid but where the defendant was liable to render accounts and where the money became due. So, in *Prem Nath v. Kaudomal Rikhiram*, Tek Chand J. observed:

There is a sharp distinction between the place where any money is in fact "paid" or becomes "payable". Place of payment is where actual satisfaction takes place. On the other hand, the word "payable" is synonymous with "due". "Payable" means that which should be paid or which is to be, or liable to be, paid. "Payable" therefore excludes notion of fulfilment which is indicated by the word "paid". If, therefore, payment is in fact made at Lahore, it cannot follow that the amount was due to be paid there.

Even apart from this, the mere sending of information to the constituent as to how the goods had been dealt with does not amount to rendition of account or fulfilment of a duty to render accounts. Again, it is not disputed that, in this case, the plaintiffs requested the defendant to send drafts in payment of money due to them and the defendant acted accordingly. That being so, as held by the Supreme Court in [The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi](#), , the payment should be regarded as having been made at Mirzapur where the drafts were posted.

Das J., who spoke for the Court, observed:

This, on the authorities cited above, clearly amounted in effect to an express request by the assessee to send the cheques by post. The Government did act according to such request and posted the cheques to Delhi.....This posting in Delhi, in law, amounted to payment in Delhi.

In view of all these authorities, I am unable to accept the submission that the defendant should be regarded as having by implication agreed either to render accounts or to make payments at Jabalpur.

The only other point urged in support of this appeal is that the defendant had agreed with the plaintiffs to account for Rs. 24-8 at Jabalpur which the plaintiffs spent in getting a wagon of sugar redespached from Jabalpur to Mirzapur. There is no evidence about this agreement at all and even the defendant was not cross-examined on the point. It may be that the plaintiffs can claim payment of a sum of Rs. 24-8 on some other account, but that by itself, and without more, cannot alter the forum of a suit by the principal against his commission agent who had transacted business only at Mirzapur.

Since no other point was argued, this appeal fails and is dismissed. Costs here shall follow that event. Costs in the lower Court as ordered by that Court. Hearing fee Rs. 75.