

(1929) 11 BOM CK 0018

Bombay High Court

Case No: Second Appeal No. 885 of 1925

Harakchand Tarachand

APPELLANT

Vs

Sumatilal Chunilal

RESPONDENT

Date of Decision: Nov. 15, 1929

Acts Referred:

- Contract Act, 1872 - Section 222

Citation: (1931) 33 BOMLR 1200 : 136 Ind. Cas. 481

Hon'ble Judges: Patkar, J; Baker, J

Bench: Division Bench

Judgement

Patkar, J.

This is a suit brought by the plaintiff to recover from the defendant a sum of money as damages on the allegation that the defendant purchased through the plaintiff eleven bales of cloth at Rs. 2-12-6 per lb. on August 20, 1918. The defendant on September 7, 1918, sold five bales through the plaintiff, and on September 8, sold six bales, and it is alleged that in the transaction of the eleven bales the defendant was bound to pay the plaintiff loss to the extent of Rs. 479-13-0.

2. In the suit the plaintiff also claimed that the defendant had entered into an additional transaction of purchase with him with regard to five bales. The learned Subordinate Judge held the transaction proved, but the lower appellate Court held that the transaction was not proved. We are, therefore, concerned only with the transaction of eleven bales of cloth purchased by the defendant through the plaintiff on August 20, 1918.

3. The question of limitation was not raised in the trial Court, and the defendant in his written statement admitted the claim with regard to Rs. 479-130 in respect of the transaction relating to the eleven bales. On appeal the learned District Judge held that limitation ran from September 8, 1918, on the ground that on that day the plaintiff could know what amount the defendant had to pay to him as damages. He,

therefore, dismissed the plaintiff's suit.

4. On second appeal the case came before Fawcett and Mirza JJ, Fawcett J. was of opinion that the article of limitation applying to the present case was Article 83 of the Indian Limitation Act. Mirza J. was of opinion that Article 83 of the Indian Limitation Act had no applicability to the present case, but, without specifying the article of the Indian Limitation Act applicable to the case, held that when there was a cross-contract entered into by the plaintiff on behalf of the defendant the liability was settled, and the liability did not depend on the pakka adatia proving actual loss or damage to himself. In view of this difference of opinion the case was referred to this bench under Section. 98, Clause (8), of the Civil Procedure Code.

5. The question, therefore, arising in the present case is which article of the Indian Limitation Act applies to the facts of the present case According to the decision in *Bhagwandas Parasram v. Burjorji Buttonji* ILR (1917) 42 Bom. 373 when a commission agent enters into a transaction on behalf of his constituent he becomes entitled to be indemnified by his employer against the consequences of the acts done by him unless those acts are unlawful. To the same effect is the decision in the case of *Tika Ram v. Daulat Ram* ILR (1924) All. 465 The commission agent, therefore, has a right to be indemnified in respect of the transactions entered into on behalf of his constituent. Under those circumstances we think Article 83 of the Indian Limitation Act would apply. This view is accepted in the cases of *Kadari Pershad v. Har Bhagwan* (1920) III L.L.J. 65 *Munshi Bam v. Bhagwan-Das* (1925) VII L.L.J. 596 and *Firm Kirpa Bam v. Firm Sawan Mal* AIR [1927] Lah. 826. To the same effect are decisions in *Manghi Bam v. Ram Sarn Das-Maman Chand* (1915) P.R. No. 23 of 1915 and *Abdul Aziz Khan v. Muhammad Bakhsh* ILR (1921) Lah. 316 and *Mohamad Mazaharal Ahad v. Mohamad Azimuddin Bhuian* 27 C. W.N. 210 where the view taken in *Kandaswamy Pillai v. Avayambal alias Thangachi Ammal* ILR (1910) Mad. 167 is dissented from. In *Kandaswamy's* case the Madras High Court appears to have held that the agent's right to indemnification arises from the statute law, i.e., Section 222 of the Indian Contract Act, and is not a part of the agency contract. We think that the right to indemnification though recognized by statute is the necessary consequence of the agency contract. The contract to indemnify under Article 83 of the Indian Limitation Act need not be by express stipulation, and may be either imposed by statute or implied or inferred in virtue of the jural relations of the parties. See *Ram Barai Singh v. Sheodeni Singh* 16 C.W.N. 1040. We think that a suit by a commission agent to recover loss on the transactions entered into on behalf of his constituents is governed by Article 83 of the Indian Limitation Act. Article 65 of the Indian Limitation Act would not apply unless there is an agreement between the parties to pay the loss immediately on its being ascertained, and in the absence of any specified time or specified contingency. Article 65 would not apply. Under Article 83 of the Indian Limitation Act the time would begin to run when the plaintiff is actually damnified. It is urged on behalf of the respondent, relying on the case in *Chandulal v. Sidhruthrai* 7 Bom. L.R. 165 that when cross-contracts are entered into

by a commission agent the liability on the original contract must be considered to have been balanced and adjusted, On the other hand, it is contended that the time ought to begin to run from the vaida date which in this case would be November 18, 1918. It is further urged that in the books of the plaintiff the account is written on November 19, 1918, i.e., the day after the vaida day. Incidents of the custom relating to pakki adat have been fully dealt with in Bhagwandas v. Kanji ILR (1905) 30 Bom. 205. It may be that when the commission agent allocates the cross contracts to himself it might be said that he is damnified on the day when the cross-contracts were entered into. If, on the other hand, he enters into cross-contracts with others, it cannot be said that the loss has necessarily occurred to the commission agent on the day on which such cross-contracts were entered. There is no evidence in the present case to show when as a matter of fact the plaintiff commission-agent was damnified, There is no dispute with regard to the amount due to the plaintiff, viz., Rs. 493-130, We think, therefore, that it is desirable that we should send down an issue in this case on the following point:

When was the plaintiff actually damnified ?

6. Both the parties will be allowed to lead evidence on the point. Finding will be returned within two months.

7. On return of the finding on the issue sent down, the Court (Patkar and Baker JJ.) recorded the following judgment on March 12, 1931.

Patkar, J.

8. The case was Bent down for a finding on the issue as to the date on which the plaintiff was actually damnified. The finding of the lower appellate Court is that the plaintiff was actually damnified on the vaida day, viz, on November 18, 1918. The suit was brought on November 18, 1921. Therefore the plaintiff's claim is within time.

9. It is agreed on both sides that the amount due to the plaintiff would be Rs. 479-13-0. The decree of the lower appellate Court will be reversed, and a decree passed in favour of the plaintiff for Rs. 479-13 0 with proportionate costs. The rest of the claim will be dismissed with costs.