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**ANALYSIS OF GAJANAN MORESHWAR PARELKAR V.  
MORESHWAR MADAN MANTRI (1942) 44 BOMLR. 703 &  
INSIGHT ON THE COMMENCEMENT OF LIABILITY  
UNDER THE CONTRACT OF INDEMNITY**

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**ABSTRACT**

Contract act was usually formulated and implemented by the British in India, which was rather in for the rains to for the development of the legal system, and the society was modified in the course of time. The synopsis of the case can be considered in the manner that it was meant to be a simple case of contract breach or an Indian contract that can be claimed by the plaintiff from the defendant. There had been a number of circumstances and activities created by the defendant for whom the plaintiff was made liable therefore, the plaintiff had to move to the court for clearing out his liabilities and play me its inability towards the defendant. This contradiction led the plaintiff to move to the court to release himself from all kinds of liabilities that are due and alleged by the defendant over the course of time. Therefore, the issue was brought before the court with appropriate documentation and the contextual relation that is created between the plaintiff and defendant based on the principle of indemnity where the plaintiff accused the defendant to beat the Indian with fire and claim himself discharge of all kinds of liabilities.

**Keywords:** Contract Act, Breach of Contract, Liabilities and Principle of Indemnity.

## Introduction

The Indian contract act has been the framework or the groundwork for different kinds of contractual relationship that are formed over the years. Contract act was usually formulated and implemented by the British in India, which was rather in for the rains to for the development of the legal system, and the society was modified in the course of time. The Indian contract act also gives a set of principles that run different kinds of contractual relationships of different professionals in industries, which are based on considerations and service for good related prospects. In a particular case the principle of indemnity that can be claimed under section 124 of the contract act is being in question, which was rather, an in furtherance was moved to the court for decisions. This case was left as the most important it all leading case in the history of contract cases in India.

## Synopsis

The synopsis of the case can be considered in the manner that it was meant to be a simple case of contract breach or an Indian contract that can be claimed by the plaintiff from the defendant. The case moved to the court with simple argument and civil litigation that educated in a matter of documentation and proofreading based on the pieces of evidence that are produced and arguments that are advanced. Therefore, in consideration of the facts of the case arguments advanced evidence is produced and the merit of the case the court decision was passed that raised different questions regarding section 124 of the Indian contract act and whether the amendment and the consolidation of the act exhaustive of the laws of contract<sup>1</sup>. The collision can also be given an observation that cases when liability arises because of something done or indifferent night at the request of the person the section that is mentioned in the contract does not subsequently conduct but the liabilities can be passed with prior to the date of the contract that is actually mentioned in the deed.

## Background

The background of the case could be understood from the facts and circumstances that followed to the decision made by the plaintiff and the defendant in regards to the contract that was kind in consideration to the amount that was made in between them. There had been a number of circumstances and activities created by the defendant for whom the plaintiff was made

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<sup>1</sup> Asimit, A.V., Boonen, T.J., Chi, Y. and Chong, W.F., 2021. Risk sharing with multiple indemnity environments. *European Journal of Operational Research*.

understood to be liable therefore, the plaintiff had to move to the court for clearing out his liabilities and play me its inability towards the defendant. The defendant had made its intentions before the court where the court accepted the arguments in favour of both the parties to make his decision justifiable according to the adjudication in regards to section 124 of the Indian contract act. Lastly, it should be regarded that any dispute regarding the contractual issues relies on compensation or for the performance of the contract that is breached by any of the parties that are found at the end of the process of adjudication.

### **Facts of the case**

The facts of the case should be regarded as the issue that is driving the point of contradiction between the plaintiff and the defendant was the plot of land on a lease that was taken from the municipal corporation of Mumbai<sup>2</sup>. The plaintiff who got a plot of land on lease from the initial corporation of Mumbai allowed the defendant to erect a building on that land. The amount that was incurred from a supplier and it was done at wise allocation for the same purpose. In the particular locations, the plaintiff mortgages the part of the land to the supplier plaintiff on the defendants request to transfer the land to the dependent on the consideration that the plaintiff would be a discharge of all the liabilities arising out of the land. The promise that was made by the plaintiff to the defendant is the main issue of contradiction between these two parties and this promise was failed to add her according to the considerations that were made in accordance with the contractual relationship that is created between these two parties. In fact, the plaintiff filed a suit for discharge of the liabilities on his allergy that the defendant would be the indemnifier<sup>3</sup>.

### **Issues**

According to the facts of this case, it can be regarded that the issue of contradiction was mainly regarding the plot of the land that was taken into lease from the population of Mumbai by the plaintiff. Inference to the movement of this case it can be regarded that the plaintiff had been in accordance to the development of the land give the land into the position of the defendant. The defendant had done serious activity is of misrepresentation of the fact and alligator measures that held the defendant liable of many of the issues that need to be resolved. This

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<sup>2</sup> Zhu, J., 2019. Study on the Effective Methods of Legal Issues of Third Party Logistics Indemnity in China.

<sup>3</sup> Behrouzizad, H.R., Almasi, N.A. and Qanavati, J., 2021. Analysis of General Theory of Indemnity in Contracts Based on Economic Attitude: A Comparative Study of Common Law. *Religious Researches*, 17(2), pp.561-587.

contradiction led the plaintiff to move to the court to release himself from all kinds of liabilities that are due and alleged by the defendant over the course of time. Therefore, the issue was brought before the court with appropriate documentation and the contextual relation that is created between the plaintiff and defendant based on the principle of indemnity where the plaintiff accused the defendant to beat the Indian the fire and claim himself discharge of all kinds of liabilities.

### **Contentions**

According to the contents of this case, the governing principle of the statutory principle that is been regarded here is the Indian contract act ought to be more specific the section 124 of the Indian contract act that talks about that indemnity claim. According to the principle of Indemnification, it can be regarded as a characteristic of insurance that provides personal protection against the loss of a preeminent. This will be replaced when the initial when it is insured back to where it was financially prior to the loss without you are adding and the analysing the initial any kinds of reduction in the price<sup>4</sup>.

In this case, the governing sections are section 124 of the Indian contract act that give the directive provisions as the promise promises in order to safeguard the other from any kind of damages that can be caused to him. The promises from also promises that there would be no protection from any damage that may be caused since there is no damage to the plaintiff as yet the plaintiff here, in this case, is not entitled to sue that indemnifier.

The contentions continued in the form the liability of the plaintiff is not absolute but is contingent on the contract, it was also mentioned that there is nothing to show that if the mortgagee was to be managed to enforce his mortgage and the property was also sold would be any differentiated for which the plaintiff would be liable. Arguments that are advanced in this content was made before the high court in order to maintain particular solidarity of the case that can be regarded as a proper position of the contract in regards to both parties<sup>5</sup>.

### **Findings**

According to the findings of the contract case, it could be regarded that the plaintiff and the

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<sup>4</sup> Brown, D., Robertson, J. and Sullivan, L., 2019. Has Comparative Fault Swallowed Ryan? the Future of Implied Contract/tort Indemnity in Maritime Law. *Southern Journal of Business and Ethics*, 11, pp.110-132.

<sup>5</sup> Han, W., 2018. On If an Insurance Policy Is a Perfect Contract of Indemnity in Marine Insurance. *China Legal Sci.*, 6, p.77.

defendants both have some of the legal issues and legal contradictions made due to the performance of the contract. There had been oral considerations between both the parties and the other considerations which is not defined under any of the legal documents signed or produced before the court. From the decision of the court, the findings could be analysed in a form that act is not exhaustive of the law of contract under section 124 that these only with one particular kind of indemnity in which the loss is caused by the conduct of the Indian fire himself out of any person other than that the indemnifier. It could also be found that 124 talks about subsequent conduct but the liabilities were passed that is prior to the date when the contract was actually entered into force. Therefore according to this contract all the acts were done nearly on request and without any consideration and hence when not binding. From this decision on the judgement that was passed it could be found that it had been a negligible act of non-legal perspective performed by both the parties are due in the form of legal contingency.

### **Reasoning**

The reasoning that was provided by the court under the mortgage and the charge that is the personal covenant by the plaintiff is rupees amount due and it would be open to the model was used to the plaintiff on the personal covenant reserving the right under the security. This decision was ineffective in the matters of the contract if the contractual terms were made to document and not in the model format, which was not binding, by any of the parties in the contract. Therefore, it can be regarded that the reasoning behind the decision-making was absolute and unconditional in regards to the plaintiff on the personal covenant-19 the principles of equity can be applied here to relieve the plaintiff from all the liabilities can also be a part of the clause of indemnity under the section 124 of the Indian contract act<sup>6</sup>.

### **Disposition**

Under the principle of legal disposition, it can be regarded that it transferring to the care of the position of one person to another with a party with alienation order of giving of the property is a process. It can be added here in this context, where the plaintiff has given the defendant the possession of the land and to perform activities that relate to the development of the construction site in that area<sup>7</sup>. Under these circumstances it can be regarded the final statement

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<sup>6</sup> Isdale, W. and Walpole, S., 2020. Indemnity of a reasonable settlement: Replace or otherwise make good. *Proctor, The*, 40(4), pp.34-36.

<sup>7</sup> Podolak, G.D. and Casanova, T., 2018. Contractual Indemnity Anti-Indemnity Statutes and Additional Insured Coverage. *The Brief*, 47(4), pp.30-39.

of a matter with reference to the decisions announced by any court and the judge's ruling is commonly referred to as the disposition which is given here by the court as a position where the plaintiff would be liable in a form to get rid of the liabilities. These are under the form of documentation in this case<sup>8</sup>. The judgement can also be followed in a form where the law of contract defines that, any loss that is caused by the conduct of the defendants and the liability that arises because of something done by the defendants at the request of the plaintiff. Therefore, under these conditions the plaintiff will not be liable for any kinds of liabilities that are due in the course of time before the court.

### **Critical analysis**

In the process of the critical analysis of this case, it can be regarded that there have been internal matters between the plaintiff and defendant that is concerning this contract and the claim of Indian bounty was made after considerations were hampered between the parties<sup>9</sup>. The considerations that were mainly due to this matter were oral ulcers that were done in regard to the plot of land that was the matter of conflict between the parties. The court has been where speculation towards the matters is and decided the case keeping in mind all the legal issues and the contractual terms that have been in between these two parties. The decision was mainly keeping in mind section 124 of the Indian contract act that only deals with one particular kind of indemnity but it also talks about the subsequent conduct. However, in this particular situation the liabilities were before the date of the contract was actually entered on, therefore the plaintiff is not liable and section 124 cannot be applied here. Lastly, it can be regarded that the case is important for the application of such matters that is due to the court and for the understanding of the indemnity of the contract, which is the important principle in this matter. Therefore, the analysis also continues in this regard that there have been multiple issues weeded in the matters that needed to be taken into consideration for the adjudication process in the overall scenario<sup>10</sup>.

### **Conclusion**

In conclusion, to the above case it can be regarded that, it is a simple case of the indemnifier

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<sup>8</sup> Weston, H., 2018. Transactional Risk and Contractual Risk Accommodation in Contract Drafting: More Than an Indemnity Paragraph. *Transactions: Tenn. J. Bus. L.*, 20, p.673.

<sup>9</sup> Syatchikhin, A.V., 2020. INDEMNITY COMPENSATION FOR LOSSES AND LIQUIDATED DAMAGES: THE DIFFERENCE OF INSTITUTIONS IN ENGLISH CONTRACT LAW. *Russian Law: theory and practice*, (1), pp.68-77.

<sup>10</sup> Srivastava, D., 2019. Principle of Indemnity in Fire Insurance: A Critical Analysis. *Journal of Banking and Insurance Law*, 2(1), pp.32-40.

on the breach of contract or contractual terms that is based on the consideration that exists between both the parties. In the process of the decision-making and handing over the charges, the plaintiff has been resilient to a different dependence in the initial terms and conditions where he has been allowed an allowance in order to provide a clear hand towards the person to move in the form of the construction site. Therefore, it can be regarded that there has been negligence on the part of the defendant in the process of conducting the business and going outside the contractual terms that is signed between the parties. In the latter part of the case, it was also observed in view of the arguments that there had been a number of loopholes in the contractual terms and the allowances were provided under consideration as without any binding notices, which cannot be held liable in the court. Lastly, it can be held that the case is a leading matter of misconduct and misrepresentation of the contractual terms under section 124 of the Indian contract act. It can be regarded that there has been a consensus followed by matters of contradiction between both the parties in order to perform a particular task due to the performance of the contract.

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