

LEX SATURATES

Bhagwandas Goverdhandas Kedia

Vs

M/S. Girdharilal Parshottamdas

Reported by :

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Student (B.A.LL.B. [Hons.])

Lex Saturates

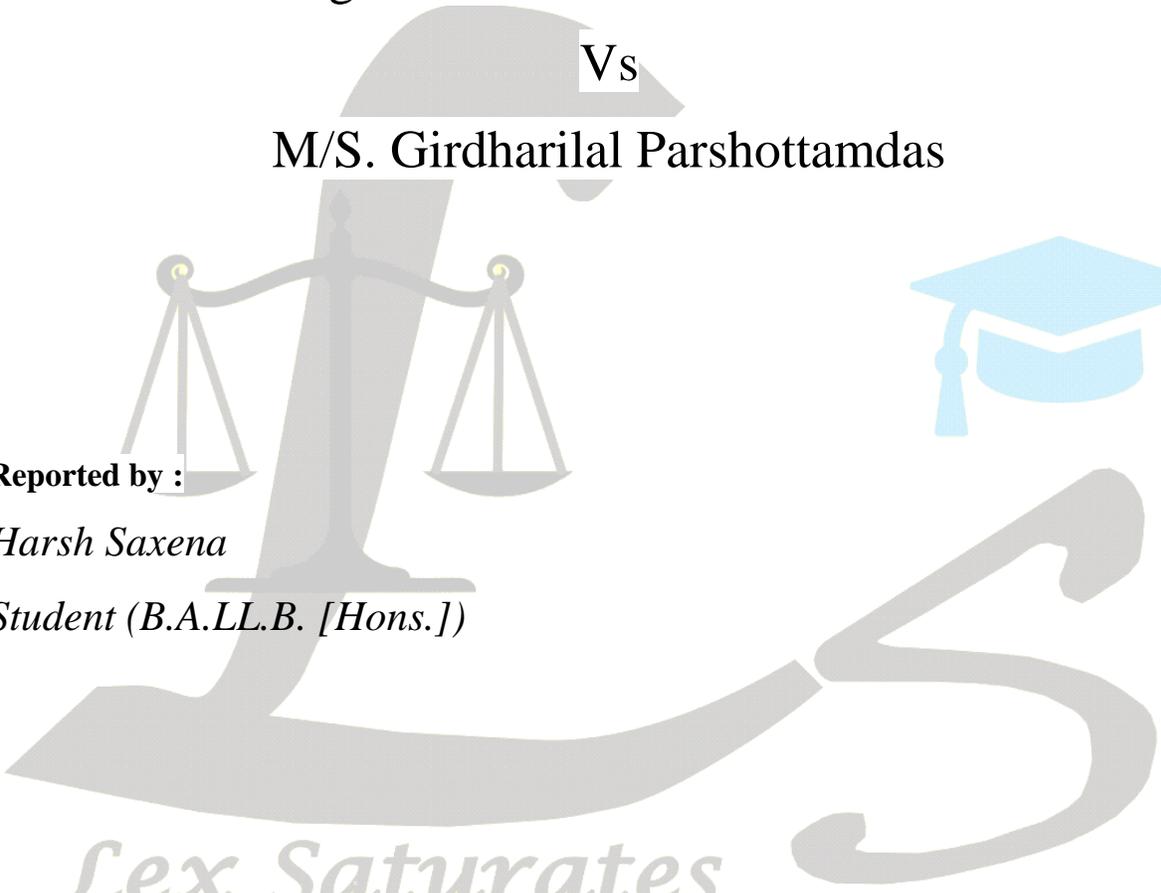
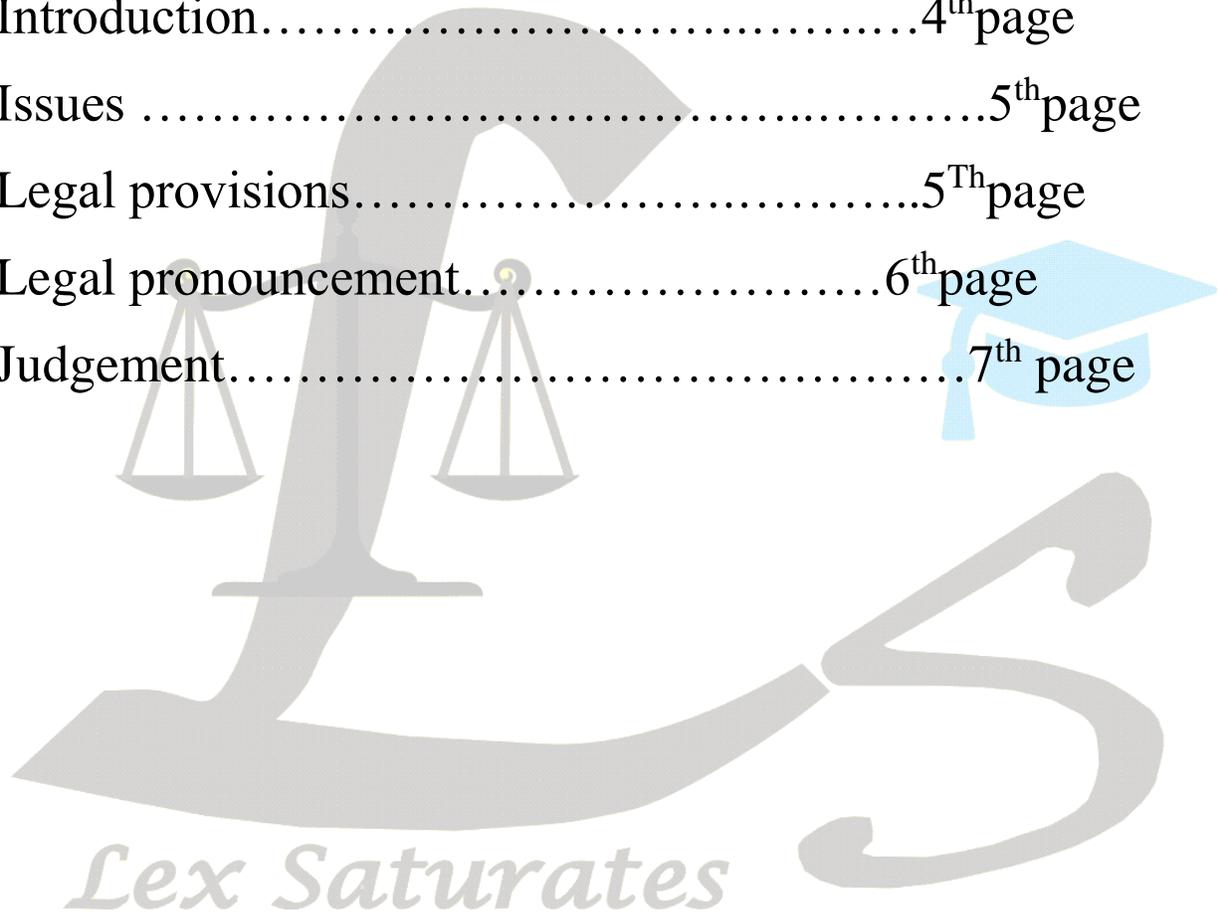


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PARTIES INVOLVED

Petitioner: Bhagwandas Goverdhandas Kedia

V.

Respondent: Girdharilal Parshottamdas

DATE OF JUDGEMENT: 30 August, 1965

BENCH:

- 1. Shah, J.C.**
- 2. WANCHOO, K.N.**
- 3. HIDAYATULLAH, M.**

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INTRODUCTION

The respondents entered into a contract with the appellants by longdistance telephone. The offer was spoken by the respondent at Ahmedabad and the acceptance was spoken by the appellants at Khamgaon. Alleging breach of the said contract the respondents Mod a suit at Ahmedabad. On the issue of jurisdiction raised by the appellants, the trial court found that the Ahmedabad Court had jurisdiction to try the suit. The High Court rejected the appellant's revision petition in limine whereupon by special leave, he came to this Court.

ISSUE:

Defendants contended that according to the section 2, 3 and 4 of ICA, the place where the offer is accepted is the place where the contract is made and therefore Ahmedabad trial court did not have the jurisdiction to try the suit.

LEGAL PROVISION :

- The Indian Contract Act, 1872
- Section 4 in The Indian Contract Act, 1872
- Section 3 in The Indian Contract Act, 1872
- Section 2 in The Indian Contract Act, 1872

LEGAL PRONOUNCEMENTS:

- i. Pacific Refractories Ltd. vs Stein Heurtey India Projects Pvt. ... on 10 February, 2006
- ii. M/S.Besant Raj International ... vs M/S.Vishwa Bharathi Textiles ... on 24 March, 2011
- iii. Pradyuman Overseas Ltd. vs Virgoz Oils & Fats Pte Ltd. & Anr on 27 January, 2010
- iv. Govind Impex P. Ltd., Jammu vs Assessee on 18 July, 2013

FACTS:

Plaintiff offered to get certain goods supplied at Ahmedabad to defendants who accepted the offer at Khamgaon. On defendants' failure to supply requisite goods, plaintiff sued them at Ahmedabad. Dispute arose as to where was contract formed- at Khamgaon where acceptance was given by defendants or at Ahmedabad where acceptance was received by plaintiffs.

Lex saturates **JUDGEMENT:**

Majority Judgment:

An agreement does not result from mere intent to accept the offer: Acceptance must be by some external manifestation (either by speech, writing, conduct in further negotiations, or

any other overt act) accompanied by its communication to the offeror (*Brogden v. Metropolitan Rly Co.*) unless expressly waived by him or impliedly by the course of negotiation to the contrary (*Carlill v. Carbolic Smoke Ball*).

Entores v. Miles: An offer was made from London by telex to a party in Holland and was duly accepted through telex; the question arose as to which court had jurisdiction to try the dispute between the parties. Denning L.J. observed that in case of instantaneous communications between the parties, i.e. where parties are in each other's presence or though separated in space are in direct communication with each other as for example by telephone or telex, contract is complete when the acceptance of offer is duly received by the offeror and the contract is formed where such acceptance is received.

Adams v. Lindsell: An offer was made by defendants by post to sell certain goods. Though, the acceptance was duly posted by plaintiff but, it reached defendants nearly after a week when latter had already sold the goods to a third party. Court ruled that 'when parties aren't in each other's presence and communicate long distance either by post or telegram, both parties get bound by contract as and when the acceptor puts the letter of acceptance in the course of transmission to offeror so as to be out of his power to recall' (postal rule).

But in India, according to S.4 of ICA, application of Postal Rule results that acceptor is bound only when the acceptance "comes to the knowledge of the proposer" while proposer becomes bound much before when letter was "put in course of transmission to him as to be out of the power of acceptor to

recall”. “S.4 doesn’t imply that the contract is formed qua the proposer at one place and qua the acceptor at another place”. The gap of time between posting of acceptance and its coming into knowledge of proposer can be utilised by acceptor in revoking his acceptance by speedier communication which will overtake the acceptance (S.5 of ICA)

The postal rule came into existence in Adams case for two prominent reasons:

The rule was based on commercial expediency/empirical grounds: for if the defendants were not bound by their offer till the acceptance by the plaintiffs is not received by them, then the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their acceptance and had assented to it; and so it might go on ad infinitum.

Secondly, if the contract is not finally concluded till the intimation of the acceptance by the promisee to the promisor, then there may be instances that the promisor will deny the receiving of any acceptance even though he may have received it. This may lead to instances of fraud and also delay in commercial transactions. Further, the satisfactory evidence of posting a letter is generally available as against of its having been received.

He held that the contract act does not expressly deal with the place where a contract is made. The conversation over telephone is analogous to the conversation when the parties are in presence of each other, wherein, the negotiations are concluded by instantaneous speech and therefore communication of the

acceptance becomes a necessary part of the contract and the exception to the rule on grounds of commercial inexpediency is inapplicable.

Further, in case of correspondence by post or telegram, a third agency intervenes which is responsible for effective transmission of letters at every instance, however, in case of telephonic conversation, once the connection has been established, there is no need of any third agency to transmit the correspondence between the parties.

Hence, as against cases of correspondence by post or telegram, in present case where there was correspondence by telephone, contract was formed when acceptance was duly communicated to the offeror and hence, at Ahmedabad.

Dissenting Opinion (J. Hidayatullah):

Stressing on literary interpretation of Indian Contract Act and not be moulded by English dicta, Hidayatuallah held that when acceptor put his acceptance in transmission (in form of telephonic conversation) to proposer as to be out of his power to recall (According to section 4 of the Indian Contract Act 1872), communication of acceptance was complete and proposer was bound by contract so formed, however quick the transmission.

It was obvious that the word of acceptance was spoken at Khamgaon and the moment the acceptor spoke his acceptance he put it in course of transmission to the proposer beyond his

recall. He could not revoke acceptance thereafter, albeit the gap of time was so short that one can say that the speech was heard instantaneously.

