

BEFORE THE HON'BLE DISTRICT COURT OF NAVI MUMBAI

APPEAL FILED UNDER SECTION 74 OF THE INDIAN CONTRACT ACT, 1872

IN THE MATTER OF

Mr. RAYMOND SHADYKUMAR.....APPELLANT

V.

PEOPLE INVOLVED IN PROMOTING OTHERS LTD. (PIPO)RESPONDENT

MEMORANDUM ON BEHALF OF THE APPELLANT

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LIST OF ABBREVIATIONS

ABBREVIATIONS	FULL FORM
ICA	INDIAN CONTRACT ACT
PIPO	PEOPLE INVOLVED IN PROMOTING OTHERS
AIR	ALL INDIA REPORTER

INDEX OF AUTHORITIES**A. TABLE OF CASES**

CASE	CITATION
Fateh Chand vs Balkishan Das on 15 January 1963	1963 AIR 1405, 1964 SCR (1) 515
Maula Bux vs Union Of India on 19 August, 1969	1970 AIR 1955, 1970 SCR (1) 928
Tata Capital Financial Services vs Sea Rock Investments Ltd	1 September, 2014
Yuvneet Suri And Anr. vs Round The Clock Stores Ltd.	13 December, 2000
A.V. Palanivelu Mudaliar vs Neelavathi Ammal on 26 January, 1937	(1937) 39 BOMLR 720
The Special Officer, Amaravathi vs D.V. Thirumalaswamy And Ors. on 16 April, 1970	(1973) 2 MLJ 361
Toshniwal Brothers (P) Ltd. vs Eswarprasad, E. And Others	18 January, 1996
A.S. Motors Pvt. Ltd. vs Union Of India (Uoi) And Ors. on 18 June, 2007	I (2008) BC 546
V.S. Saini And Anr. vs D.C.M. Ltd.	24 April, 2012

B. STATUTES

1. The Indian Contract Act, 1872
2. Constitution Of India

C. ARTICLES AND REPORTS

1. Law Commission Of India 93rd Report on Disclosure of sources of information by mass media

D. DYNAMIC LINKS

1. www.manupatra.com
2. www.indiankanoon.org
3. www.advocatekhoj.com

STATEMENT OF JURISDICTION

THE HON'BLE DISTRICT COURT OF NAVI MUMBAI has the inherent jurisdiction to try, entertain and dispose of the present appeal by virtue of following SECTIONS OF THE INDIAN CONTRACT ACT, 1872. These are -

Section 74, Section 73, Section 75, Section 37, Section 40, Section 182, Section 192, Section 191, Section 211

STATEMENT OF FACTS

1. Raymond Shadykumar, an NUJS graduate, is a young, struggling, upcoming actor from Allahabad. Although he was offered a job after college by leading Indian law firm, Raymond turned away from his legal career to pursue his current career which he enjoyed more. He has participated in various beauty pageants in India, and had done a few TV commercials as child. He recently became a local celebrity after winning the 'Best Beard Model Contest in Wasseypur on 25th March 2010.

2. Ablonde Bundar is a prominent socialite in Mumbai and on the guest-list for many coveted Bollywood parties. She is an executive in People Involved in Promoting Others Ltd. (PIPO), one of India's foremost publicity famous in show business. As a policy, for fear of the vicious tabloids, paid management agencies that caters to the publicity needs of the rich and news, and other such aberrant reporting PIPO stays away from the print market. PIPO also has a strict internal policy instructing their executive newspapers (who otherwise remained fairly autonomous) to stay away from the newspapers.

3. PIPO is known for offering its clients premium service. Established and highly successful actors such as Ni Hao Kant and Charz Chatwan, who have been in the industry for more than 10 years, were charged 35% of their annual gains. Novice actors are normally charged a basic fee of about 15% for their first 4-5 years in the industry. This was also widely known to be the market standard for such services.

4. Ablonde Bundar was invited to judge the 'Best Beard Model Contest. On spotting Raymond Shadykumar she immediately fell in love with him. She convinced him to move in with her in Navi Mumbai where she promised to help him hone his talents and make a career in Bollywood. Eager to make use of this opportunity, Raymond Shadykumar readily took up the offer and went along with her.

5. On account of Ms. Bundar's close personal relations with Raymond, he soon started getting a lot of offers from various directors who were Ms. Bundar's acquaintances. Due to his idyllic-but-innocent chocolate boy looks Mr. Shadykumar got a number of offers from various children and teenage family movie productions and started to make a name for himself in that pocket of the industry. Rumor had it that even Dizzney (an internationally known animation and film studio) was hoping to sign him for a couple of their new projects.

6. Chocolate Alexander, CEO of PIPO noticed this trend and wanted to cash in on Mr. Shadykumar's growing fame. He called Ms. Bundar and asked her to get Mr. Shadykumar to sign with PIPO as his personal management agency. Mr. Alexander handed Ms. Bundar a

contract for Raymond and said that he wanted it signed soon. He also suggested that Ms. Bundar would be considered for a promotion on account of the celebrity client she was bringing in.

7. Mr. Shadykumar's profile was currently being managed by Nega Nikora, a small firm in Mumbai. Nega Nikora was charging him a very paltry fee of 10% of his annual income. Ms. Bundar suggested that PIPO being an older and far more renowned firm would be able to network and get Raymond far better projects. After weighing the options and listening to Ms. Blonde's advice he agreed to risk PIPO's greater service fee and sign the contract.

8. On 2 January 2011 Raymond signed the contract with PIPO. With PIPO'S efforts Raymond was soon offered roles in the three mega budget family based Bollywood movies, helping him earn a small fortune.

9. In December 2012 PIPO's Ms. Bakwas Chauhan, the head of Mr. Shadykumar's portfolio at PIPO, was going through various albums and photographs of Raymond and spotted a picture from his high school prom night. The photo was from a private collection of Mr. Shadykumar, which PIPO was granted access to in order to develop a publicity campaign that best suited Mr. Shadykumar's personality and career. She was sure that this was the most stunning and flattering picture of Mr. Shadykumar and that it would attract large amounts of interest and media attention. Even though she knew that as a matter of policy PIPO didn't use print media, Ms. Chauhan was keen to win some personal brownie points with Raymond, and make a name for herself in the Publicity Industry. Thus, she hastily and without consulting anyone else or any of her superiors, sent the pictures to the 'Navi-Mumbai Slimes' (a widely read, but often questionable newspaper in the Navi Mumbai), on Page 3 of the paper (commonly known to report the parties and high life of Navi Mumbai)

10. The next day Navi-Mumbai Slimes came out with a big story on Raymond Shadykumar with the picture sent by Ms. Bakwas Chauhan splashed across the front page. Contrary to Ms. Bakwas' expectations, the picture drew a lot of severe criticism and hate mail. The picture in question showed Raymond standing with a girl on each side and a joint in his hand. "The Parents for Clean Movie Watching Association (PCMWA) carried out an extensive campaign against Mr. Shadykumar denouncing him as a bad influence and example for youngsters in the country. A lot of people forbade their children from watching movies or TV programs with Raymond in it. Viewership of his movies which were currently running dropped by 40%.

11. Even Dizzney announced that they would not be going forward with their contract with him, as his image in the Children and Teenage movie industry had been permanently tarnished.

His parents, shocked at what their son had become, also severed all relations with him and his 'bad habits'.

12. In the meantime Dr. Al Bhasino, a famous Hollywood director and major shareholder in Badass Motion Picture Studios, known for producing 'Wild West' movies was very impressed with Raymond's potential 'bad-boy' image. He thus decided to offer him a multiple-production contract with their Studio.

13. Raymond was extremely upset by this turn of events. He was constantly badgered by hate mails and the niche career he had built for himself seemed to be at a dead-end. His parents' alienation had also hurt him deeply. Even Ms. Bundar was extremely shocked by the public reaction to Raymond. Fearing for her own image in her social circles, she decided to discontinue her relationship with Raymond and asked him to leave.

14. Mr. Shadykumar sent PIPO a letter terminating the contract stating that he only contracted with them in the first place because Ms. Bundar forced him to do so. He also expressed his utter disgust and disappointment with their services.

15. PIPO's legal counsel replied to this letter distancing themselves from the erratic actions of Mr. Alexander, and suggested that Raymond file a case against him instead. She also said that the only way he could get out of the contract was to pay the penalty under Clause 1.9 of the Contract.

16. The District Court issued notice, and is scheduled to hear arguments from both sides on the 10 of August 2013.

ISSUES FOR CONSIDERATION

- a) WHETHER MR. SHADYKUMAR CAN VALIDLY END HIS CONTRACT WITH PIPO WITHOUT PAYING THE PENALTY AMOUNT?
- b) WHETHER PIPO WAS NEGLIGENT AND THUS LIABLE TO PAY COMPENSATORY DAMAGES TO MR. SHADYKUMAR?

SUMMARY OF ARGUMENTS

a) WHETHER MR. SHADYKUMAR CAN VALIDLY END HIS CONTRACT WITH PIPO WITHOUT PAYING THE PENALTY AMOUNT?

Mr Shadykumar can validly end his contract with PIPO without paying the penalty amount of INR 1 crore which is mentioned in the clause 1.9 of the contract.

Under section 16 of ICA, 1872 the contract is induced by undue influence as Mr Shadykumar was forced to sign by Ms Bundar who is an employee of PIPO. According to section 19(A) of ICA, 1872 PIPO has to return all the money it got because of Mr Shadykumar to him.

PIPO clearly violates Section 37 of the ICA, 1872 which states the obligation of parties to contract and section 40 of the ICA, 1872 by not keeping their promise of providing economic benefit to Mr Shadykumar and also ruining his future opportunities. Hence PIPO breaks the clause 1.7 of the contract by violating section 37 and section 40 of the Indian Contract Act.

Because of the actions of PIPO there is a breach of contract and under section of 73 and 75 of ICA, 1872 Mr Shadykumar who suffered because of the breach is entitled to receive compensation of loss or damage from PIPO. Mr Shadykumar not only lost his major projects but his image was also ruined. A lot of people forbade their children from watching movies with Shadykumar in it. He was considered a bad influence and his viewership dropped by 40%. He received hatred emails and his relation with his parents was also ruined. PIPO is responsible for the suffering caused to Mr Shadykumar, since their actions ruined his life and his career. Hence under section 74 of Indian Contract act PIPO has to give the penalty amount to Mr Shadykumar.

According to section 182 of ICA, 1872, Mr Shadykumar is the “principal” and PIPO is the “agent”, under section 191 Ms Chauhan is “sub-agent”. Under section 192 of ICA, 1872 PIPO is responsible for the actions of Ms Chauhan, which led to bad publicity of Mr Shadykumar and ruining his career. Under section 211 of ICA, 1872 it is the duty of PIPO to promote Mr Shadykumar and bring him projects that prove economically beneficial to him but instead PIPO has ruined Mr Shadykumar’s image and has taken away major projects like Dizzney from him and hence have failed to perform their promise .

In view of above sections appellant has the right to terminate the contract due to fundamental breach to his interest and due to loss of faith and claim compensation of

INR 1.5 crore as well as the termination amount of INR 1 crore from PIPO and apart from that file a suit against the respondent for damage caused to his reputation and future financial loss.

b) WHETHER PIPO WAS NEGLIGENT AND THUS LIABLE TO PAY COMPENSATORY DAMAGES TO MR. SHADYKUMAR?

People Involved in Promoting Others Ltd. (PIPO) has turned out to be negligent based on the following facts

Ms. Bakwas Chauhan, head of Mr. Shadykumar's portfolio at PIPO was granted the access to Mr. Shadykumar's private collection. Hence the only method of obtaining the picture of Mr. Shadykumar was via PIPO.

PIPO had a strict internal policy of not using print media. Even though, a picture of Mr. Shadykumar's private collection was published in the newspaper.

PIPO failed to institute proper checks and balances in its organisation, thus resulting in Ms Bakwas Chauhan , staff employed by PIPO to resort to this breach and damaging act

As a result, Mr Shadykumar suffered huge defamation and loss of Goodwill.

According to Law of Torts under Common Law Of Indian Constitution, Mr. Shadykumar is liable to receive compensation.

These laws come into enactment under the Article 372(1) of The Constitution Of India.

PIPO's actions has led to loss and damage to Mr. Shadykumar's career. Hence Mr. Shadykumar should be given a compensation of INR 1.5 Cr from PIPO.

WRITTEN SUBMISSIONS

a) WHETHER MR. SHADYKUMAR CAN VALIDLY END HIS CONTRACT WITH PIPO WITHOUT PAYING THE PENALTY AMOUNT?

Mr Chocolate the CEO of PIPO, wanted Mr Shadykumar to sign the contract because he wanted to take advantage of the rising popularity of Mr Shadykumar. So he told Ms Bundar who was close to Mr Shadykumar to make him sign the contract. Hence Mr Shadykumar was forced to sign the contract and by

Section 16: A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

By Section 19(A): When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.

The company PIPO has to return all the money it got because of Mr Shadykumar

According to the clauses of the contract

1.7 PIPO shall provide publicity management services publicity and public relations, in such a manner that will prove economically beneficial to Mr Shadykumar both now , and for future business .

1.9 This contract between Mr Shadykumar and PIPO is for a term of four years from date signing. During this period, a premature termination of the contract , by either party , will result in the defaulting party being liable to pay a sum of INR 1 crore.

PIPO has taken the responsibility of publicising Mr Shadykumar and has to keep the promise which is mentioned in clause 1.7 of the contract. But by ruining his image PIPO has failed to keep its promise and breaking the section 37 and 40 which are

Section 37: Obligations of parties to contracts

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisor in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Section 40: Person by whom promise is to be performed

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contain in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

By failing to perform their duties PIPO has caused a breach in the contract, hence under

Section 73: Compensation of loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation: In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

Section 75: Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non-fulfilment of the contract.

Section 74: Compensation for breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for

**b) WHETHER PIPO WAS NEGLIGENT AND THUS LIABLE TO PAY
COMPENSATORY DAMAGES TO MR. SHADYKUMAR?**

Ms Bakwas Chauhan who was managing Mr Shadykumar's portfolio, is an employee of PIPO. Here PIPO is the agent, Mr Shadykumar is the principal and Ms Chauhan is the sub-agent, according to

Section 182: "Agent" and "principal" defined or to represent another

An "agent" is a person employed to do any act for another, who is so in dealings with third persons. The person for whom such act is done, or represented, is called the "principal".

Section 191: "Sub-agent" defined

A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Her actions led to ruining of Mr Shadykumar's image and his career because of which he decided to terminate the contract. PIPO has to take responsibility of her action because under the

Section 192: Representation of principal by sub-agent properly appointed

Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agents: The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility: The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Ms Chauhan opted to use printed media to provide publicity to Mr Shadykumar thus going against the strict policy of her company PIPO which had a serious impact on his career. Hence because of the mistake and negligence of PIPO, it should pay for the loss and damage of Mr Shadykumar.

Section 211: Agent's duty in conducting principal's business

An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and if any profit accrues, he must account for it.

CONCLUSION

WHEREFORE it is concluded in the light of the circumstances and facts of the case, issues raised arguments advanced and authorities cited that this Hon'ble Court may be pleased to:

- a) Hold PIPO negligent and liable for "Breach of Contract."
- b) Dismiss the counter claim of PIPO and the claim of Mr. Shadykumar be allowed and be granted the sum of INR 1 crore as per the contract clause 1.9
- c) Grant compensation of INR 1.5 Cr to Mr. Shadykumar.

and pass any other order, direction, or relief that it may deem fit in the best interests of justice, equity and good conscience.

Sd/-

(Counsel for the Appellant)