

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 509 of 2004**

- Dr. Anil Kumar Agrawal Aged S/o Shankar Prasad Agrawal, Agrawal X- Ray Clinic, Juni Line, Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. M/s National Garage Through Manager, Rajendra Nagar, Link Road, Bilaspur, Chhattisgarh
2. M/s. National Garage, G.E.Road, Raipur, Chhattisgarh
3. M/s. Pal-Peugeot Limited Through Competent Authority, Kalyansheel Road, Manpaada Dambiwali, District – Thane, Maharashtra.

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondents 1 and 2	:	None

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****13/02/2020**

This appeal is directed against impugned judgment and decree dated 02/07/2004 passed by the 3rd Additional District Judge, Bilaspur in Civil Appeal No.1-B/2004 whereby the learned lower Appellate Court has allowed the appeal of two defendants and exonerated them from the liability of refund to the plaintiff / appellant herein.

2. The appellant, desirous of purchasing a car, booked purchase of vehicle by drawing a cheque in the sum of Rs.25,000/- in favour of Pal-Peugeot Ltd. through its agent - M/s. National Garage, Link Road, Bilaspur and its office - M/s. National Garage, G.E. Road, Raipur. Later on, when the vehicle was not supplied as per the schedule, the plaintiff decided to cancel the booking and accordingly cancelled. The

plaintiff, then claimed refund of the amount as, despite repeated reminders and letters sent by the plaintiff to defendant - M/s. Pal-Peugeot Ltd. and to the agents, other defendants, suit came to be filed by the plaintiff not only against the principal but also against the agent. Learned Trial Court, vide its judgment and decree dated 31/10/2002, decreed the suit in favour of the plaintiff and against all the defendants which included principal as well as agents. Aggrieved by the said judgment and decree, M/s. National Garage, Bilaspur and M/s. National Garage, Raipur filed an appeal before the learned lower Appellate Court. The main ground of appeal was that in view of provisions contained in Section 230 of the Contract Act, 1872 (for short 'Contract Act'), the agents are not liable for the acts of the principal and the liability, if any, was on the principal and not on the agent. This argument found favour with the learned lower Appellate Court and the appeal was allowed exonerating the agents. Against this judgment, this appeal has been preferred by the plaintiff which was admitted by this Court on following substantial question of law

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“Whether the Lower Appellate Court committed an error of law by exonerating defendants No.2 & 3 from the liability to refund the amount to the plaintiff even after holding that the defendant No.3 was working as an agent of defendant No.1 ?”

3. Learned counsel for the appellant argued that present is a case covered under Section 233 of the Contract Act and not under Section 230 thereof. Learned counsel for the appellant contended that the plaintiff has not only specifically pleaded but also led reliable and clinching evidence that the plaintiff decided to purchase a car because of the assurance given to him by the respondent / agent having local office at Bilaspur and Raipur. It is submitted that the plaintiff would not have ventured to purchase vehicle had there been no agent at Bilaspur and Raipur as there is no question for the plaintiff going all the way to Thane, Maharashtra and book the vehicle. It was the facility provided by the agents in Bilaspur and Raipur

that the plaintiff decided to buy the vehicle by way of sale and delivery at Bilaspur and the plaintiff proceeded to book the vehicle by paying advance of Rs.25,000/-. Learned counsel for the appellant further argued that even though, the draft was drawn in the name of Pal-Peugeot Ltd., it was submitted to the said manufacturer only through local agent i.e. respondent / agents. When the plaintiff sent various reminders, it is the agent, through whom, reminders were sent and the agent, time and again, also wrote for refunds. Therefore, if finally refund is not made, liability would be of the agent as envisaged under Section 233 of the Contract Act. It is also submitted that the defendant / agents failed to specifically plead and prove by leading cogent oral and documentary evidence that at the time of booking of the vehicle, the agent disclosed the name of the principal. In such a case, where the agents have not disclosed the name of the principal, there is statutory presumption to the contrary as contemplated under Section 230 of the Contract Act and in that event, the agent would also be personally bound to satisfy the claim of the plaintiff and he cannot seek exoneration from the liability by taking shield of Section 230 of the Contract Act.

4. None appears for the respondent even when the case is called out in the second round.

5. The issue raised in the present petition is as to whether the agents are liable by virtue of applicability of Section 233 of the Contract Act or are entitled to be exonerated in view of provisions contained under Section 230 of the Contract Act. Before appreciating the arguments of learned counsel for the appellant towards substantial question of law involved in this appeal, it is relevant to examine the provisions contained in the aforesaid two sections, namely, 230 and 233 of the Contract Act, which are extracted herein below -

“230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal — In the absence of any

contract to that effect, an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary - Such a contract shall be presumed to exist in the following cases :—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.”

233. Right of person dealing with agent personally liable—In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.”

6. According to Section 230 of the Contract Act, an agent cannot personally enforce contract entered into by him on behalf of his principal nor is he personally bound by them. This is subject to any contract to the contrary. That means, in a case where the agent under the contract gets a right to personally enforce contract or he undertakes to be personally bound by the contract, in that case, he would be liable and will not be protected under Section 230 of the Contract Act. In at least three circumstances, the statutory presumption of contract to contrary is provided in Section 230 itself. Firstly, where the contract is made by an agent for sale and purchase of goods for a merchant resident abroad, secondly, where the agent does not disclose the name of his principal and thirdly, where the principal, though disclosed, cannot be sued.

7. However, in cases where the agent is personally liable, it is Section 233 which becomes applicable and in that case, a person dealing with agent may hold either agent or his principal, or both of them liable. Thus, in a case where the agent is personally liable, right of the person dealing with agent is that he may either sue the agent or sue the principal or both. Therefore, applicability of Section 230 or Section 233 of the Contract Act would depend upon whether agent is personally liable or not.

8. In the present case, plaintiff's pleadings has been to the effect that the plaintiff decided to book a car through the agent – National Garage. Pleadings are that the plaintiff contacted the local agent and on the assurance given by the local agent, the plaintiff decided to purchase vehicle and thereafter, advance of Rs.25,000/- was deposited by way of demand draft with the principal namely Pal-Peugeot Ltd. The pleadings of the plaintiff are that the plaintiff acted on the assurance of defendant no.2 that he will ensure supply of vehicle Peugeot 309 that he proceeded to deposit the amount. However, in the entire pleadings, there is nothing pleaded that the defendant / agent received any amount in his account or received cash or kept with him. Moreover, the pleadings and evidence of the plaintiff do not disclose that the amount was first required to be paid in the accounts of the agent and the liability was fastened upon the agent to transfer the amount to the manufacturer company. Further, the plaintiff has not been able to lead any documentary evidence containing any express stipulation under which, the agent has undertaken any personal liability, supply of vehicle or any liability to compensate the plaintiff in the event, vehicle is not supplied to the plaintiff by the manufacturer company. Therefore, from plaintiff's own pleadings and evidence, there is no material pleading or evidence to constitute a case of personal liability of the agent. In the absence of that, applicability of Section 233 of the Contract Act stands completely ousted.

9. Now, it remains to be seen whether there was contract to the contrary as contemplated under Section 230 of the Contract Act or whether statutory presumption of contract to the contrary is made out so as to make the agent liable for refund along with the principal.

10. On plaintiff's own showing, demand draft of Rs.25,000/- prepared in the name of Pal-Peugeot Ltd. and receipt (Ex.P/1) was also issued in favour of the plaintiff by Pal-Peugeot Ltd. A perusal of Ex.P/1 clearly reveals that the receipt was issued for

and on behalf of Pal-Peugeot Ltd. in which, it was disclosed that the National Garage is its dealer. The admitted facts that draft was drawn by the plaintiff in the name of Pal-Peugeot Ltd. and receipt was issued in favour of the plaintiff directly by Pal-Peugeot Ltd. clearly proves that the agent had, right from the beginning, disclosed the name of the principal. This is also clear from the averments made in the pleadings and not only in the evidence, but also from various communications between the plaintiff and Pal-Peugeot Ltd. which have been led in evidence as Ex.P/2, Ex.P/3 and Ex.P/5. These are communications between the plaintiff and Pal-Peugeot Ltd. Apparently therefore, the present case is that the agents had clearly disclosed the name of the principal and it cannot be said that at the time of booking of the vehicle, the plaintiff was not disclosed the name of the principal.

There is no case made out in the pleadings by the plaintiff that it is a case where the contract is made by an agent for a sale or purchase of goods for a merchant resident abroad or it is a case where the principal, though disclosed, cannot be sued. Moreover, no contract to the contrary could be proved by the plaintiff. Therefore, in such an event, the only inevitable conclusion would be that in view of provisions under Section 230 of the Contract Act, the agent will not be personally bound by the agreement of sale and purchase of the vehicle and in the event of cancellation of booking and liability of refund, it is the principal and the principal alone, who would be liable and not the agent. In this regard, it is apposite to refer to the Supreme Court decision in the case of **Vivek Automobiles Ltd. v. Indian Inc., (2009) 17 SCC 657**. That was a case where the vehicle was booked through an agent for supply of cars. As the vehicle could not be supplied, booking was canceled and refund was sought. The principal as well as the agent, both were sued. The Supreme Court, applying the provisions of Section 230 of the Contract Act, held that the agent would not be held liable for acts of a disclosed principal subject to the contract to the contrary as no contract to the contrary was pleaded. It was held that an agent could not be sued when the name of principal was disclosed.

It was held -

“8. Section 230 of the Contract Act categorically makes it clear that an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary. No such contract to the contrary has been pleaded. An identical issue was considered by this Court in *Marine Container Services South (P) Ltd. v. Go Go Garments*, (1998) 3 SCC 247, where a similar order passed under the Consumer Protection Act was set aside by this Court. It was held that by virtue of Section 230 the agent could not be sued when the principal had been disclosed.”

11. Therefore, the question of law framed is answered in the manner that the learned lower Appellate Court did not commit any error of law by exonerating defendants 2 and 3 from the liability to refund the amount to the plaintiff even after holding that defendant No.3 was working as an agent of defendant No.1.

12. In the result, the appeal fails and is hereby dismissed. Let appellate decree be accordingly drawn. Parties to bear their respective costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge