

**(1915) 02 CAL CK 0024**

**Calcutta High Court**

**Case No:** None

Pandit Raghu Nandan Lal Sarma

APPELLANT

Vs

Madanmohan Dass

RESPONDENT

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**Date of Decision:** Feb. 5, 1915

**Citation:** 76 Ind. Cas. 333

**Hon'ble Judges:** Chaudhuri, J

**Bench:** Single Bench

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### **Judgement**

Chaudhuri, J.

This is a broker's suit for commission for negotiating a lease. He claims to be entitled to the sum of Rs. 2,530 as the amount agreed upon between himself and the defendant according to a note signed by the defendant, which also contained an endorsement by the defendant's attorney acting on his behalf. The note is in these terms "Babu Raghunandan Lal Sarma--I admit that I have agreed to grant (an) "agreement" (lease) in respect of my lands Nos. 156 and 157 Machua Bazar Street and 17 Munshi Sadaruddin Lane through you for 99 years on the condition that cash Salami Rs. 12,000 twelve thousand and monthly rent Rs. 210 two hundred and ten, besides the entire Municipal tax will have to be paid by the person taking the lands, and brokerage (I) shall pay. I shall pay Rs. 2,530 in all and nothing else after registration and, on receipt of the amount of Salami. This letter is only for 8 days, that is, from date 29th December 1913 to date 5th January 1914; after which it will be considered to be waste paper."

2. The plaintiff alleges that he brought Samarmull Parek to the defendant within the time specified, that the terms were discussed and accepted by them and that Samarmull Parek agreed to take the lease and paid Rs. 151 as earnest-money in part payment of the Salami. The plaintiff claims to be entitled to the sum of Rs. 2,530 as he had completed his work as broker within the time limited in the note. The plaintiff further alleges that the lease has not in fact been executed owing to the inability on the part of the defendant to make out a title to the said premises. The

last allegation has not been denied in the written statement, and the whole question before me has been practically purely one of construction of the note. The note is dated the 29th December, and the time during which it was to remain operative was limited to the 5th January 1914. To my mind, the period of eight days clearly refers to the time during which the plaintiff was authorised to negotiate on the terms mentioned in the note. It can hardly mean that the negotiation, acceptance, execution of the lease, registration and payment of Salami were all to take place within that time. This is also made clear from the endorsement of the attorney on the letter. There is no contention that the plaintiff failed to do his part of the work or that there was any default on his part or on the part of the intending lessee". The plaintiff contends that the words "'brokerage I shall pay Rs. 2,530 in all, and nothing else after registration and on receipt of the amount of Salami" mean that the payment was to be postponed till the registration and payment of the Salami that the note does not mean that he was to be paid only in the event of the Salami being paid and registration being effected. The defendant was careful enough to provide that the letter was to be treated as waste paper after the 5th January, but he does not say that unless the Salami is paid or the document registered the plaintiff will have no claim to the brokerage. It seems to me that if it was the defendant's intention that he was not liable to pay Rs. 2,530 unless there was a registered lease, and unless he received the Salami, he would have said so. The plaintiff relies upon the case of Fisher v. Drewitt (1878) 48 L.J. Ex. 32 : 39 L.T. 253 : 27 W.R. 12 where Bramwell, L.J., says that the current of modern opinion is to the effect that those who bargain to receive commission for introduction have a right to their commission as soon as they have completed their portion of the bargain irrespective of what may take place subsequently between the parties introduced. The question in that case was as regards the construction of the words "on any money received" in the commission note (which?) in that suit meant "terms accepted." The defendant relies upon the case of Alder v. Boyle (1847) 16 L.J.C.P. 232 : 4 C.B. 635 : 11 Jur. 391 : 136 E.R. 657 where the learned Chief Justice held that the money in that case was to be paid only on the happening of a certain event, and that event not having happened the plaintiff was not entitled to relief. The case of Lott v Outhwaite (1893) 10 T.L.R. 76 turned upon the construction of the word "completion" in the agreement in that suit. The case of Chapman v. Winson (1904) 91 L.T. 17 : 53 W.R. 19 : 20 T.L.R. 663 and the case of Henry v. Gregory (1905) 22 T.L.R. 53 do not afford any help. It seems to me that the plaintiff's contention is correct and that he is entitled to the amount claimed in this suit. He has done his part of the work. The letter was in the nature of an authority to negotiate containing a certain term that his brokerage was to be nett Rs. 2,530. It contained a promise on the part of the defendant to pay that amount on a future date if he succeeded in getting a lessee to agree to the terms of the lease. The lease here could not be put through as the defendant had failed to make out a title to the premises. I decree the suit for the plaintiff with costs on Scale No. II. Interest on decree at 6 percent.