

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****SECOND APPEAL NO.182/2001**

(Principal Uttamchand Rajeshwar Convent, Akola and anr. .vs.. M/s. Shri Sahityalaya, Satish Balmukund Agrawal, Akola.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. D. Mohogaonkar, Advocate for appellants.

Mr. V. P. Panpalia, Advocate for respondent.

CORAM : A. B. CHAUDHARI, J.

DATE : MARCH 7, 2016

Heard learned counsel for the parties.

What is under challenge is a money decree in the sum of Rs.28,257/- against the present appellant-defendant. It is not in dispute that Neuton was the Principal appointed by the appellant to Uttamchand Rajeshwar Convent, Akola, a school run by the appellant no.2. It is in that capacity, he wrote a letter to the respondent-shop keeper to supply stationery for the school. The stationery was supplied on few occasions and the bills were duly exhibited by the trial Court from Exh.-30 to 37. Exh.-31 was letter issued by Neuton for the purchases. Exh.-45 and 46 were letters and reminders given by the respondent-plaintiff asking for the payments. The trial Court dismissed the suit holding that the plaintiff failed to prove that Neuton was really authorised to make purchases from his shop. The lower appellate Court partly decreed the suit by reversing judgment of the trial court and relied on Section 237 of the Indian Contract Act. He

also relied on same celebrated judgments on Section 237 of the Contract Act.

Mr. Mohogaonkar, learned counsel for the appellant, vehemently argued that the lower appellate Court ought not to have reversed the decree of the trial Judge when, admittedly there was no authorisation in favour of Neuton and no such authorisation was proved by the plaintiff. According to Mr. Mohogaonkar, neither the school nor the society could be charged with the liability of shop keeper for stationery in the absence of valid and legal authorisation to act as an agent. Mr. Mohogaonkar, however, fairly stated that on the dates when the purchases were made, Neuton was the Principal appointed by the trust. He further submitted that thereafter services were terminated and thereafter the suit was filed and even in the suit some claims were time barred. The only substantial question of law that is required to be decided in the present case is :

(i) Whether in the wake of Section 237 of the Indian Contract Act, appellant no.2-Society running appellant no.1-School, could disown its monetary liability for the purchases of the stationery made on various dates by Mr. Neuton, the Principal of the School admittedly appointed by appellant no.2-Society? **...In Negative**

(ii) What order?

...As per final order

It is not necessary for me to repeat the position of law since the lower appellate Court in paragraph 10 of his judgment has quoted the said provision and same celebrated judgments. I quote paragraph 10 of the judgment, which reads thus:

“10. Section 237 of Contract Act reads as under:

“237. Liability of principal inducing belief that agent's unauthorized acts were authorized:

When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.”

Particularly, in case of Lloyd V. Grace Smith & Co. (1912) A.C. 716, it is held that the principal is liable for the fraud of his agent acting within the scope of his authority whether the fraud is committed for the benefit of the principal or for the benefit of the agent. The principle laid down in Lloyd's case was approved by a Division Bench of the Calcutta High Court in Diana Bandhu V. Abdul Latif

reported in AIR 1923 Calcutta 15. Even a Division Bench of the Nagpur High Court in Bissessardas Kastuchand..vs..Kabulchand Asaram, reported in AIR 1945 Nagpur, 121, it is observed that:

“Even if the agent has acted in excess of his actual authority the liability of the firm remains, if the contracting party has been led into an honest belief in the existence of the authority to the extent apparent to him. Even if fraud is committed by agent for his own benefit the firm is liable if the agent is acting within the scope of his implied authority.”

In view of these observations of Their Lordships in the above said cases and in view of provisions of Section 237 of the Contract Act and as per evidence of the plaintiff that since he received letter from the Principal of School defendant no.1, on letter head of the institution, believing on that letter he supplied the stationery and books to the defendant society. Then in that circumstance, even the Principal has committed mischief and fraud, still the defendants being school and the institutions are liability to pay the price of the goods purchased by its principal. They may take steps against the principal who committed fraud in respect of those goods.”

In view of facts and evidence in his case, the proposition of law stated by the lower appellate Court has

been correctly understood and applied. Hence, following order is passed.

ORDER

- (i) Second Appeal No.182/2001 is dismissed.
- (ii) No order as to costs.

JUDGE

kahale