

**CASE: GAJANAN MORESHWAR PARELKAR VS MORESHWAR MADAN
MANTRI**

Tirath N Shah*

CITATION

AIR 1942 BOMBAY 302

COURT

Bombay High Court

BENCH

Chagla. J.

INTRODUCTION

The subject of contract law is considered one of the most important fields of study in the legal discipline. The subject of the law of contracts has contributed a lot to human society, the law of contracts has emerged from the mercantile law which is the law that deals with transactions, agreements, and so on. In the Indian legal system, the Indian Contracts Act of 1872 deals with the law of contracts, the provisions of this act deal with the various types of contracts, offences, provisions, exceptions, definitions, etc.

The law of contracts covers many such aspects of the society that if not covered or addressed may cause havoc in the working of the society. The law of contracts as a field of study has seen its share of development through a series of landmark judgements that have raised various questions about various subject matters of the act itself. It is through these cases that the law of contracts develops and adapts to society as it progresses.

One such case is the case of Gajanan Moreshwar vs Moreshwar Madan is one of the landmark cases that deals with one of the important provisions of the act which is Indemnity. The case further clarifies the provisions related to implied indemnity of contracts.

*CHRIST (DEEMED-TO-BE-UNIVERSITY) BANGALORE.

As discussed earlier, the case of Gajanan Moreshwar Vs Moreshwar Madan is a landmark judgment related to the concept of implied indemnity. This case can be analysed using the FILAC method which analyses every detail of the case.

FACTS

In the year 1934, the plaintiff, Gajanan Moreshwar, consented to lease a block of land to the Bombay Municipal Corporation for 999 years. The plaintiff owned that tract of land following the agreement. By any means, the plaintiff was not making use of the property. Moreshwar Madan Mantri, the defendant, approached him and requested that he transfer possession of the land in order to construct a building. The plaintiff agreed to the same thing. The defendant then began to construct a structure. A supplier, Keshavdas Mohandas, was supplying the materials for the building's construction. The price of raw ingredients was more than Rs.5000. The supplier then sought payment of that sum. The plaintiff was asked to mortgage the land to Keshavdas Mohandas by the defendant. The plaintiff then mortgaged the land to Keshavdas Mohandas. At the request of the defendant, the plaintiff obtained a further sum of rupees 5000 by enforcing a new charge on the property in favour of Keshavdas. The payment deadlines for both debts were the same. The plaintiff wrote to BMC, requesting that the land be transferred to the defendant's name. The BMC's Improvement Committee approved the transfer, but no formal lease in the defendant's favour has yet been signed. Keshavdas Mohandas' payment was defaulted by the defendant. Because the title deeds to the plot of land were with the supplier, the plaintiff believed he would now lose his land. The plaintiff then demanded compensation from the defendant for any losses he might incur if Keshavdas used his right to the property he had with him at the time of the building materials supply.

Legal Issues

- When does the liability of the indemnifier commence?
- Whether the suit premature?
- Is the plaint required to reveal any cause of action?

LEGAL CONCEPTS

The case of GAJANAN MORESHWAR VS MORESHWAR MADAN is one case that deals

with many legal concepts such as rental agreements, mortgage of property and so on, but majorly the case deals with section 124 and section 125 of the Indian Contracts Act. The Indian Contract Act through sections 124 and 125 defines and addresses the issues related to indemnity in contracts. The term ‘indemnity’ in layman’s terms means a sort of protection against any sort of personal, financial loss, it basically means a type of security that has been provided as there is a possibility of such a financial loss or harm that a person may encounter while undertaking such said action. In contractual terms, the word indemnity is similar to that of the layman, in contractual terms the term indemnity is used as a different type of contract and it means the type of contract indemnifier saves the indemnified from such loss or harm caused by him or some other person.

¹Section 124 of the Indian Contracts Act 1872 defines indemnity as “a contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity”. In simpler terms, section 124 of the Indian Contract Act 1872 defines indemnity as a contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person. For instance, a contract to indemnify B against the consequences of any proceedings that may be taken against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

The person who gives/ ensures the indemnity is called the Indemnity giver/ indemnifier and the person who receives such protection from the indemnifier is called the Indemnity holder/ Indemnified.

²Section 125 of the Indian Contracts Act states the Rights of indemnity-holder when sued. —The promise in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him

¹ Indian Contracts Act, 1872, § 124

² Indian Contracts Act, 1872, § 125

to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

Section 125 of the Indian Contracts Act 1872 explains the rights of the Indemnity holder/indemnified when he /she is being sued.

ANALYSIS

The case of Gajanan Moreshwar Parelkar vs Moreshwar Madan Mantri is solely based on sections 124 and 125 of the Indian Contracts Act 1872, which have been discussed in the earlier section of this essay. The court in this case observed that the entire rule of indemnity of contracts is not just limited to §124 & 125 of the Indian Contracts Act 1872. However, in the current case, it can be observed that the plaintiff had retained the property under the mortgage and executed the deed of additional charge at the request of Moreshwar Madan, hence the mortgage and deed because the leasing agreement was signed in his name. He further claimed that the defendant has to get the plaintiff's release from the mortgage deed and future charge. The court further applied the landmark judgement of ³Osman Jamal & Sons Ltd. Vs Gopal Purshattam to further understand and clarify the broad scope of sections 124 & 125 of the Indian Contracts Act 1872. By applying such cases the court interpreted the broad scope of articles 124 and 125 of the Indian Contracts Act 1872. The court further stated the reason that even though sections 124 and 125 do not cover indemnity in all cases solving situations that fall beyond the provisions of sections 124 and 125 of the Indian Contracts Act 1872, the courts will have to apply the principles of equity and fairness that originate from the common English law. The defendant however in this case contended that the indemnifier is not liable to pay the indemnified unless he has suffered an actual loss. The defendant contended that indemnity cannot be given without a loss and in this case, there was no actual loss of the plaintiff. The court rejected the defendant's argument that the plaintiff had experienced no damage and that the plaintiff couldn't seek any remedy. Here, even though the defendant had contended that there was no actual loss incurred and even

³ *Osman Jamal and Sons Ltd. v Gopal Purushottam* AIR 1929, Cal 208

cited the case of ⁴Shankar Nimbaji v Laxman Supdu, the court rejected the claim and also had an opinion against that of the Bombay High Court. The plaintiff won the case, and the defendant was compelled to promise the plaintiff a release document, freeing him from the mortgage and any associated liabilities. The defendants were given three months to pay the money required to pay off the entire amount due to the mortgagee under the mortgage or face additional penalties in court.

CONCLUSION

The case of Gajanan Moreshwar Parelkar Vs Moreshwar Madan Mantri is a landmark case related to the topics of Indemnity of the Indian Contracts Act 1872, the case is a very important interpretation of sections 124 & 125. The court in this case not only interpreted sections 124 & 125 but also said that they are not exhaustive, the court through this case explained the broad scope of sections 124 & 125 of the Indian Contracts Act. The plaintiff won the case and the defendants were given a time of 3 months to pay the money to the plaintiff. Hence, the case of Gajanan Moreshwar Parelkar Vs Moreshwar Madan Mantri is a landmark judgement of the Indian Contracts Act 1872.

⁴ *Shankar Nimbaji Shintre v Laxman Supdu Shelke* (1940) 42 BOMLR 175