

PREM NATH MOTORS LTD.

v.

ANURAG MITTAL

(Civil Appeal No. 6656 of 2008)

NOVEMBER 14, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

Contract Act, 1872 – s. 230 – Booking of car pursuant to advertisement by Car manufacturing company – On non-allotment of car, refund of booking amount sought – On failure thereof, claim before MRTTP Commission – Dealer of the company making application that it was not liable to refund being only an agent of the Company – Dismissal of application – On appeal held: Agent is not liable for the acts of a disclosed principal subject to contract to the contrary. – On facts, no contract to the contrary pleaded – Hence, dealer company not liable to refund the booking amount – Monopolies and Restrictive Trade Practices Act, 1969 – s. 12-B.

An international car manufacturing company entered into agreement for manufacture and sale of a particular model of a car with an Indian Car manufacturing company. Appellant company was the dealer/agent of the Indian Company.

In pursuance of an advertisement by the contracting companies, respondent No.1 applied for allotment of a car with the booking amount. On non-delivery of the car, respondent No. 1 sought refund of the amount. On failure thereof, he filed a petition u/s. 12-B of Monopolies and Restrictive Trade Practices Act, 1969. Appellant-company filed application before MRTTP Commission on the plea that, it being only an agent/dealer was not liable to refund

A the amount. Application was dismissed. Hence the present appeal.

Allowing the appeal, the Court

B HELD: 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 of the contrary. No such contract to the contrary has been pleaded. Appellant-company was dealer of the Indian Company, with whom the International Company had entered into an agreement. The appellant had nothing to do with the advertisement, in response to which the individuals had applied for the said car. The cheque submitted by the individual person, whoever was interested in purchasing the said car was given in the name of the Indian Car manufacturing Company and the appellant Company had no other role except to send the same to the Indian Company. [Paras 3 and 4] [48-A; 48-E; 47-C; 47-H]

Marine Contained Services South Pvt. Ltd. vs. Go Go Garments AIR 1999 (SC) 80 – relied on.

E Case Law Reference :

AIR 1999 (SC) 80 Relied on. Para 4

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6656 of 2008.

From the final Judgment and Order dated 16.4.2004 of the Monopolies and Restrictive Trade Practices Commission, New Delhi in Review Petition 14 of 2004 in C.A. No. 502 of 2000.

G Irshad Ahmad for the Appellant.

P.N. Puri, Dhiraj, Sanjeev Sharma and Reeta Dewan Puri for the Respondent.

The Judgment of the Court was delivered by

H DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by Monopolies Restrictive Trade Practices Commission, New Delhi, (in short 'Commission') dismissing the application filed by the present appellant. A

3. Background facts in a nutshell are as follows: B

An International Car Manufacturing Company i.e. M/s. Automobiles Peugeot of France had entered into a joint venture agreement with manufactures of Premier Cars in India which had a network of dealers spread all over the country, for the purpose of manufacturing and sale of Peugeot 309 models car in India. C

The original agreement of M/s. Automobiles Peugeot of France was with M/s. Kalyan Motors Company Limited which was incorporated during 1994. Subsequently, M/s. Kalyan Motors was named Pal Peugeot Limited/Premier Automobiles Limited. D

Thereafter M/s Pal Peugeot Limited gave advertisements in various newspapers, inviting application for Priority-cum-Registration of Peugeot 309 cars. The individual who were interested in purchasing the said car, applied to M/s Pal Peugeot Limited at: Kalyan Shil Road, Manpada, Dombivli-421204, Distt. Thane, Maharashtra. E

Some individuals like the respondent No.1 submitted their application at Prem Nath Motors Ltd. with a cheque of Rs.25,000/- in the name of Pal Peugeot. F

It is pertinent to point out that Prem Nath Motors Limited was dealer of Pal Motors, with whom the Peugeot Company had entered into an agreement. Petitioner before Commission had nothing to do with the advertisement, in response to which the individuals had applied for the said car. In fact, the individuals had submitted their applications at Prem Nath Motor's office only due to above reasons. G

It is also necessary to add that the cheque submitted by H

A the individual person, whoever was interested in purchasing the said car was given in the name of M/s Pal Peugeot Limited and Prem Nath Motors Limited, i.e. the appellant herein had no other role except to send the same to M/s Pal Peugeot Limited.

B But the individual i.e. the respondent No.1 herein who seems to have applied for "Peugeot 309 Car" did not get the delivery and, therefore, asked for the refund of the booking amount of Rs.25,000/-. As the said amount was not refunded, the respondent No.1 filed a Claim Petition under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the 'Act') on the grounds of failures on the part of respondents to refund the said amount.

D The appellant's stand before the Commission was that the liability, if any, was of M/s. Pal Peugeot to pay to respondent. According to the appellant it was only the agent/dealer of said party.

E 4. 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 of the contrary. No such contract to the contrary has been pleaded. An identical issue was considered by this Court in the case of Marine Contained Services South Pvt. Ltd. vs. Go Go Garments AIR 1999 (SC) 80 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.

G 5. A similar view has been expressed by a three judge Bench of this Court in Civil Appeal 6653/2005 arising out of S.L.P. (C) No.19562/2004.

6. The appeal is allowed accordingly.

K.K.T.

Appeal allowed.