
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 RESPONDENT

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LIST OF ABBREVIATIONS

ABBREVIATIONS	FULL FORM
AAEC	APPRECIABLE ADVERSE EFFECT ON COMPETITION
AC	APPEAL CASES
ICA	INDIAN CONTRACT ACT
PIPO	PEOPLE INVOLVED IN PROMOTING OTHERS
SC	SUPREME COURT

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

CASE	CITATION
Maula Bux v Union of India ¹¹ on 19 August 1969.	1970 AIR 1955, 1970 SCR(1) 928
Jalpa Pradeepbhai Desia v Bar Council Of India on 22 nd September, 2017	C/LPA/915/2017
Government Of Andhra Pradesh v Y.S Vivekanand Reddy on 2 September, 1994	AIR 1995 AP 1, 1994 (3) ALT 179
Rashtriya Mill Mazdoor Sangh v National Textile Corporation on 24 November, 1995	1996 AIR 710 1996 SCC (1) 313

B. STATUTES

1. The Indian Contract Act, 1872
2. Constitution of India
3. The Narcotic Drugs and Psychotropic Substances Act, 1985

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 SECTION 11, SECTION 74, SECTION 196 and SECTION 197 OF THE INDIAN CONTRACT ACT, 1872 and SECTION 27 of THE NARCOTIC DRUGS and PSYCHOTROPIC Substances Act, 1985

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 Wasseyapur 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 has terminated his contract prematurely and is liable to pay 1 Crore rupees as compensatory charges. None of the clauses were breached and PIPO had abided by the clauses and has provided with publicity services which are economical beneficial to its clients. PIPO is not liable to pay compensatory charges for moral damage as it has not been involved in that matter in any way.

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

PIPO was not negligent and is not liable to pay any compensatory losses to Mr. Shadykumar. PIPO has not breached any clauses of the contract. Mr. Shadykumar gave access to his personal pictures and PIPO had the authority to use them in whatsoever manner. PIPO has policy of not using print media but Ms. Chauhan had done so without consulting her superior and thus by lifting the corporate veil she is one at fault for the change done to the public of Mr. Shadykumar and not PIPO. Although PIPO has a strict internal policy of not using print media however PIPO's executives can remain fairly autonomous.

WRITTEN SUBMISSIONS

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

The claim for money was filed by Mr. Raymond Shadykumar against PIPO seeking damages for the losses he suffered because of the negligent way in which his publicity was handled. In the same suit PIPO filed a counter claim asking for the penalty amount of 1 Crore as per the contract clause 1.9.

The Indian Contract Act, 1872, Section (11) of Chapter II mentions the competency of person for contract which is read as follows:

“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject”

The Indian Contract Act, 1872, Section (11) of Chapter II provides us insight that Mr. Shadykumar had satisfied the conditions and hence was competent to sign the contract. Mr. Shadykumar had signed the contract weighing his options and took the step of signing the contract with regard to his self-decision.

The contract was not breached by PIPO on any grounds as per the clauses mentioned in the of Annexure 1: Extracts of Contractual Clauses.

The Clause 1.9 of Annexure 1: Extracts of Contractual Clauses is read as follows:

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

As per the annexure of the contract clause 1.9 the agreement is for 4 years from the date of signing.

Date of signing: 2.1.11

After 4 years the contract gets completed on 2.1.15

Currently, the contract has not been completed hence, Mr. Shadykumar is liable to pay the compensation as stated in the Clause 1. 9 of Annexure 1: Extracts of Contractual Clauses due to breach of contract.

Mr. Shadykumar can only validly end his contract with PIPO if and only if he pays the compensatory charges.

The Indian Contract Act, 1872, Section (74) can be read as follows:

“When a contract has been broken, if a sum is named in the contract as the amount to 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 or 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.”

The responsibility of PIPO is to provide work for Mr. Raymond Shadykumar whether in Bollywood or Hollywood. Though Mr. Raymond Shadykumar lost work from Dizzney, he was still given an offer of a multiple-production contract by Mr. Al Bhasino, a famous Hollywood director. Hence there is no financial loss for Mr. Raymond Shadykumar PIPO is only a management agency that caters publicity needs of the people in show business and are not responsible for the client’s personal life.

Mr. Raymond Shadykumar gave the reason for premature termination in only one line that he signed the contract without reading only due to force of Ms. Bundar.

The important thing here is that there was no complaint by Mr. Raymond Shadykumar after 2.1.11 about the pressuring or force by Ms. Bundar up till the date of dispute which shows that Mr. Raymond Shadykumar tried to take advantage of the situation and avoided his liability and kept hiding behind Ms. Bundar for his mistake.

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

As per the Annexure 1: Extracts of Contractual Clauses, Clause 1.7 is read as follows:

“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.”

As stated in Clause 1.7, PIPO has stated that it would provide publicity services for economic benefit. It does not mention whether the publicity has to be negative or positive. It does not promise that PIPO would maintain his ‘idyllic-but-innocent chocolate boy looks’. Due to PIPO’s influence Mr. Shadykumar got recognition by Navi-Mumbai Slimes with his article on the very first page of their newspaper. So, Mr. Shadykumar got the publicity services that was promised by PIPO.

Now, regarding the economic losses. Even though, he lost his contract to Dizzney, he was provided with a Multi-Production contract by Badass Motion Picture Studios which proves he did not receive any economic losses due to change in his public image.

PIPO had abided by all the clauses mentioned in the contract and did not breach any of the clauses. Things like his parents severing his relationship with him, hate mails stated by Mr. Shadykumar isn’t the responsibility of PIPO.

Hence, PIPO is not liable to pay any compensation for those damages.

Regarding, Mr. Shadykumar’s public image being modified. It Mr. Shadykumar who had held a joint in his hand.

Joint: A handmade cigarette which is often known to contain something more than just tobacco.

As per the section 27 in The Narcotic Drugs and Psychotropic Substances Act, 1985

“ Punishment for consumption of any narcotic drug or psychotropic substance.- Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,- (a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by

the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and (b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.”

It was Mr. Shadykumar’s fault for his consumption and usage of drugs which modified his public image.

Secondly, it was Ms. Bakwas Chauhan, the head of Mr. Shadykumar’s portfolio at PIPO who had decided to publish his image without the consent of her superiors even though it was against the policy of PIPO to use print media.

Lifting of Corporate Veil defined

“A company is a juristic person, but in reality, it is a group of people who are the beneficial owners of the property of the corporate body. Being an artificial person, it (company) cannot act on its own, it can act only by natural persons. The doctrine of lifting the veil can be understood as the identification of the company with its members.”

The Indian Contract Act, 1872, Section (196) can be read as follows:

“Right of person as to acts done for him without his authority, effect of ratification -

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.”

The Indian Contract Act, 1872, Section (197) can be read as follows:

“Ratification may be expressed or implied -

Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.”

It is Ms. Chauhan’s fault and not PIPO’s for the change that done to Mr. Shadykumar’s public image as she did not abide by the policies of PIPO and did not consult her superiors. As per

Section 196, of the Indian Contract Act. PIPO condemns the actions of Ms. Chauhan and disowns her acts as the Portfolio Head of Mr. Shadykumar.

In an interview on national television, Raymond said that he wished he had never signed such an unfair contract which he compared to a "deal with the devil". 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. If it was an unfair contract, Mr Shadykumar shouldn't have signed it in the first place and he filed his suit when the conditions seemed favourable after he was offered a multi-production contract and did not wish to pay his cut to PIPO and was looking to take advantage of situation by prematurely on moral grounds.

So, the claim of Mr. Raymond Shadykumar should be dismissed and counter claim of PIPO be allowed and be granted ₹1crore from Raymond as per the contract clause 1.9

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) Not hold PIPO negligent and liable for "Breach of Contract."
- b) Accept the counter claim of PIPO and dismiss the claim of Mr. Shadykumar
- c) Grant PIPO the sum of INR 1 crore by Mr. Shadykumar as per the contract clause 1.9

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 Respondent)