

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 297 of 1995**

(Arising out of judgment/order dated 01.05.1995 in Civil Suit No.4-B/1979 of the learned Court of District Judge, Raipur)

- M/s Faruq Anwar Co.

---- Appellant**Versus**

- M/s Dhadiwal Sales Enterprises

---- Respondent

For Appellant
For Respondent

Shri Amrito Das, Advocate
Shri Ashish Surana, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****31/10/2017**

1. This is defendant's appeal challenging the judgment and decree dated 01.05.1995 passed by the District Judge, Raipur declaring that the plaintiff is entitled to rendition of account from the defendant, further appointing a Commissioner to ascertain the exact amount, which the plaintiff is entitled to receive from the defendant and that the said amount be paid by the defendant to the plaintiff together with interest @ 12% w.e.f. 24.10.1979 till recovery.
2. Facts of the case, very briefly stated, are that the plaintiff is a registered partnership firm engaged in commission business and

Kirana trade at Gudiyaari, Raipur. The defendant, who is a manufacturer of postman groundnut refined oil, appointed the plaintiff as its commission agent to sell its product on commission on the terms mentioned in para 3A of the plaint. The relationship of commission agent thus continued from 08.01.1973 to 1976, however, on 13.10.1976, the defendant returned the amount of Rs.32,550/-, which was the amount paid by the plaintiff to the defendant for supply of goods, but the defendant could not supply the goods. According to the plaintiff, as on this date i.e. 13.10.1976, the defendant was to pay a sum of Rs.97,943.76 paise, which the defendant did not pay, therefore, adding interest on that amount, the defendant owed Rs.1,33,203.51 paise as the commission for the commission agent, for which there was an agreement between the parties.

3. The defendant denied the entire suit allegations. According to the defendant/appellant, the plaintiff was never appointed a commission agent by it, therefore, there is no obligation on the part of the defendant to maintain the account of transactions between them. In substance, the defendant pleaded that the relationship between them was that of producer/supplier and dealer/broker, therefore, even if the plaintiff was maintaining an account of transactions between them, the same would not get converted into appointment of commission agent. The defendant also pleaded that the suit is barred by limitation, because there was no transaction on 13.10.1976 in continuation of a running account. On the said date, the defendant only returned the amount as it was unable to supply the postman oil to the plaintiff,

but there was no acknowledgment at any point of time by the defendant, in token of which the amount was paid.

4. The trial Court has framed as many as 10 issues for determination interalia holding that the plaintiff was appointed as a commission agent; it had paid Rs.5,000/- to the defendant in furtherance of the agreement of relationship of commission agent; that each transaction between the parties was not separate but it was a running account and the suit is not barred by limitation. However, while deciding Issue No.3, the trial Court has found that there was no agreement or understanding between the parties that the defendant had agreed to the plaintiff's method of keeping the account or that the account shall be finalized at the time of Diwali every year.
5. It is argued by Shri Amrito Das, learned counsel for the appellant/defendant that in view of the provision contained in Order 20 Rule 16 CPC, the trial Court could not have straightway passed a decree, which is in the nature of a final decree for rendition of account. It is also argued that under the law of agency, an agent cannot seek rendition of account from the principal. It is also argued that the suit was barred by limitation.
6. Shri Surana, learned counsel for the respondent/plaintiff would submit, on the other hand, that once it is found that there was an oral understanding between the parties wherein the defendant had agreed to pay certain commission to the plaintiff on sale of each tin of postman oil and the relationship/transaction continued for a number of years, there would be presumption of a

continuous account between the parties, therefore, the suit was within limitation. It is also argued that even if the word 'preliminary decree' is not used in the impugned decree, the fact that Commissioner has been appointed for finalizing the account would demonstrate that the decree is in the nature of preliminary decree.

7. I shall first deal with the argument relating to preparation of final decree without proceeding to pass a preliminary decree of rendition of account. Order 20 Rule 16 CPC provides that in a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.
8. A plain reading of the provision would manifest that a decree for rendition of account between a principal and an agent has to be a preliminary decree directing such account to be taken and thereafter a final decree is passed after finalization of the account. Contrary to the provision, the trial Court has passed the impugned decree appointing commissioner for obtaining accounts from both the parties and arrived at the figure, which the defendant owes to the plaintiff together with interest @ 12% from 24.10.1979. It appears, the trial Court was in a hurry to pass the decree because it does not even mention the name of the person who is appointed as commissioner. The decree is thus

vague and inexecutable, because it is not known to the parties as to before whom the accounts are to be submitted and who will finalize the account. It was necessary because in a case where the preliminary decree is not assailed by any of the party to the suit, the same is ordinarily treated and converted into a final decree, therefore, the preliminary decree itself should be clear in terms so that in such eventuality, as above, it is capable of execution.

9. It was the plaintiff's case that he was appointed as commission agent and the trial Court has decided the issue in plaintiff's favour, therefore, going by the plaintiff's own case, the law of agency would apply to the relationship between the parties. Section 213 of the Contract Act, 1872 (henceforth 'the Act, 1872') provides that an agent is bound to render proper accounts to his principal on demand. There is no provision akin to Section 213, which binds the principal to submit accounts to the agent. It is exactly for this statutory provision, the Supreme Court in the matter of **Narandas Morardas Gajiwala and others vs S.P.A.M. Papammal and another**¹ has held that the principal's right to sue an agent for rendition of accounts is recognized under Section 213 of the Act, 1872 but there is no such provision enabling an agent to sue his principal for account. It is further observed, the statute is not exhaustive and the right of an agent to sue the principal for account is an equitable right arising under special circumstances and is not a statutory right. The agent's right is held to be equitable because ordinarily the accounts are

1 AIR 1967 SC 333

maintained by the principal, therefore, an agent, who is not possessed of the account, may seek rendition of account from the principal in special cases so that his claim for commission against the principal is settled.

10. Similarly in **Hulas Rai Baij Nath vs Firm K. B. Bass and Co.**², it is again held by the Supreme Court that the principal alone has normally the right to claim rendition of accounts from the agent. The agent cannot ordinarily claim a decree for rendition of accounts from the principal.
11. In a comparatively recent judgment, the Supreme Court in the matter of **K. C. Skaria vs Govt. of State of Kerala and another**³ has reiterated the principal in the following expression:-

“17. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.”

12. It is thus settled that the principal has statutory right to claim rendition of account from the agent but it is not so for the agent to

² AIR 1968 SC 111

³ (2006) 2 SCC 285

claim rendition of account against the principal, therefore, in a suit filed by the agent claiming rendition of account from the principal, he has to make out a special equitable case on the plea that since the entire account is maintained by the principal but the principal owes some amount to him, therefore, he should render the account. Applying the principle to the case at hand, the agent has filed the documents in the reverse manner. It is he who has filed documents to demonstrate that there was a running account between the parties and on the basis of the said account, he is claiming recovery of a deficit amount of Rs.1,33,203.51 paise. Initially, the plaintiff did not pray for passing of a preliminary decree for rendition of account, which was pleaded through an amendment incorporated subsequently. It is not a case where the defendant/appellant has admitted the relationship of principal and agent. The defendant has denied that a running or continuous account was maintained between the parties, therefore, to expect the defendant to submit account before the Commissioner amounts to issue a direction, which the defendant may not be able to comply.

13. It is also to be seen that as per plaintiff's own case, the defendant returned an amount of Rs.32,550/- to the plaintiff on 13.10.1976. If there was a running account between the parties, the defendant would not have returned the amount, because at the said point of time, the defendant was not in a position to supply the postman oil to the plaintiff. In a case of running account, the principal would never enter into a transaction for refund or return of the amount to the agent.

14. In view of the above, since I have come to the conclusion that ordinarily a suit for rendition of account is not maintainable, on behalf of the agent against the principal as also for the reason that the impugned decree itself is contrary to Order 20 Rule 16 CPC and is also vague and inexecutable, I am not deciding the other issues decided by the trial Court.
15. The appeal succeeds and is allowed. The impugned decree is set aside. A decree be accordingly drawn up.

Sd/-

Judge

Prashant Kumar Mishra

Nirala