UNDERSTANDING THE JUDICIAL RULE ON REVOCATION OF AGENCY IN INDIA

Written by Clarissa D'Lima,

Student, Kirit P. Mehta School of Law, NMIMS University

Abstract

Contracts may be drawn to define the duties, rights, and powers given to an agent to undertake any business on behalf of the Principal, and these are known as "Contracts of Agency". The Indian Contract Act, 1872, is the prime legislation governing such contractual relations between the Principal and Agent. The laws relating to agency cover a wide ambit of possible disputes that may arise in the cases involving contracts of agency, however, the case-specific nature of a dispute needs to be given due consideration before proceeding to claim the relief embedded in the laws, and this involves understanding the perspective of the judiciary on specific provisions of the act and the rationale applied by it in executing these provisions. This article thus attempts to explore the application of the provisions, relating to revocation of an agency, by the judiciary. It proceeds with the assumption that the authority of an agent can be revoked at any time before or during the contract. In order to arrive at a conclusion, this article relies on the illustration of cases concerned with the revocation of an agency. The subject matter of this article is limited to revocation of agency under the Indian Contracts Act 1872 and Torts, and it attempts to highlight the principles that underlie the termination of an agency under different situations, specifically, in the Indian context.

Keywords: Agency, Principal and Agent, Revocation of agency, Termination of agency.

1) The Concept of Agency

1.1) Agency as an Evolving form of Identity

Agency refers to an instrumentality through which an individual is able to carry out his/her will. The instrumentality here is representative in nature wherein the duties of one person are

performed by another person, such that the person representing another, acts on the instruction of the one represented and the one represented is to be accountable for the acts of the agent. There may be limitations to such accountability under exceptional circumstances. The agreement to represent another creates an obligation on the one undertaking such representation. The concept of agency gained recognition with the development of natural laws in the 12th Century, the principle till then was that individuals ought to be liable for their own actions[*]. The historical basis of the concept of representation is found to be linked to one's identification with one's family, for instance, in ancient Greek societies the servant was considered to be a part of the family and by virtue of this recognition he was authorized to carry out certain works on behalf of his master. Similarly, in Torts law, the guardian or parents represent the minor child. However, today representation may be undertaken by people who are not a part of a family, to cater to a number of needs. Under Early Roman Law, agency as a concept did not resemble much of a contract and was seen as the mere performance of an act on someone's behalf on a gratuitous basis[†].

As stated by Huffcut, the principle of agency is covered in the legal maxim "*Qui facit per aliumfacit per se*" (the one acting through other, acts in person). This principle pertaining to the law of agency is a part of Torts law as well as The Indian Contract Act. In today's modern societies where the territorial boundaries cannot contain the scope of man's activity due to the availability of advanced communication and transport, the concept of agency has broadened to include different types of agencies. The complexities of a number of obligations that are attached to the nature of modern day trading and commercial activities may not allow a person to complete these obligations *sui juris*. In such conditions, the creation of an agency through a formal written instrument is seldom avoidable as the complex nature of activities require clarity of the rights being delegated to the agent. Thus it is important to ensure that the power or authority of an agent is legitimately conferred and exercised.

1.2)Defining the Key Players: Principal and Agent

[*]Ernest W, Elements of the Law of Agency 2-4, (Beard Books, 1999)
[†]Joseph Story, Commentaries on the Law of Agency as a Branch of Commercial and Maritime Jurisprudence 1-3 (Little, Brown & Company,1863), available at https://books.google.co.in/books?id=Y3IDAAAAQAAJ&printsec.

CC BY-NC 4.0

A person not disqualified by the municipal laws of the country to own or perform certain transactions on his own, and is not barred by law to delegate his/her authority may take up the position of a Principal when he appoints another person to act on his/her behalf.

Similarly, a person not disqualified by the municipal law from doing things in his/her own capacity may act as an Agent. The category of persons not eligible to act as agents to overlap with those incapable to contract, as an agency is a form of contract. It is pertinent to note that though a person may have the power to delegate his/her authority to an agent to carry out certain acts, he, however, cannot delegate authority to perform acts that are illegal. In this case, the appointment of an Agent is considered to be void.

1.3) Termination of Agent's Authority

The contract between the Agent and Principal may be terminated in the following manner:

i. Through mutual act of the parties, including expressed renunciation of agency or revocation of agency.

ii. Frustration of agency due to destruction of subject matter

iii. Due to insolvency, death or mental incapacity[‡]

There also exists exception to revocation of Agent's authority, whereby the authority of the Agent cannot be revoked basing on the following grounds:

i. Contract which is of interest to the agent. For instance, the collection of rent by an agent for repayment of loan given by the principal to the agent.

ii. When the Power of Attorney is expressed to be irrevocable. For instance, Power of Attorney given to the Agent to take decisions on behalf of the Principal, given by the Principal in the apprehension of his/her ill-health or mental incapacity. In such a case the authority of the agent cannot be revoked once the principal is not in a state to take decisions due to his ill-health or unsoundness of mind.[§]

[‡] Beatson, Burrows and Cartwright, Anson's Law of Contacts 718, (Oxford,2010)
[§] *ibid*

CC BY-NC 4.0

2) Legal Provisions Relating to Contract of Agency

The principal-agent relation in India in its contractual form is governed by the provisions of Chapter X of the Indian Contract Act, 1872. The parties to a contract of agency, the Agent and the Principal are defined under *Section 182* of the Indian Contract Act. According to this section, "*an agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal*."

Any person of sound mind who has attained the age of majority may appoint an agent, and similarly, a person of sound mind who has attained the age of majority may act as an agent between the principal and the third party (section 184 and 185) as per this act. An agent may be appointed without consideration either through an explicit word or written contract or in an implied manner, wherein a person may act as an agent without any explicit contract. For example, a person who is employed to undertake home-delivery may act as an agent of a restaurant without a separate contract of agency to be made for every delivery.

2.1) Duties of Agent and Principal:

It is the duty of the agent to ensure that in times of emergency, he/she must act in a manner that minimizes the potential losses of the principal and to take preventive steps which are likely to be taken by a person of ordinary prudence (section 189).An agent may appoint a sub-agent only in case where the duty is not personally assigned to the agent. In case the agent appoints a sub-agent without the consent of the principal then the agent is liable for the acts of the sub-agent (section 190 and 193)[**]. It is the duty of the agent to carry out the business of his principal as per the directives of the principal (section 211). The agent is also required to act with his skills and diligence to prevent any loss that the principal may incur due to the agent's incompetence (section 212).

One of the duties of the agent is to maintain accurate accounts, this can also be inferred from section 211 of the act which requires the agent to make good to the principal the losses and gains, the realization of which is possible only when the accounts are accurately maintained.

[**] *Section 190 and 193* of the Indian Contract Act, 1872.

CC BY-NC 4.0

The maintaining of account is to be done with the aim of securing the rights of the principal in a contract of agency.

The law also attaches certain duties to the role of the principal with regard to delegation of powers to the agent. The most significant of these is the responsibility of the principal to indemnify the agent against the act of loss caused while discharging a lawful act or for an act done in good faith (section 222 and 223). The principal is also required to compensate for any injury caused to the agent in course of his/her duty.

2.2) Revocation of Agent's Authority:

The agency may be terminated by means of revocation on the following grounds:

a) Incapacity- In case of unsoundness of mind or death of either party, the contract of agency may come to an end. Insolvency of the principal may also lead to termination of agency. This means that when any of the parties becomes incompetent to enter into a contract as per section 11 and 12 of the Indian Contract Act, the agency is terminated. In case of death or insanity of the principal, it becomes the responsibility of the agent to safeguard the interest of the principal (section 209).

b) Interest of agent in the subject matter- According to section 202 of the act, if an agent has personal interest in the subject matter then the contract of agency can be terminated.

c) Revocation by Principal- The principal may revoke the authority of an agent at any time before the agent has undertaken an act to give effect to the delegated power. In case of revocation without sufficient cause, the principal is liable to compensate the agent and vice-versa (section 205). The revocation of the agent's authority may be done through a notice of revocation which maybe served to prevent future losses to either of the parties.

Thus the Indian Contract Act, 1872 contains provisions for termination of agency which have further been interpreted by the Judiciary as described in the following section.

3) Overview of Related Judicial Precedents

The preceding section states the provision of the Indian Contract Act, according to which the agent's authority can only be revoked with sufficient cause. Moreover, the authority cannot be revoked halfway through performance of the delegated act. The aim of this provision is similar

CC BY-NC 4.0

to the principle of unjust enrichment, as per which the Principal is not allowed to enjoy the undue benefits of the work done by the agent in fulfilment of his obligations prior to the revocation of agency. The Judiciary has upheld the said principle in its decisions relating to termination of agency which can be illustrated with the following instances:

3.1) Condition for Revocation of Agency:

The revocation of authority can be done only on reasonable grounds. In the case of *Union of India and others vs. Smt. V.P. Parukutty,*[††] the respondent was appointed as an agent for the National Savings Scheme in 1976. In 1994 her agency was terminated on the ground that the respondent was a close relative of the post-master, which was against the rules of the government mentioned in a circular dated 5/12/198, which stated that no relative of the post-master could be appointed at the same place of work.

On appeal, the division bench of Supreme Court held that since the respondent was working as an agent since 1976, it would be unfair to terminate the agency on the basis of a circular dated 5/12/1981, without clear recording of finding of breach of the said rule, and thus the appointment of the respondent was not to be disturbed.

The termination of the agency, in this case, was based on inadequate reasoning and insufficient cause, and these factors were taken into strict consideration by the court while determining the grounds for termination. It is thus essential to ensure that the grounds for termination of agency should be of direct consequence to the contract of agency to stand the test of validity in the court of law.

3.2) Compensating an Agent:

When the agency can be revoked on justified grounds, the loss incurring to the agent needs to be compensated. This principle has been relied in the case of *MSM Discovery Private Limited & Others Versus Viacom 18 Media Private Limited & Others:*[‡‡]

Facts- The 11th February 2009, MSM Discovery Private Limited (MSMD)and Viacom18 (defendant) signed a Memorandum of Understanding (MOU) whereby MSMD was granted exclusive distribution rights of Viacom18 channels, for a period of three years. However, in July 2010 Viacom18 terminated the MOU by way of a communication sent to MSMD without

[††]45 AIR, SC 1997
[‡‡] W.P.(C) 5109/2010 & CM APPLs 10061-62/2010

CC BY-NC 4.0

a prior notice of 90 days as stipulated in Clause 20 of the MOU. On the same day, the defendant entered into an agreement of agency with other agents. The Petitioner in this case thus pleaded that the termination was illegal and that Viacom18 should be restrained from giving effect to the said communication.

The Delhi High Court ruled that since the losses and damages suffered due to revocation can be quantified, it is not required to grant any interim relief to keep the agency alive and compensation was granted a relief. Thus in cases where the loss caused to an agent due to termination of agency can be justly compensated, the contract can be brought to an end.

3.3) Revocation of *Agency of Interest*

Another factor that needs to be considered while revoking the authority of an agent is the nature of benefit the agent derives from the contract of agency. When an agent is not a mere middleman but rather shares vital interest in the contract with the third party, the contract is said to be an agency of interest to the agent. However, deciding whether a particular interest qualifies as an agency of interest is the domain of the courts. The judicial stand on this matter is reflected in the case of *Southern Roadways Ltd. Madurai v. S.M. Krishnan*[§§]

Facts-In this case, Southern Roadways appointed the respondent as its agent for carrying out its business in Madras. Southern Roadways took a godown on lease, which was handed to the respondent for possession so as to use it for the purpose of the agency. As per the agreement between Sothern Roadways and the defendant, the principal could remove the agent at any time without notice and take possession of the godown for its own use. Later due to findings of mismanagement by the agent, Southern Roadways terminated his agency, took possession of the godown, and appointed another Company as agent. The company appointed as the new agent by Southern Roadways instituted a suit for injunction against the defendant (the ex-agent) when the defendant prevented the Company from taking possession. After a series of appeals, in the final appeal made by Southern Roadways before the Supreme Court, the Court rejected the contention of the defendant that the agency created was an agency of interest on the ground that mere holding the principal's property by the agent does not cause the agent to acquire any interest for himself in such property. Thus the Court held:

[§§]AIR 1990 SC 673

> *"The respondent as agent was allowed to remain in possession of the premises. It was only for carrying on company's business. His agency has been terminated and his authority to act for the company has been put an end to…the respondent has no legal right to remain in the premises or to interfere with the business activities of the company."*[***]

Thus it is evident that mere possession of the principal's property does not amount to an agency of interest. An agency of interest involves a right of the agent which is likely to be surpassed in case of termination of agency by the principal. The interest of the agent in the subject matter does not exceed the rights of the principal unless it is an agency of interest as under section 202 of the Indian Contract Act. This means that the incidental benefits accruing to an agent while acting as an agent, does not take away the principal's right to revoke the agency, but if the contract is such that it is primarily meant for the benefit of the agent, such as in case of a lien held by the agent, then the agency cannot be terminated without an express contract between the parties. This is an exception to the general right of the principal to terminate an agency.

3.4) Completion of Revocation:

The revocation of an agency takes effect only when the same is brought to the knowledge of the third party. In the case of *Kashi Ram v. Raj Kumar,* the question before the Rajasthan High Court was whether a sale-deed executed by an agent in favour of the vendee with the knowledge of the landowner, when the fact of termination of the agent's authority was not made known to the vendee, will bind the parties to the contract.[†††] In solving this question the court relied on the judgment delivered in the case of *Janardan v. Ganga Ram*[‡‡‡], wherein it was held that - "insofar as third parties are concerned, the termination of a contract or agency will take effect only from the time the third party obtains knowledge of it"

Thus it is essential that the revocation of agency is made known to the third party which had some kind of interest attached to the contract of agency, for the process of revocation to be complete.

[***] *Id*
[†††] in *Kashi Ram v. Raj Kumar*, AIR 2000 Raj 405
[‡‡‡] AIR 1951 Nag 313

CC BY-NC 4.0

4) Conclusion

The idea of agency finds its roots in the concept of representation which has diversified over the years from representation by the family to representation by commercial agents in commercial transactions. In India, a contract of agency is governed by the Indian Contract Act, 1872 which describes the creation of the agency, types of agency, duties of the agent and principal, as well as the rules governing the termination of agency.

With regard to the revocation of agency, the hypothesis wherein it was assumed that the authority of an agent can be revoked at any time before or during the contract is partly affirmed as there are exceptions to revocation of an agency at the will of the principal. Revocation of the agency cannot be done on arbitrary grounds as seen in the case of *V.P. Parukutty*. Moreover, the main exception to the rule of revocation is an agency of interest, where revocation without an express agreement is not permissible (section 202 of Indian Contract Act). Agency may be terminated through other means including notice of revocation, frustration, death or insanity of the principal. Revocation of agency needs to be brought to the knowledge of the third party for completion of revocation process.

The revocation of agency, being a part of the vast topic of agency as a contract, can be understood in depth by analysing the fact-specific rulings of the courts. The application of the related provisions has been undertaken by the courts in a fashion that ensures that there is no unjust gain enjoyed by either the principal or the agent from the revocation of the contract of agency.

CC BY-NC 4.0