

**CASE COMMENT: BHAGWANDAS GOVERDHANDAS KEDIA V  
GIRDHARILAL PARSHOTTAMDAS AND CO. AND OTHERS**

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**Niharika Singh Rajawat\***

## **INTRODUCTION**

Salmond states, “Contract is an agreement creating and defining obligations between parties”. In the views of Sir Fredrick Pollock, “Contract is every agreement and promise enforceable at law is a contract”. Similarly, section 2(h) of the Indian Contract Act 1872 defines a contract as “an agreement enforceable by law”. The term ‘contract’ denotes the legal obligation parties create towards each other for fulfilling their respective promises. To constitute a contract, an agreement must be made between two or more persons intended to be and is enforceable by law. To form an agreement, there must be acceptance of the offer made by one party to the other to do or to abstain from doing an act. According to Section 2(b) of the Indian Contract Act<sup>1</sup>, “When the person to whom the proposal is made signifies his assent to that, the proposal is said to be accepted. A proposal, when accepted, becomes a promise”. Communication of proposal and acceptance are the crucial aspects of the contract. Under section 4 of the Indian Contract Act, communication of an offer made by the offeror is complete regarding the knowledge of the person to whom it is made. For example, Ram offered Shyam to sell his watch for 2000 rupees. The communication of the proposal is complete against Ram when it comes to the knowledge of Shyam. Likewise, the communication of acceptance is completed against the offeror when it is in the way of transmission to him to be out of the control of the offeree. Illustrating the above statement, the communication of acceptance is completed against the offeror when the offeree posts his acceptance letter as out of his power.

Similarly, the communication of acceptance is completed against the offeree when the offeror receives the letter of acceptance. In the case of communication by way of post, the acceptance is completed when the offeree puts the post in the course of transmission. If a telegram accepts an offer, the contract is concluded when the telegram is dispatched. Therefore, the place of the contract is where the acceptance telegram starts its journey. These provisions were made when there were no technological advancements, but the situation changed when communication started happening through the telephone rather than post. In the case of instantaneous

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\*BA LLB, FIRST YEAR, DR. BHIMRAO AMBEDKAR UNIVERSITY, JAIPUR.

<sup>1</sup> The Indian Contract Act 1872, s 2(b)

communication, where parties are in direct communication by telephone or telex, the question arises: what will be the place of the contract? This dilemma was resolved by the English case law *Entores Ltd v Miles Far East Corporation*<sup>2</sup>. In India, the principle of the *Entores* case has been endorsed by the Supreme Court in *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co.*<sup>3</sup> This paper, through the ambit of this case, will try to inculcate that the place of formation of contract and the completion of acceptance by way of telephone and telex.

### **FACTS OF THE CASE**

Let's take a look at the facts of the case. On July 22nd, 1959, Girdharilal Parshottamdas of Khamgoan entered into a contract over the telephone to supply cotton seed cakes worth rupees 31,150/- to Bhagwandas Goverdhandas Kedia (plaintiff) of Ahmedabad. This contract took place through verbal telephonic communication. The plaintiff brought an action against the Kedia Ginning Factory and Oil Mills (defendants) for failing to supply cotton seed cakes as per the aforementioned agreement. The suit was filed by the plaintiff in the City Civil Court of Ahmedabad for the breach of contract. The question was whether the contract resulted in a contract at Khamgoan or Ahmedabad. The defendants contended that the Ahmedabad Court had no jurisdiction because the contract was completed by the acceptance of an offer by telephone at Khamgoan. On the other hand, the plaintiff contended that the contract was struck when the acceptance was communicated to him (he heard the acceptance) at Ahmedabad, and therefore, the suit was within the ambit of the jurisdiction of Ahmedabad Court. The city court of Ahmedabad held that it had jurisdiction as the acceptance of the offer was intimated to the offeree at Ahmedabad, and this is where the contract was made. The Appellants (defendants) filed a revision application in the High Court of Gujarat, which was rejected. Then, the appellants adopted an appeal to the Supreme Court with special leave.

### **THE LEGAL ISSUES RAISED**

Which court had jurisdiction over the suit under the Indian Contract Act of 1872?

At which place the contract was formed, whether at the place of acceptance or at the place where acceptance was received?

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<sup>2</sup> *Entores Ltd v Miles Far East Corporation*, [1955] 2 QB 327

<sup>3</sup> *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co.* [1966] AIR 543

## ARGUMENTS

### Contentions of Appellant

- In the case of a contract by telephone, only the court within whose territorial jurisdiction the acceptance of the offer is spoken by telephone has jurisdiction to try any suit regarding the contract.
- Sections 3 and 4 of the Indian Contract Act of 1872 are applicable in determining the place where a contract is made and not the decisions of the UK court.

### Contentions of Respondents

- The making of an offer is a part of the cause of action in a suit for damages for the breach of contract. Hence, the court in whose territorial jurisdiction such an offer was made can try such a suit.
- The contract is formed where the acceptance of the offer is intimated to the offeree. Hence, the court in whose territorial jurisdiction such acceptance of the offer was intimated can try such a suit.

## JUDGEMENT

### Majority Judgement

A contract comes into existence when it is accepted, and the acceptance of the offer is intimated through an external manifestation by speech, writing, or other acts recognized by law. The judges who ruled over the case were Shah J, Hidayatullah J (Afterwards CJ), and Wanchoo J. The Judges Shah and Wanchoo said that making an offer at a place that has been accepted elsewhere does not form a part of the cause of action in a suit for damage for breach of contract. The Supreme Court cited the cases *Baroda Oil Cakes Traders v Purshattam Naravandas and Anr.*<sup>4</sup> and *Sepulchre Brothers v Sait Khusal Das Jagjivan das Mehta*<sup>5</sup> while justifying their decision. Though sections 3 and 4 of the Contract Act speak about the communication, acceptance, and revocation of a proposal and acceptance respectively, the act does not expressly deal with the place where a contract is made, and in determining the same, the

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<sup>4</sup> *Baroda Oil Cakes Traders v Purshattam Naravandas and Anr.* [1954] Bom 1137

<sup>5</sup> *Sepulechre Brothers v Sait Khusal Das Jagjivan das Mehta* [1942] Mad 243

interpretation clauses in section 2 of the Act must be taken into consideration<sup>6</sup>. A majority of judges preferred to follow the English rule as laid down in *Entores Ltd. V Miles Far Eastern Corp.*<sup>7</sup> and saw no valid reason for extending the post office principle to telephonic communication. Shah J felt that “Section 4 does not imply the contract is made qua the proposer at one place and qua the acceptor at another place. The contract becomes complete when the acceptance of the offer is intimated to the offeror”. But, he continued to say that the draftsman of the Indian Contract Act could not have envisaged the use of the telephone because it had not yet been invented and, therefore, the words of the section should be confined to communications by post. The court held that the exception of commercial expediency applicable to contracts formed via post does not apply to contracts made through telephone. Hence, the Hon’ble Court held that the Trial Court was right in taking that a part of the cause of action arose within the jurisdiction of the City Civil Court of Ahmedabad, where acceptance was communicated by telephone to the respondents. The was dismissed with costs.<sup>8</sup>

### **Dissenting Opinion of Justice Hidayatullah**

J Hidayatullah had a dissenting opinion in the case. According to him, indeed, Lord Denning in the *Entores Ltd v Miles Far East Corporation*<sup>9</sup> held that acceptance through telephone was governed by the principles of oral acceptance wherein the parties were in the presence of each other and the principles of acceptance sent by post could not be applied. He further added that the law under consideration was formed when wireless, telephone, Telstar, and Early Bird were not explored. As time has passed, instantaneous communication over large distances has become easier due to inventions, and the language of our current law does not fit the new conditions; it can be altered to reject the old principles. In the contradiction, it is not possible to go against the language of the law. In the concerned case, both sides agreed that the acceptance was properly heard in Ahmedabad. The acceptor was in a position to say that the communication of acceptance was completed when he put his acceptance in the course of transmission to the proposer as to be out of the power of the acceptor as per section 4 of the Indian Contract Act of 1872. Therefore, he cannot revoke his acceptance after that. According to J. Hidayatullah, the time gap was probably so short that one could say that the words were

<sup>6</sup> Supreme Court of India ([judis.nic.in](http://judis.nic.in), 30<sup>th</sup> August 1965)< <https://main.sci.gov.in/jonew/judis/2902.pdf> > accessed 15<sup>th</sup> June, 2024

<sup>7</sup> *Entores Ltd v Miles Far East Corporation*, [1955] 2 QB 327

<sup>8</sup> Supreme Court of India ([judis.nic.in](http://judis.nic.in), 30<sup>th</sup> August 1965)< <https://main.sci.gov.in/jonew/judis/2902.pdf> > accessed 15<sup>th</sup> June, 2024

<sup>9</sup> *Entores Ltd v Miles Far East Corporation*, [1955] 2 QB 327

heard instantaneously. Still, if we are putting new inventions in a frame of our statutory law, we must say that the acceptor, through the telephone, put his acceptance in the course of transmission to the proposer. Hence, the contract was made in Khamgaon and not Ahmedabad.

### **CRITICAL ANALYSIS**

The judgment delivered in this case was the turning point in the history of contracts. It not only gave clarity in accepting contracts through telephone but also accepted instantaneous communication through electronic means with open hands. The judgment delivered by the judges stands as a demonstration of the judiciary's foresight and adaptability in addressing the distinction of contract law in the face of evolving communication technologies. The Supreme Court's ruling provides clear guidance on jurisdictional issues, ensuring that the contractual obligations are fairly adjudicated. By recognizing the instant nature of telephone calls, the court has set a yardstick that aligns legal principles with the realities of modern communication methods. While the judgment in the concerned case is largely seen as progressive and adaptable, it is not without criticisms. Firstly, the judgment does not mention e-contracts, a type of contract the use of which is skyrocketing. Secondly, it does not clarify the ambiguity arising in foreign agreements made over the telephone and, most importantly, where the disputes are to be heard. Thirdly, the court focused only on the communication aspect of the contract formation and overlooked other important elements, such as the intention of the parties and the context in which the communication took place. Furthermore, the malicious obstruction by a third party in the contract should be taken into account legally. Last but not least, the judgment's silence on how to handle situations in which an offeree accepts a contract under coercion from a third party poses legal ambiguity issues.

### **CONCLUSION**

Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co<sup>10</sup>. is a landmark case in the history of contract law. The judgment delivered in the case has been pivotal in shaping the understanding of contract through telephonic conversation. The case specifically addressed issues about when and where a contract is complete in modern communication methods. The court tackled the jurisdictional issue in contracts made through telephone by determining that the contract is formed where the acceptance is heard. Hence, the location of the proposer when they hear the acceptance becomes the relevant jurisdiction for legal disputes. This was a

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<sup>10</sup> Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co. [1966] AIR 543

significant clarification as it provided a concrete rule to determine jurisdiction. The judgment distinguished between contracts formed through instantaneous communication methods, for instance, telephone, and those formed through non-instantaneous methods, like postal communication. The judgment focused on the importance of clear and immediate communication in commercial transactions. By establishing that acceptance is effective upon being heard by the offeror, the court backed the need for efficiency in business transactions. This ruling helps both parties be on the same page regarding the exact moment a contract is formed, reducing potential disputes. In a nutshell, this case represents a crucial milestone in Indian contract law, particularly regarding the formation of contracts via telephone conversations. Clarifying the location where such contracts are completed, the Supreme Court's judgment has provided a foundation for understanding contractual relationships in an era of instantaneous communication. Though the decision has faced few criticisms, it remains a critical reference point for legal principles governing modern commercial transactions.

