

**Fida HuseIn Mahomedali Antelawala Vs. Gokaldas and anr.**

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**Court :** Gujarat

**Decided On :** Sep-11-1962

**Reported in :** (1963)4GLR791

**Judge :** V.B. Raju, J.

**Appellant :** Fida HuseIn Mahomedali Antelawala

**Respondent :** Gokaldas and anr.

**Judgement :**

V.B. Raju, J.

1. The plaintiff has come in appeal challenging the order of the Civil Judge Senior Division Godhra holding that the suit filed by the plaintiff at Godhra should have been filed at Akola and not at Godhra. The learned Judge held that the contract between the parties was completed at Akola and not at Godhra.

The contract between the parties which was alleged in the plaint was a contract to pay the plaintiff brokerage of 2% on the price of the property to be purchased by defendant No. 1. According to the plaintiff defendant No. 1 purchased a factory and he was therefore obliged to pay 2% commission on that price. He therefore filed a suit at Godhra.

2. Section 20 of the Code of Civil procedures which is material provides among other things that every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. A cause of action is a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. It does not mean all relevant facts which may be proved but it refers to the essential facts which have got to be proved by the plaintiff before he can succeed in the suit. In a suit for the breach of a contract the factum of the contract and the factum of the breach of the contract are both material facts in issue.

This is a suit for failure to pay commission which according to the plaintiff was agreed upon by a contract between the parties.

Section 2(h) of the Contract Act provides that an agreement enforceable by law is a contract. Clause (e) of the same section reads thus:

Every promise and every set of promises forming the consideration for each other is an agreement

Now we have to see how promise is defined in the Contract Act. Clause (b) of Section

2 of the Contract Act reads as follows:

When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted. A proposal when accepted becomes a promise. Clause (a) of Section 2 of the Contract Act defines a proposal as follows:

When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence he is said to make a proposal.

A contract is therefore ordinarily a set of promises. There may be some cases where only one promise amounts to a contract but in the instant case we have a contract which consists of a set of promises. A person who relies on a contract has therefore to prove the set of promises of which the contract is made up and therefore he has to prove when the proposals have become promises. When a proposal becomes a promise which is part of the contract the place where the proposal becomes a promise would be a part of the cause of action in the matter of a contract which consists of a set of promises. The promises are in such a case part of the cause of action.

Where a contract consists of a set of promises the place where any of the promises is made would be part of the cause of action. In other words the place where the respective proposals have become promises would be part of the cause of action.

The Contract Act does not say when a contract is complete. It however speaks of the completion of the communication of a proposal and the completion of the communication of an acceptance in Section 4 which reads as follows:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete.

as against the proposer when it is put in a course of transmission to him so as to be out of the power of the acceptor;

as against the acceptor when it comes to the knowledge of the proposer.

As laid down in Section 2(b) of the Contract Act a proposal when accepted becomes a promise and when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted.

Section 4 of the Contract Act deals with the question when the communication of a proposal becomes complete and when the communication of an acceptance is complete. In regard to the completion of the communication of a proposal no separate sub-division is made by Section 4 of the Contract Act. But in regard to the completion of the communication of an acceptance the Contract Act distinguishes between the completion as against the proposer and the completion as against the acceptor.

3. It is difficult to say that a contract is complete when the communication of the acceptance of a proposal is complete as against the proposer. If a contract is to be complete as between the proposer and the acceptor the communication of the

acceptance of the proposal must be complete as against both the proposer and the acceptor. A contract cannot be complete with respect to one party and not with respect to other. A contract can be said to be complete only when it is complete with reference to both the parties to the contract in other words when the communication of the acceptance of the proposal of one party is complete as against both the parties.

4. In the instant case one of the parties to the contract has promised to find a suitable factory to be purchased by the other party. The second party has promised to pay 2% commission to the first party. There is no dispute about these two facts. In fact the letter Ex. 22 dated 22-10-55 was written to the plaintiff by defendant No. 1 that he would pay 2% commission when the contract was completed and he has also written to the plaintiff to furnish details of the ginning and pressing factory which was to be sold the district in which it was situated and the distance between the factory and the railway station. He also informed the plaintiff that on receipt of these details he would proceed to inspect the factory of ginning press. In the letter Ex. 23 dated 21-11-55 written by defendant No. 1 to the plaintiff defendant No. 1 asked the plaintiff to send a letter of introduction to enable him to see the factory situated in West Khandesh and he further stated that he would inform the plaintiff after inspecting the said factory. He also requested the plaintiff to inform him if and when some good factories are to be sold and also requested him to inform him if he had in view any cotton textile mill to be sold. This letter which was in reply to the plaintiff's letter was written by defendant No. 1 to the plaintiff in which he offered to pay 2% commission. It is true that the letter of the plaintiff dated 13-11-55 and the letter of the plaintiff dated 13-10-55 are not on record. Defendant No. 1 would not have written the second letter dated 13-11-55 if the plaintiff had not accepted defendant No. 1's offer to pay 2% commission.

In the instant case therefore the contract consists of a set of promises. The plaintiff had promised to find out a suitable factory to be purchased by defendant No. 1 and the defendant No. 1 had promised to pay the plaintiff commission of 2% in case he showed a good factory and that was purchased by defendant No. 1. Here therefore we have a contract by a set of promises and the cause of action or the bundle of essential facts in the instant case is therefore, the set of two promises forming the contract. The place where these promises were made would therefore be part of the cause of action. In other words the place where either of the respective proposals was accepted could be a place of suing. The proposal to show a factory to be purchased by defendant No. 1 seems to have been contained in the letter of the plaintiff dated 13-10-55 but that letter is not on record. The plaintiff has not produced any copies of the letters written by him to defendant No. 1 nor has defendant No. 1 produced any of the letters received by him from the plaintiff. But it is clear from Ex. 22 which is a letter of defendant No. 1 to the plaintiff that he acknowledged the receipt of the plaintiff's letter dated 13-10-55. In that letter defendant No. 1 called upon the plaintiff to furnish details of the gin press which was to be sold. It is therefore clear that in his letter dated 13-10-55 the plaintiff wrote to defendant No. 1 about a gin press factory which was to be sold. In reply defendant No. 1 wrote Ex. 22 dated 22-10-55 and offered to pay commission at 2% to the plaintiff. Here therefore is a proposal of defendant No. 1 to pay 2% commission to the plaintiff and this letter was addressed to the plaintiff at Godhra. This is an admitted position. The proposal to pay 2% commission which was made by defendant No. 1 to the plaintiff by letter addressed to the plaintiff at Godhra was therefore complete at Godhra where the letter was received by the plaintiff. In view of the first part of Section 4 of the Contract Act the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The

promise by defendant No. 1 to the plaintiff was therefore complete at Godhra and as already observed in the case of a suit on a contract which consists of a set of promises the suit can be filed at any of the places where one of the two promises has been made or completed. Now as the proposal to pay 2% commission was completed at Godhra a suit can be filed in Godhra. It is not necessary to consider the place where the promise of the plaintiff to secure a good factory to be purchased by defendant No. 1 was made or completed. We can take the view that that promise was completed at Akola where defendant No. 1 was staying and to which place the plaintiffs letter dated 13-10-55 may have been addressed.

5. For the reasons given above one of the promises constituting the contract was made at Godhra and therefore the Godhra Court would have jurisdiction.

The Learned Counsel for the respondents however relies on *Baroda Oil Cakes Traders v. Parshottam* : AIR1954Bom491 As observed by the learned Judges of the Bombay High Court in that case the cause of action is a bundle of essential facts and would not include facts which are merely relevant by way of *res gestae*. His Lordship Gajendragadkar was of the opinion that the suit would lie at the place where the proposal is complete. Applying this rule therefore to the instant case the proposal to pay two per cent commission was complete at Godhra and therefore the Godhra Court would have jurisdiction His Lordship observed as follows:

The position under Section 4 is clear beyond doubt. A proposal which is made becomes complete when its communication comes to the knowledge of (the person to whom it is made. In other words unless the proposal is communicated to the person to whom it is made it is not complete, and in that sense is inchoate and inconclusive. If that be the position the proposal can be said to have been made by the plaintiff to the defendants only when it comes to the knowledge of the defendants; and this incident takes place at Kanpur that is to say the proposal becomes at Kanpur and not at Baroda.

It is however urged by the Learned Counsel for the opponents that there is no proof that the proposal made by the defendant No. 1 to pay 2% commission to the plaintiff which was contained in the letter Ex. 22, was unconditionally accepted by the plaintiff. The subsequent correspondence namely Ex. 23 which is a letter of defendant No. 1 dated 21-11-55 in reply to the plaintiffs letter dated 13-10-55 is a clear indication that the proposal must have been made. Otherwise defendant No. 1 would not have written the letter Ex. 23.

6. I therefore hold on the facts of this case that the Godhra Court had jurisdiction as part of the cause of action arose at Godhra. The appeal is therefore allowed the order of the lower Court is set aside and the lower Court is directed to proceed with the suit. There will be no order as to costs.