

M/S VIJAY TRADERS
v.
M/S BAJAJ AUTO LTD.

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NOVEMBER 1, 1995

[FAIZAN UDDIN AND S.C. SEN, JJ.]

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Indian Contract Act, 1872 :

Ss. 182, 206—'Agent'—Defendants appointing plaintiffs as their distributors—Contract terminated by defendants after giving notice—Suit by plaintiffs for damages for wrongful termination of agency—Plaintiffs claiming relationship of agent and principal between parties—Evidence adduced establishing that distributor would pay price of goods ordered and delivery was to be given on payment of price—Risk with regard to damage during transit to be suffered by distributor—Held, contract between parties was one of purchase and sale and not of agency—15 days notice not unreasonable for termination of distributorship.

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The plaintiff - appellants, a trading firm, filed a suit for damages for wrongful termination of agency and for rendition of accounts against the defendant - company, manufacturers of Vespa Scooter and Vespa auto-rikshaws (Vespa Commercials), alleging that the latter appointed the plaintiff as their permanent sole selling agent for Vespa Scooters and Vespa Commercials in the district of Ahmednagar and thus they were the sole distributors of the said vehicles and the appointment was irrevocable. It was stated that the plaintiff secured orders for vehicles on behalf of the defendants and the appointment constituted an agency coupled with interest, and the relationship between the parties was that of principal and agent. The defendants denied the relationship of agent and principal between the parties and pleaded that their relationship was principal to principal; that the plaintiffs were never required to procure any orders from customers on behalf of the defendants; the plaintiffs were appointed as ordinary distributors and the defendants had a right to terminate the contact at any time at their sole discretion. The Trial Court dismissed the suit holding that there was no relationship of agent and principal between the parties. Having failed before the High Court, the plaintiffs filed the appeal by special leave.

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A Dismissing the appeal, this Court.

B HELD : 1. The contents of letter dated 9.10.1964, by which the plaintiffs were appointed as dealers/distributors by the defendants of their products, do not envisage any relationship between the parties as that of agent and principal but it relates to the appointment of the plaintiffs as distributors and not as an agent to sell the products of the defendants to purchasers. [630-C, F]

C 2.1. Though the terms of the contract are not clearly spelt out from the letter appointing the plaintiffs as distributors, it is clear from the evidence that the contract provided that the distributor will pay the price of the vehicles ordered and delivery was to be given to the plaintiffs on payment of price. The defendant-Company took no risk with regard to the damage caused to the vehicles during transit and the same had to be suffered by the plaintiff-firm. Thus the contract between the plaintiffs and the defendants would be one of purchase and sale and not of any agency. [632-E]

D 2.2. It cannot be disputed that even an agent can become a purchaser when the agent makes payment of the price to the principal on his own responsibility. In such a circumstance the agreement would be one between vendor and purchaser and not one of principal and agent. [631-G]

E *State of Mysore v. Mysore Spinning and Manufacturing Company Limited*, AIR (1958) SC 1002 and *Gordon Woodroffe and Co. v. S.K.M.A. Majid and Co.*, AIR (1981) SC 967, relied on.

F 3. Since there was no relationship of agent and principal between the plaintiffs and defendants, the question of application of section 206 of the contract Act did not arise. However the respondent-company had given a notice terminating the distributorship after about 15 days from the date of receipt of said notice. The said period of 15 days cannot be said to be unreasonable for termination of distributorship. [632-D]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4600 of 1984.

From the Judgment and Order dated 27.1.82 of the Bombay High Court in F.A. No. 590 of 1974.

H Kishan Mahajan, P.H. Parekh and Ms. Shefali S. Fazi, for the

appellants.

V.N.Ganpule, Satish K. Agnihotri, Ms. Punam Kumari and A.B.L. Saxena for the Respondents.

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. 1. This appeal at the instance of the plaintiff has been directed against the Judgment and decree dated 27.1.1982 passed by the High Court of Bombay in First Appeal No. 590/1974 affirming the judgment and decree dated 21.1.1974, passed by the Civil Judge, Senior Division, Ahmednagar dismissing the suit of the plaintiff- appellant except for an amount of Rs. 4419.81 which was admitted.

2. The appellant hereinafter shall be referred as plaintiffs and the respondents as defendants.

3. The facts in brief leading to this appeal are that the plaintiffs are a trading firm registered under the Indian Partnership Act, having its Office at Station Road, Ahmednagar. The defendants are a Company registered under the Indian Companies Act as a Public Limited Company having its Registered Office at Pune. The defendants are the manufacturers of Scooters called Vespa Scooters and Vespa Auto-rikshaws, hereinafter referred to as Vespa commercials. Due to the shortage of automobiles at the relevant time the Central Government in exercise of its powers conferred by section 18 (G) of the Industries (Development & Regulation) Act, 1951 had promulgated an order called the "Scooter (Distribution & Sale) control Order, 1960" and later on similar order was promulgated in respect of Vespa Commercials. The plaintiffs alleged that the defendants wanted to secure proper distribution and sale of their products mentioned above and, therefore, wanted to appoint Agents at different places including Ahmednagar. Further case of the plaintiffs was that the defendants by their letter/order dated 9/12-10-1964, appointed the plaintiffs as their permanent sole selling agent for Vespa Scooters and December 12, 1966 for the Vespa Commercials in the district of Ahmednagar and thus they were the sole distributors of the said vehicles and the appointment was irrevocable. The plaintiffs took the plea that the appointment constituted an agency coupled with interest and the relationship between the parties was that of principal and agent. The plaintiffs alleged that they secured 2700 orders for Vespa Scooters and 501 orders for Vespa Commercials. But the defendants wrongfully terminated the distributorship with effect from

- A 1.7.1968 for Vespa Scooters by their letter dated 4/7.6.1968 and by a subsequent letter dated 28.8.1968 the defendants terminated the distributorship for Vespa Commercial also with effect from 1.10.1968 and directed the plaintiffs to transfer the orders booked by them together with the registers and postal deposit books to their Branch at Wakdevadi, Pune.
- B The plaintiffs alleged that this termination was wrongful, illegal and without proper notice causing loss to the plaintiffs and, therefore filed the suit for damages for wrongful termination and rendition of accounts.

4. The defendants contested the suit by denying the allegation that they had appointed the plaintiffs as their agent. The defendants denied the relationship of agent and principal as alleged by the plaintiffs. The defendants pleaded that they had never appointed the plaintiffs as their sole, permanent and irrevocable agents but their relationship was that of principal to principal. The plaintiffs used to pay for the said automobiles and sell them independently. The defendants asserted that it was not a fact that plaintiffs were appointed distributors. The demand for supply was greater than the capacity of the defendants to manufacture the vehicles and therefore, there was no question of the defendant's desiring to have a better distributing agency. The defendant's took the plea that the plaintiffs were appointed as ordinary distributors which could be terminated at any time. But the plaintiffs were never required to procure any orders from the customers on behalf of the defendants and that the defendants had a right to terminate the contract with a particular dealer at their sole desertion and their decision to that effect was final. The defendants, in their pleadings refuted the claim of the plaintiffs Firm.

5. The learned Trial Judge held that the plaintiffs had failed to establish that there was any relationship of agent and principal between the parties and the termination of distributorship was lawful and, therefore dismissed the suit of the plaintiffs except for an amount of Rs. 4419.81 which was admitted by the defendants. The High Court reappreciated the evidence on record and recorded the finding that there was no material to establish relationship of principal and agent between the parties and that the documents and the evidence on record indicated that the plaintiffs purchased from the respondents the vehicles allotted to them at the net dealer's price, sold the same to the ultimate customers at the retail price, and retained the difference as their profit and that being so the relationship between the plaintiffs and defendants in respect of sale by the plaintiffs' was not the relationship of agent and principal. With these findings the

High Court affirmed the Judgment and decree of the Trial Court and dismissed the plaintiffs appeal against which this appeal under Article 136 (i) of the Constitution of India has been preferred. A

6. Learned counsel for the plaintiffs-appellants contended that the distribution and sale of the Vespa Scooters and Vespa Commercial were regulated and controlled by Scooter (Distribution & Sale) Control Order, 1960 and after the plaintiffs were appointed as sole distributors by the defendants the defendants were under an obligation to sell the products to the customers whose orders were booked by the plaintiffs for which the defendants gave their own guarantee/warranty for the vehicles manufactured by them and the defendants also gave guarantee cards duly endorsed by them at the time of delivering the vehicles. He also submitted that the intending purchasers of the vehicles were required to apply in the prescribed form with a prescribed guarantee from the Post Office payable to the dealer at the time when the vehicles would be ready for delivery and the plaintiffs in the capacity of a dealer of the respondents entered the names of such purchasers in the register in accordance with the date of receipt of applications and the vehicles were delivered to the intending purchasers according to the serial order in the said register and that these facts coupled with letter dated 8.10.1994 with regard to the appointment of plaintiffs-appellants as distributor, clearly established that the relationship between the parties was that of an agent and principal. Learned counsel for the plaintiffs-appellants therefore, vehemently urged that the view taken by the learned Trial Judge as well as by the High Court is erroneous and deserve to be set aside. B
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7. In view of the afore-mentioned facts and circumstances the short question that arises for consideration is whether there existed a relationship of agent and principal between the parties or there was only a relationship of buyer and seller between them. F

8. Here a reference may be made to Section 162 of the Contract Act which defines an agent thus : G

"An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented, is called the "principal". H

A It has, therefore, to be seen whether in the present case the plaintiffs were employed by the defendants to sell their products i.e. Vespa Scooters and Vespa Commercials to the customers on their behalf or while so dealing they represented the defendants in the transaction with third parties i.e. the ultimate purchasers of the vehicles so as to bring the defendants in the category of the principal and the plaintiffs as their agent.

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 9. In order to determine the relationship between the parties it would be appropriate to look to the contents of letter dated 9.10.1994 by which the plaintiffs were appointed as dealers/distributors by the defendants of their products and the evidence on record as there is no written contract precisely setting out the nature of contract between the parties. The letter dated 9.10.1994 on which the plaintiffs-appellants have placed reliance to spell out the relationship of agent and principal between the parties reads as under ;

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 D "We have pleasure in appointing you distributor for Vespa Scooters at Ahmednagar. Your territory will be city of Ahmednagar.

E We have already explained to you the procedure regarding announcement in the paper, registration of orders etc., you should accordingly arrange for the necessary advertisement in the papers and start the registration of orders seven days after necessary announcement appears in the paper.

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 G 10. From a bare perusal of the contents of the letter reproduced above it is difficult to accept that it envisages any relationship between the parties as that of agent and principal but it relates to the appointment of the plaintiffs as distributor and not as an agent to sell the products to the defendants to purchasers. The question whether the plaintiffs took the delivery of the vehicles manufactured by the defendants in the capacity of an agent for sale on their behalf or whether the plaintiffs themselves purchased the vehicles out-right, would largely depend upon the terms of the contract.

H 11. The terms of the contract are not clearly spelt out from the letter reproduced above appointing the plaintiffs as distributors and, therefore, the evidence produced by the parties on record has to be looked into. One Hastimal Chandmal Muner, a partner of the plaintiffs firm was examined as a witness who deposed that the talks took place in his

presence in respect of the dealership with one Firodia who represented the respondents and thereafter the letter dated 9.10.1964 was received by the plaintiffs, according to the terms of the dealership the dealer was to get the difference between the retail and wholesale price. He stated that when the scooter was sold to the customer, the customer was entitled to three free servicings thereof by the plaintiffs for which the plaintiffs were paid Rs. 21 by the respondents. He admitted that the company used to dispatch the letters to the plaintiffs mentioning the allotment sanctioned in a particular month and the plaintiffs were communicated wholesale price of the scooters allotted in that particular month and the plaintiffs used to send the amount on receipt of such allotment letter. He also stated that sometimes the delivery was made even before the payment of the amount on account of the confidence that the defendant-company had in the plaintiffs firm. He admitted that as per rules the plaintiffs should send that amount first and it was thereafter that the delivery was to be made. He also admitted that the transport charges were paid by the plaintiffs firm and that if the scooter was damaged during transit it had to be suffered by the plaintiff-firm. Almost similar was the statement of Sharaschandra Kamalakant Paranjape examined on behalf of the defendants. He categorically stated that normally deliveries of the vehicles were made to the distributor on receipt of the price and if the amount was not sent the defendants did not dispatch the scooters.

12. From the evidence discussed above it is abundantly clear that the plaintiffs were buying the vehicles from the defendants for resale and the assertion of the plaintiffs about agency is quite inconsistent with the notice of transaction between the parties. The evidence discussed above clearly goes to show that the contract was one of sale and if in fact the plaintiffs were intended to be constituted as agents for sale of the vehicles on behalf of the respondents the terms of the contract would have been entirely different. It cannot be disputed that even an agent can become a purchaser when the agent makes payment of the price to the principal on his own responsibility. In such a circumstance the agreement would be one between vendor and purchaser and not one of principal and agent.

13. Here a reference may be made to a decision of this Court in the case of *State of Mysore v. Mysore Shining and Manufacturing Company Limited*, AIR (1958) SC 1002 in which the manufacturer sold the goods to the licensed export dealer who exported the goods to foreign buyers. The

A question for consideration arose whether the export dealers who exported the goods to the foreign buyers were agents of the manufacturers or the export dealers themselves were the principal and not the agent of the manufacturers. This Court took the view that such a transaction would not make the exporters as agents of the manufacturers because of the very act of purchase, the exporters became the principals buying as such. Similar
B was the view expressed by this Court in *Gordon Woodroffe & Co. v. S.K.M.A. Majid & Co.*, AIR (1981) SC 967.

14. Learned counsel for the appellants also submitted that though the appointment of the appellant-firm as an agent was irrevocable yet the
C respondent-company terminated the same without reasonable notice as required by section 206 of the Contract Act. From the discussion aforementioned it is clear that no relationship of agent and principal is established between the plaintiffs and defendants and, therefore, in this case, the question of application of section 206 did not arise. In any case it may
D be noted that the respondent-company had given a notice terminating the distributorship after about 15 days from the date of receipt of said notice. The said period of 15 days cannot be said to be unreasonable for termination of distributorship.

15. In the present case also as noticed above, it is clear from the
E evidence that the contract provided that the distributor will pay the price of the vehicles ordered and delivery was to be given to the plaintiffs on payment of the price. The defendant-company took no risk with regard to the damage caused to the vehicles during transit and the same had to
F suffered by the plaintiffs-firm. Thus the contract between the plaintiffs and the defendants would be one of purchase and sale and not of any agency. In these facts and circumstances the view taken by the two courts below cannot be said to be erroneous so as to call for any interference.

16. In the result the appeal fails and is dismissed but without any order as to costs.

R.P.

Appeal dismissed.