

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 418/2003**

% **Judgment reserved on : 22nd December, 2011**
Date of Pronouncement : 9th January, 2012

M/S. THE KERALA AGRO INDUSTRIES CORPORATION LTD. & ANR.
..... APPELLANTS

Through: Mr. C.N. Sreekumar, Advocate
with Ms. Resmitha R. Chauhan,
Advocate.

versus

M/S. BETA ENGINEERS RESPONDENT

Through: Mr. B.S. Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J.

1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 30.1.2003 decreeing the suit of the respondent/plaintiff for recovery of ₹ 4,99,500/- with pendente lite and future interest @ 24% per annum.

2. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of monies against the appellants/defendants for having supplied a total of 417 numbers of Golden Rocker Sprayers and 100 numbers of knapsack sprayers. The respondent/plaintiff is a manufacturer and supplier of Agriculture, Anit-Malaria and other pest control sprayers and

spare parts. Originally, the order which the respondent/plaintiff claimed was placed upon it on 3.12.1999, was for 300 golden rocker sprayers 100 numbers of knapsack sprayers, however, subsequently the quantity of Golden Rocker Sprayers was increased to 400 numbers vide telegram dated 27.12.1999 which was said to have been sent by the appellants/defendants and thereafter to 417 numbers. The respondent/plaintiff claimed that a total amount of ₹ 8,48,053/- became due from the appellants/defendants and for which the bill bearing No.1558 dated 28.12.1999 was sent to the appellants/defendants. The appellants/defendants paid a sum of ₹ 4 lacs, leaving a balance of ₹ 4,48,053/- and for recovery of which the subject suit was filed.

3. The appellant No.1/defendant, M/s. Kerala Agro Industries, Corporation Ltd., a Kerala State Government undertaking, contested the suit and the basic point of defence was that out of the total sprayers supplied, the representative of the respondent/plaintiff one Mr. M.A. Jose had taken back 195 numbers of rocker sprayers and 45 numbers of knapsack sprayers and therefore unless credit is given for these sprayers having taken back, no payment could be made. In fact, considering that out of the total bill of ₹ 8,48,053/-, a sum of ₹ 4 lacs was already paid, it was urged before this Court that a very negligent amount if at all would remain due to the respondent/plaintiff once the value for 195 numbers of Golden Rocker Sprayers and 45 numbers of knapsack sprayers is reduced from the claim of

the respondent/plaintiff.

4. The main issue which was argued before the trial Court was with respect to whether Mr. M.A. Jose was the agent of the respondent/plaintiff and whether he had received back 195 numbers of Golden Rocker Sprayers and 45 numbers of knapsack sprayers from the appellants/defendants. The relevant issue, in this regard, which was framed by the trial Court was modified as issue No.3 which reads as under:-

“MODIFIED ISSUE NO.3

“Whether Sh. M.A. Jose was authorized by the plaintiff to collect sprayers back from the defendant on behalf of the plaintiff and the said goods were returned by the defendant to him as alleged in the Written Statement? If so, to what effect. OPD”

5. The trial Court has held that Mr. M.A. Jose was not the agent of the respondent/plaintiff for receiving back of the goods. It is also held that Mr. M.A. Jose acted in excess of authority in receiving back the goods and therefore the respondent/plaintiff was not liable. The relevant observations, made by the trial Court, in this regard read as under:-

“ Perusal of the telegram Ex.P.4 shows that it has been sent by Mr. S.C. Bose i.e. DW.1 Divisional Engineer of the defendant company. The said telegram is not sent by Mr. Jose as is being claimed by the defendants. So it is proved that the goods in question were sent by the plaintiff to the defendants in pursuance of the order Ex.P.3 followed by enhanced order vide telegram Ex.P.4 dated 27.12.1998. As already mentioned above receipts of goods as mentioned as mentioned in the Bill Ex.DW.1/p.1 is not disputed by the defendants in any manner whatsoever. However, the plea of the defendants is that they had placed an order for supply of 300 Rocker Sprayers and

100 Knapsack Sprayers 9 litre capacity, but the plaintiff sent excess supply. Their plea is that the excess goods were received from the plaintiff vide the said bill with an understanding between the defendants and Mr. Jose, Local Representative of the plaintiff that Mr. Jose would take back part goods and so that goods were returned to Mr. Jose for and on behalf of the plaintiff company. It is not disputed that the plaintiff had sent the goods in question to the defendants vide Bill Ex.DW.1/P.1. As mentioned in the quotation Ex.P.2 the orders taken directly or through the Representative of the plaintiff were subject to confirmation by the plaintiff. The plaintiff vide their letter Ex.D.1/PX had sought confirmation from the defendants regarding order for enhanced number of goods. The said letter is duly admitted by the defendants during admission/denial of documents vide endorsement dated 09.7.2002. The defendants vide telegram Ex.P.4 which is dated 27.12.99 asked the plaintiff to send the enhanced number of goods as mentioned in the telegram. As already mentioned above, the said telegram is duly proved to have been sent by the defendants to the plaintiff. It is further shows that the confirmation for supply of enhanced number of goods sought by the plaintiff vide their letter Ex.D1-PX was sent by the defendants to the plaintiff vide telegram Ex.P.4. That means the concluded contract came into existence between the parties vide telegram Ex.P.4. This further shows that the terms and conditions as mentioned in the quotations Ex.P.2 has been duly accepted by the defendants . As per the terms and conditions contained therein the goods once sold were not to be taken back by the plaintiff. There is no clause in that contract under which the defendants could return part of goods to Mr. M.A. Jose, a Representative of the plaintiff. **There is nothing on record by the defendants to prove that the plaintiff vide any written communications or by their conduct representations made the defendants to believe that Mr. M.A. Jose was authorized to enter into any agreement with the defendant for an on their behalf and to take back any part of goods from the defendants for and on behalf of the plaintiff.** The terms and conditions contained in Ex.P.2. go to show that even the orders received through the Representative, were subject to confirmation by the plaintiff and so there is no question of Mr. M.A. Jose being

authorized to take part of goods supplied by the plaintiff to the defendants vide Bill Ex.DW.1/P.1 in pursuance of a concluded contract between the plaintiff and the defendants.

Besides, the plaintiff has placed on record the communications dated 29.12.1999, 21.1.2000 and 01.03.2000. Letter dated 29.12.1999 another letter dated 21.1.2000 and the Fax message dated 01.3.2000 have been admitted by the defendants during admission/denial of documents. They did not dispute the contents of the said documents at any point of time, and therefore, can be read in evidence against the defendants. Vide letter dated 29.12.1999, the plaintiff had requested the defendants to release the payment for the goods supplied by them to the defendants. Similarly, vide letter dated 21.1.2000, the plaintiff while referring to invoice No.1558 Ex.DW.1/P.1 again asked for payment from the defendants for the goods supplied. Similarly, letter dated 01.3.2000 has been admitted by the defendants during admission/denial of the documents. Its contents were also not disputed by the defendants and, therefore, the document and its contents are deemed to have been proved by the defendants. Vide this letter also, the plaintiff has reiterated their demands for the goods supplied vide invoice/bill No.1558 which is Ex.DW.1/P.1. As borne out from the invoice/bill Ex.DW.1/P.1 copy of which has also been admitted by the defendants and Mark Ex.P.6 shows that the goods were received by the defendants from the plaintiff. However, the defendants did not send reply to any of the communications dated 29.12.1999, 21.1.2000 and 01.3.2000 disputing their liability of the entire amount of the bill i.e. Rs.8,48,053/- on the plea that they had returned back part of goods to Mr. M.A. Jose under an expressed or implied authority by the plaintiff to him. The defendants brought the fact regarding return of part of goods to Mr. M.A. Jose for the first time vide their reply Ex.P.10/D.A. in reply to the letter dated 06.6.2000 (Ex.P.9) sent by the plaintiff. Vide letter dated 06.6.2000 (Ex.P.9) the plaintiff had informed the defendants about the non-payment of the full amount of Rs.8,48,053/- against bill No.1558 dated 28.12.1999. Admittedly, the said letter was received by the defendant and was replied by the defendants vide letter dated 22.6.2000 which is Ex.P.10/D.A. It was vide this reply dated 22.6.2000 that the defendant

informed the plaintiff for the first time that Mr. M.A. Jose Representative of the plaintiff had collected back 215 Rocker Sprayers and 64 Knapsack Sprayers from them till 14.2.2000. Non information on the part of the defendant in that regard despite receipt of admitted letter dated 21.1.2000 and 01.3.2000 (since admitted by the defendants) which were received by the defendants subsequent to alleged taking back of aforesaid quantity of Rocker Sprayers and Knapsack Sprayers by Mr. M.A. Jose is not explained. The defendants did not inform the plaintiff for the reasons best known to them. This further goes to show that had the defendants given back part of goods to Mr. M.A. Jose at the instructions or under the authority of plaintiff, the defendants would have certainly informed the plaintiff in that regard. Their silence in that regard for a period of almost six months leads to irresistible inference that they did not do so as they knew very well that they had given back a part of goods admittedly received against bill No. 1558 dated 28.12.1999, as per the understanding between the defendants and Mr. Jose and not at the instructions of the plaintiff either expressed or implied authority of the plaintiff for that purpose.

Besides, in reply Ex.P.10/D.A dated 22.6.2000 by the defendant to the plaintiff's demand of balance payment of Rs.4,48,053/- against the aforesaid bill No. 1558 dated 28.12.1999 out of the total bill amount of Rs.8,48,053/-. The defendant did not allege that 215 Rocker Sprayers and 65 Knapsack Sprayers out of those received against the aforesaid bills were returned to Mr. Jose entire under any written authority by the plaintiff in his favour or that the plaintiff had at any point of time acted so as to make the defendants believe that the plaintiff has authorized Mr. Jose to collect back the said goods from the defendants. These facts go to show that the plea of the defendant that Mr. M.A. Jose had been given back 215 Rocker Sprayers and 65 Knapsack Sprayers out of the goods admittedly received against the bill No. 1558 dated 28.12.1999 under any expressed or implied authority by the plaintiff in favour of MR. Jose, in an afterthought. This plea of the defendants also cannot be believed in view of accepted terms and conditions of the concluded contract between the plaintiff and the defendants according to which goods once sold, could not be returned back by the defendants. The above

evidence goes to show that the defendant has failed to prove that Mr. M.A. Jose was authorized to receive back 215 Rocker Sprayers and 65 Knapsack Sprayers out of the said articles received vide Bill No. 1558 dated 28.12.1999, for and on behalf of the plaintiff. Issue is accordingly decided against the defendants and in favour of the plaintiff.

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The proposition of law laid down by the Hon'ble Calcutta High Court, by Hon'ble Patna High Court and by Hon'ble Apex Court in the above noted three cases is squarely applicable to the facts of this case. In the light of the findings on Issue No.3 above, it is held that by operation of Section 237 of the Contract Act, the plaintiff is not bound by the aforesaid acts of Mr. M.A. Jose as the defendant has failed to prove that the plaintiff has by his words or conduct induced the defendants to believe that the alleged acts of Mr. M.A. Jose were within the scope of his authority given by the plaintiff. Therefore, the return of 215 Rocker Sprayers and 65 Knapsack Sprayers by the defendants to Mr. Jose assuming the same were received back by Mr. M.A. Jose is no answer to the plaintiff's claim in the suit. Hence, the plaintiff is entitled to recover a principle sum of Rs.4,48,053/- along with the interest of Rs.51,447/- (total Rs.4,99,500/-) till the date of institution of the suit. Issue is accordingly decided in favour of the plaintiff and against the defendants.” (underlining added)

6. A reading of the aforesaid paras of the impugned judgment shows that the trial Court arrived at a conclusion that Mr. M.A. Jose was not the authorized agent and he acted in excess of the authority, consequently the respondent/plaintiff is not bound by the action of Mr. M.A. Jose in receiving back 195 numbers of rocker sprayers and 45 numbers of knapsack sprayers. This conclusion was arrived at firstly on the ground that there was no term and condition in quotation, Ex.P2 dated 29.4.1999 that Mr. M.A. Jose could

receive back any goods which were sold by the respondent/plaintiff to the appellants/defendants. Another reason for arriving at the conclusion that Mr. M.A. Jose was not the agent was that because as per the trial Court, there was nothing on record to prove that the respondent/plaintiff by any written communication or by its conduct/representation made the appellants/defendants believe that Mr. M.A. Jose was authorized to take back the goods. Yet another reason for holding that the case of the appellants/defendants is not correct because it was held by the trial Court that respondent/plaintiff wrote letters dated 29.12.1999, 21.1.2000 and 1.3.2000 asking for payment, and to which letters no disputes were raised that payment was not liable to be made on account of goods having been returned to the respondent/plaintiff through Mr. M.A. Jose.

7. I am afraid that the impugned judgment has wholly misconstrued the relevant documents which have been filed and exhibited in the trial Court. In fact, the trial Court has committed clear cut illegality in avoiding to make reference to the various relevant portions of the documents/correspondence existing on record. Once we look at the relevant portions of the documents and correspondence on record, it becomes clear that Mr. M.A. Jose was in fact the agent of the respondent/plaintiff and therefore the appellant/defendant was fully justified in taking Mr. M.A. Jose as the agent of the respondent/plaintiff, who could receive back the goods.

Before I refer to the documents/correspondence on record, it is relevant first to refer to Sections 182, 186, 187 and 188 of the Contract Act, 1872 and which Sections read as under:-

“182. ‘Agent’ and ‘principal’ defined. – An ‘agent’ is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the ‘principal’.

186. Agent’s authority may be expressed or implied – The authority of an agent may be expressed or implied.

187. Definitions of express and implied authority – An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

188. Extent of agent’s authority – An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.”

8. A reading of the aforesaid provisions shows that the relationship of principal and agent can be express or implied or partly express or partly implied. The relationship of principal and agent therefore can also arise on account of the principal and agent conducting themselves as such. Once a person is taken as an agent unless therefore there are words restricting the authority of the agent, ordinarily an agent would be entitled to represent the principal within the ordinary scope of business conducted by the agent on

behalf of the principal. At this stage it is necessary to refer to some of the relevant observations of the Supreme Court on the aspect of relationship of principal and agent as contained in the judgment reported as *Chairman, Life Insurance Corpn. and Ors. Vs. Rajiv Kumar Bhasker (2005) 6 SCC 188*. The summary of different paragraphs of this judgment pertaining to relationship of principal and agent are contained in head note D of this judgment which reads as under:

“The relationship of principal and agent can only be established by the consent of the principal and the agent. The consent need not necessarily be to the relationship of principal and agent itself. The “principal” and “agent” will be held to have consented if they have agreed to a state of facts on which the law imposes the consequences which result from agency, even if they do not recognize it themselves and even if they have professed to disclaim it. Nor is the use of or omission of the word “agent” conclusive. The consent must, however, have been given by each of them, either expressly or by implication from their words and conduct. Agency is a legal concept which is employed by the Court when it becomes necessary to explain and resolve the problems created by certain fact situations. When the existence of an agency relationship would help to decide an individual problem, and the facts permit a court to conclude that such relationship existed at a material time, then whether or not any express or implied consent to the creation of an agency may have been given by one party to another, the Court is entitled to conclude that such relationship was in existence at the time, and for the purpose in question.

Ostensible or apparent authority comes about where the principal, by words or conduct, has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a contract with him in reliance on that representation. The principal in these circumstances is stopped from denying that actual

authority existed. In the commonly encountered case, the ostensible authority is general in character, arising when the principal has placed the agent in a position which in the outside world is generally regarded as carrying authority to enter into transactions of the kind in question. **Ostensible general authority may also arise where the agent has had a course of dealing with a particular contractor and the principal has acquiesced in this course of dealing and honoured transactions arising out of it.**

XXXX XXXX XXXX XXXX”
(underlining added)

A reading of the ratio laid down by the Supreme Court in the case of *Rajiv Kumar Bhasker (supra)* shows that even if principal and agent deny that they are having the relationship of principal and agent, they will have to be taken as principal and agent if they are held to have consented and acted as per a state of facts which imposes the consequences of relationship of principal and agent, and it is not necessary that the agent is described as an ‘agent’. The Supreme Court clearly observes that when the facts of a case permit to conclude that there existed a relationship of principal and agent between two persons, then whether or not any express or implied consent to the creation of an agency may have been given by one party to another, a Court is still entitled to conclude that relationship of an agency was in existence between a principal and an agent. A principal by ostensible words of conduct can represent that agent has the requisite actual authority and the person dealing with the agent can place reliance on such a representation, and whereupon the principal is estopped from denying that actual authority vests

in an agent, to act as an agent. The ostensible general authority can also arise from a course of dealing.

9. In view of the aforesaid legal position, let us see the facts which have emerged on record. It is also relevant to note before referring to the actual documents/correspondence on record that the relationship between the parties for supplying of sprayers did not arise for the first time under the subject order dated 3.12.1999, but existed from over a year earlier inasmuch as other orders were also placed upon the respondent/plaintiff by the appellants/defendants, and with respect to which payments were made and there are no disputes with respect to the earlier supplies. With this preface, let us see the documents/correspondence on record as to whether the same bring out a course of dealing giving ostensible general authority to an agent whereby the principal can be said to have represented that the agent is duly authorized to act on behalf of the principal/respondent-plaintiff.

10. The first letter necessary to be referred in this regard is the letter dated 18.11.1998 (Ex.DW1/PZ) sent by the respondent/plaintiff to the appellants/defendants. This letter is marked by the respondent/plaintiff to Mr. M.A. Jose specifically referring him as a *Sales Executive*. Then there is the letter dated 15.12.1999 (Ex.D1/PX), making reference to the subject order dated 3.12.1999 which specifically refers to Mr. M.A. Jose as “**our representative Mr. Jose**”. At this stage, it must be kept in mind that the
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Supreme Court in *Rajiv Kumar Bhasker's case (supra)* has held that an agent need not be called by the term 'agent', and thus 'representative' surely is an agent. Copy of this letter dated 15.12.1999 is in fact marked to Mr. Jose. It was Mr. M.A. Jose who received payments on behalf of the respondent/plaintiff and one such payment is evidenced by the receipt dated 15.3.2000, Ex.P8/DA, and which was a receipt showing that Mr. M.A.Jose had received a demand draft of ₹1,73,077/-. There is in fact also a letter written by Mr. M.A.Jose on the letter-head of the respondent/plaintiff and which is dated 12.1.2000 (Ex.DW1/5) asking for handing over back 35 numbers of Rocker sprayers. That the requisite numbers of Rocker sprayers and Knapsack sprayers as stated by the appellants/defendants have been given back to Mr. M. A. Jose is established beyond doubt by means of the delivery challans duly receipted by Mr. M. A. Jose and which are dated 12.1.2000 (Ex.DW1/6), 2.2.2000 (Ex.DW1/8), 14.2.2000 (Ex.DW1/10) and 15.3.2000 (Ex.DW1/12). The respondent/plaintiff in fact in its plaint also admits that Sh. M. A. Jose was working for the respondent/plaintiff on commission i.e. as a commission agent for the respondent/plaintiff. The appellants/defendants have also pleaded, and which pleadings have been proved by the deposition of its witness, Sh. G. Subhash Chandra Bose, DW1, that the appellants/defendants have always been consistently dealing with the respondent/plaintiff only through Mr. M. A. Jose and such course of dealings

included placing of orders upon the respondent/plaintiff through Mr. M.A.Jose, an aspect admitted by the respondent/plaintiff in the letter dated 15.12.1999, Ex.P5/DA. This witness DW1 has also deposed with respect to goods in question being received by the appellants/defendants through Mr.M.A.Jose and also making of payment to Mr. M. A. Jose.

11. In my opinion, in the face of the aforesaid documentary evidence being the plaint where the respondent/plaintiff admits that Mr. M.A.Jose was working on commission with the respondent/plaintiff, i.e. as a commission agent, the specific admission in the letter dated 15.12.1999, Ex.P5/DA that Mr. M.A.Jose was their representative by stating “our representative Mr. Jose” and copy of this letter is marked to Mr. Jose, the fact that Mr. Jose received payment on behalf of the respondent/plaintiff vide Ex.P8/DA dated 15.3.2000, in my opinion, leaves no manner of doubt that Mr. Jose was in fact an agent acting for and on behalf of the respondent/plaintiff. Surely, if “a representative”, a term mentioned in the letter dated 15.12.1999, Ex.P5/DA and by which the subject order was placed, is not an agent then what else is a representative. A representative is indeed a very wide term and such representative can, therefore, unless the scope of authority is specifically curtailed, without doubt, would have led the appellants/defendants to believe that the appellants/defendants could even return the goods to the said agent, Mr. M. A. Jose. Any doubt as to the complete authority of the agent, Mr. M.

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A. Jose to act for and on behalf of the respondent/plaintiff is clear from the course of dealing including of Mr. M. A. Jose having received the payment as evidenced by Ex.P8/DA dated 15.3.2000. Though, the respondent/plaintiff has conveniently chosen to deny the document being the letter dated 12.1.2000, Ex.DW1/5, and which is a letter on the letter-head of the respondent/plaintiff by which Mr. M.A.Jose took back 35 numbers of Rocker sprayers, in my opinion, such a convenient denial cannot take away the validity and effect of this letter dated 12.1.2000. Whatever doubt remains becomes clear from the document being the letter dated 1.7.2000, Ex.DW1/13, and at the back of which, are contained the minutes of the meeting when the brother of the partner of the respondent/plaintiff, one Sh. Hari Prakash visited the office of the appellants/defendants. These minutes of meeting clearly show that it is Mr. M. A. Jose who took Mr. Hari Prakash to the office of the appellants/defendants and the appellants/defendants have never dealt with anyone else except Mr. Jose. The presence of Mr. Jose when this meeting took place on 3.7.2000 becomes clear from the endorsement in Hindi written by Sh. Hari Prakash on Ex.DW1/12 which states that he has heard both the parties, i.e. the appellants'/defendants' representative on one hand and Mr. M. A. Jose on the other.

12. In my opinion, what appears from the facts of the present case is

that either a fraud is sought to be perpetrated on the appellants/defendants by

the respondent/plaintiff along with its representative, Mr. M.A.Jose, or more probably the respondent/plaintiff has fallen out with this agent, Mr. M.A.Jose who had received back 195 numbers of Rucker sprayers and 45 numbers of Knapsack sprayers from the appellants/defendants. In fact, in my opinion, it can be said that there is a fraud being played upon the appellants/defendants by the respondent/plaintiff along with Mr. M.A.Jose because in the cross-examination of the witness of the respondent/plaintiff, Sh.Anil Kumar, PW1, this witness in categorical terms admitted on 1.11.2002 that the respondent/plaintiff has taken no action whatever against Mr. M.A.Jose for taking back the goods without instructions. Surely, once it came to light that Mr. M.A.Jose had received sprayers of a huge amount of over ₹4,00,000/-, then surely, if there is the taking of these sprayers without authority of the respondent/plaintiff, then, the respondent/plaintiff surely would have sent at least notices and complaints to Mr. M. A. Jose mentioning of his illegal conduct and fraud being played, and possibly even file a case (civil or criminal) for fraud, however admittedly no such thing was done by the respondent/plaintiff and entitling the drawing of conclusion of a possible collusion for the purpose of committing fraud by the respondent/plaintiff along with Mr. M. A. Jose on the appellants/defendants. Even if there is no issue of fraud, possibly, it appears that there could have been certain dues of the respondent/plaintiff to Mr. M. A. Jose, and therefore in spite of Mr. M. A.

Jose allegedly having illegally taken back sprayers of huge value of over ₹4,00,000/-, however, no action whatsoever was taken against Mr. M. A. Jose possibly because of certain dues which could have existed of the respondent/plaintiff towards Mr. M. A. Jose.

13. Learned counsel for the respondent/plaintiff laid great stress on the fact that in Ex.P2 dated 29.4.1999 it is specifically mentioned that goods once sold shall not be taken back under any circumstances, and therefore, Mr. M.A.Jose had no right to receive back the goods. I really fail to understand his argument because once goods are sold, surely it could have been specifically agreed between the respondent/plaintiff and the appellants/defendants for return of certain goods, and if a principal can agree to an alteration of the term of the supply, surely an agent could also have done so. In addition, I may also mention that the order dated 3.12.1999, and reflected through the respondent's/plaintiff's letter dated 15.12.1999, Ex.P5/DA, does not talk of contractual relationship with respect to this earlier terms and conditions contained in Ex.P2 dated 29.4.1999 and which have specifically not been incorporated in the contract dated 3.12.1999/15.12.1999.

14. Learned counsel for the respondent/plaintiff also placed reliance upon three judgments reports as *Mohd. Ekram & Ors. vs. Union of India, AIR 1959 Patna 337; Kamal Singh Dugar vs. Corporated Engineers (India)*

Pvt. Ltd., AIR 1963 Calcutta 464 and State of Orissa vs. United India Insurance Co. Ltd., AIR 1997 SC 2671 in support of the proposition that when the agent acts beyond the scope of his authority including by committing a fraud, the principal will not be liable. In my opinion, all these judgments are based on the assumption that Mr.M.A.Jose acted beyond the scope of his authority, however, before these judgments can apply, it was necessary to prove that the authority/agency of Mr. M.A.Jose was specifically restricted to not receiving back the goods, and which was duly brought to the notice of the appellant/defendant, however, I have already referred to in detail above respondent/plaintiff itself referring to Mr. M.A.Jose as their representative or commission agent, and which terms are wide terms to show complete agency without any restriction of authority. That there was no restriction of authority becomes clear also from the course of dealing between the parties through Mr. M.A.Jose, and as per which course of dealing, Mr. M.A.Jose not only supplied these sprayers to the appellants/defendants, but in fact received payments with respect to the same. The judgments which are therefore cited on behalf respondent/plaintiff have no application to the facts of the case. In the *Mohd. Ekram & Ors.(supra)* case relied upon, the admitted position was that the railways re-booked the consignment without expressed authority, i.e. the agent was found to have acted beyond authority, and so is the position in the other cases of *Kamal Singh Dugar (supra)* and

State of Orissa (supra). The judgments therefore cited on behalf of the respondent/plaintiff have no application to the facts of the present case.

15. In my opinion, the trial Court has drawn a wrong conclusion by holding that payments were due because the appellants/defendants failed to reply to the letters dated 29.12.1999, 21.1.2000 and 1.3.2000 stating that sprayers were returned to Mr. M.A. Jose, and which is faulty inasmuch as it is rightly pointed out by the learned counsel for the appellants, that during this period the aforesaid letters were written, the appellant/defendant was in fact returning the goods to Sh. M.A. Jose vide Ex.DW1/6 dated 12.1.2000, DW1/8 dated 2.2.2000 and DW1/10 dated 14.2.2000 and DW1/12 dated 15.3.2000, and therefore, only after the goods were returned, would there have arisen the occasion of stating that the total amount of sprayers returned were of a particular number and only whereafter would the liability have been crystallized for payment under the particular number of sprayers supplied. At the very first opportunity once the fraud came to light, the appellants/defendants wrote the letter dated 1.7.2000 detailing the fraud being played. It is this letter which also contains the minutes of meeting between the representative of the appellants/defendants, Sh. Hari Kishan- brother of partner of respondent/plaintiff and Mr. M.A. Jose. This letter dated 1.7.2000 pithily brings out the fraud being played upon the appellants/defendants and therefore this letter is reproduced as under:-

“KTR/S/58F/949

M/s. Beta Engineers,
1534, Mamurpur,
Narela, Delhi – 110 040

REGIONAL
OFFICE,
NEELESWARAM.
P.O.
KOTTARAKARA
– 691 506.
PHONE : 454740
DATE: 1-7-2000.

Sirs,

Sub : Supply of Sprayers – Settlement of pending bills.

Ref: Your Lr. No.BE/06/2000/291 dt. 29-6-2000.

This is to acknowledge the receipt of your letter under reference. We may inform you the following:

1. We have been doing the business of your products in good faith through your representative, Mr. M.A. Jose. He used to collect all payments in your favour and also collect the orders from this office on your behalf. Even the last payment Rs.4,00,000/- (Rupees Four lakhs only) also has been collected by Mr. Jose.
2. Our supply order KTR/S/58F/1977 dt. 3-12-99 was also collected by Mr. Jose on the understanding that the consignment could be sent through direct truck only if an order of 400 pieces is given. It was also agreed that he will manage to dispose off the excess quantities, if any, on his own arrangement.
3. You have also confirmed that you have received the confirmation to supply 400 Rocker Sprayers, 100 Knapsack Sprayers and other items through your representatives, Mr. Jose, vide your Lr. No.BE/12/99/1119 dt. 15-12-99.
4. We regret to inform you that the telegram dt. 27-12-99 (as seen from the photocopy enclosed with your above letter), is not seen sent either by the undersigned or from this office. You may kindly trace the origin of the telegram which might also have been sent by your representative, Mr. Jose.

5. It is a matter of great concern to us that even though all the transactions on your behalf were being done through your authorized representative, Mr. M.A. Jose, you have now disowned him through your letter under reference.

6. However, on receipt of your above letter by 2 PM on 1/7/2000, I have booked a trunk call to 0482 252307 to contact, Mr. Jose at his residence. Unfortunately I could not get Mr. Jose as he has gone to Kottayam to receive one of your managers who is expected to arrive at Kottayam through K.K. express as told by the father of Mr. Jose who attended the phone. I have also passed the message such that Mr. Jose or the Manager of the Beta Engineers may contact me back immediately on their arrival.

7. As explained above being the fact, we, The Kerala Agro Industries Corpn. Ltd. strongly feel that there is a small of fraud either on your part or on your representative's part.

Under this circumstances, in order to settle this issue, we request that you may either depute one of your authorities along with Mr. Jose to this office to discuss the matter in detail and to find a solution, or send us the credit note as demanded vide our Lr. No.KTR/S/58F/883 dt. 22-6-2000.

Thanking you,

Yours faithfully,

FOR THE KERALA AGRO INDUSTRIES CORPN. LTD.

Sd/-

REGIONAL ENGINEER

Copy to: 1. Sri M.S. Jose,
Kunchirakkattu,
Kadaplamattam,
Kortayam – 686 571.

2. The Engineer (Op.), H.O., for information.”

In my opinion, therefore, not too much weight can be attached to the appellants/defendants not replying to the letters dated 29.12.1999, 21.1.2000 and 1.3.2000.

16. A civil case is decided on balance of probabilities. A civil Court puts all the evidence which have been led in a melting pot so as to determine the final picture which has to emerge. In my opinion, in view of the admitted documents/correspondence on record, there is no manner of doubt that Mr. M.A. Jose was an agent acting for the respondent/plaintiff, and in view of the ratio of the judgment of the Supreme Court in the case of *Chairman, LIC (supra)*, Mr. M.A. Jose clearly had ostensible general authority which was clear from the correspondence between the parties and also the course of dealing, and therefore, the respondent-plaintiff/principal was clearly bound to honour the actions of the agent, Mr. M. A. Jose of having received back the goods as held by the Supreme Court in the case of *Chairman, LIC (supra)*. The respondent-plaintiff/principal is estopped in the facts of the case from denying that actual authority existed in Mr. M.A. Jose in taking back the goods.

17. In view of the above, appeal is accepted. Suit of the respondent/plaintiff shall stand dismissed. Parties are left to bear their own costs. Decree sheet be prepared.

18. The bank guarantee furnished by the appellants/defendants pursuant to the order dated 27.4.2005 shall stand discharged. The amount which has been deposited by the appellants/defendants in this Court, being the amount of ₹22,403/-, along with accrued interest be also released back to the appellants/defendants. Trial Court record be thereafter sent back.

VALMIKI J. MEHTA, J.

JANUARY 09, 2012
ak/Ne