

(1928) 12 BOM CK 0026

Bombay High Court

Case No: Civil Revision Application No. 149 of 1928

Harilal Chimanlal

APPELLANT

Vs

Pehladrail and Co.

RESPONDENT

Date of Decision: Dec. 18, 1928**Acts Referred:**

- Contract Act, 1872 - Section 222

Citation: (1929) 31 BOMLR 508**Hon'ble Judges:** Murphy, J; Amberson Marten, J**Bench:** Division Bench

Judgement

Amberson Marten, Kt., C.J.

This is a contest between an Ahmedabad commission agent as plaintiffs and their Delhi principal as defendants, and the point is, whether the plaintiff's had any power to sell the goods they purchased on behalf of the defendants, when the defendants failed to retire certain drafts in payment of the goods. I say commission agents because we accept the finding of the learned Judge that that was the true relationship between the parties at the outset of the transaction.

2. On the other hand, we have it here that the agents bought these goods personally and paid for them, and that as between themselves and their own vendors they were acting, in effect, for an undisclosed principal, and were accordingly personally liable to them. We further think that on the facts of this case when the goods were forwarded to Delhi, they were merely sent, in effect, to the plaintiffs' own agents, viz., their bankers, and that the property did not pass to the defendants. What the plaintiffs did was to send the railway receipt forward to their bankers with the drafts, and the railway receipt was only to be handed over by the bank, when the draft was retired by the defendants. This is borne out by the letter of the defendants of September 13, 1926 in which they requested the plaintiffs to instruct the bank to get the goods of the above draft cleared and stored in the bank's own godown, and that they would pay as early as possible. It was really,

therefore, an ordinary case of payment against documents.

3. The defendants, however, failed to carry out their duty, viz., to indemnify their agent u/s 222 of the Indian Contract Act. They, therefore, broke the terms of what was a purely business arrangement, viz., to pay for the goods and pay also the railway freight.

Thereupon, after notice by telegram, the plaintiffs sold the goods. The exact date of the re-sale does not appear and no complaint was made as to that, The suit is brought to recover the difference between what the plaintiffs have paid for the goods (including expenses incurred) and the proceeds of the sale.

4. The learned Judge held that in law the suit would not lie as the commission agents had no power of sale but had only a lien and that their remedy was to sue to be indemnified. It does not, however, appear that the attention of the learned Judge was drawn to the following passage in Bowstead on Agency, 7th Edition, at page 265 :

Where an agent, by contracting personally, renders himself personally liable for the price of goods bought on behalf of his principal, the property in the goods, as between the principal and agent, vests in the agent, and does not pass to the principal until he pays for the goods, or the agent intends that it shall pass, and the agent has the same rights with regard to the disposal of the goods, and with regard to stopping them in transitu as he would have had if the relation between him and his principal had been that of seller and buyer.

5. Many English authorities are referred to in support of this statement, and we see no adequate reason why this part of the law of principal and agent as it exists in England should not apply in India. It is true that this precise statement is not found in the Indian Contract Act, but the Indian Contract Act is not exhaustive, and, speaking for myself, this provision appears to me to be good sense. What the defendants really ask here is that their commission agents should be obliged to carry the burden of the whole of these goods for an indefinite period until it pleases the defendants to pay, or alternatively that the defendants should only pay when a suit is brought against them and a decree is obtained and executed. Knowing that one party is at Ahmedabad and the other at Delhi, and knowing the possibilities of delay in Indian litigation, great injury might be caused to a commission agent if it was to be laid down that there was no remedy open to him except a law suit to enforce his just rights.

6. Under these circumstances, with all respect to the learned Judge, I am unable to agree with his decision, I think the case must be dealt with on the basis that in law the plaintiffs were entitled to sell and that accordingly this action would lie. But as regards the details we are not in a position to give judgment to-day for the plaintiffs for the alleged balance without further evidence on the figures or else an account.

7. Accordingly, our order will be, rule absolute, decree set aside, remand to the trial Court to determine the quantum of damages suffered by the plaintiffs on the basis that the

plaintiffs were entitled to sell the goods in question and that the present suit would lie in law.

8. With regard to the poets, the respondents must pay the costs of this application. The costs in the original Court will be costs in the cause and should be dealt with by the learned Judge on the remand.

Murphy, J.

9. I agree with the judgment just delivered by the learned Chief Justice and I have nothing to add to what he has said on the point.