



# Jus Corpus Law Journal

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## Case Comment: Gajanan Moreshwar Parelkar vs Moreshwar Madan Mantri

Nitesh Ranjan<sup>a</sup>

<sup>a</sup>National University of Study and Research in Law, Ranchi, India

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### INTRODUCTION

The Bombay High Court decided this case in 1942, and it concerns sections 124 and 125<sup>1</sup> of the Indian Contract Act, 1872, which deal with various issues of indemnity. Indemnity is a legal phrase that signifies "security" or "protection." According to Section 124<sup>2</sup> of the Indian Contract Act, a contract of indemnity is one in which one party promises to safeguard the other from loss caused by the action of the promisee or himself, or by the conduct of any other person. It refers to a promise to save a person from the consequences of an act in English law. Depending on the circumstances of the case, the promise may be declared or implicit.<sup>3</sup> As a result, the English meaning of indemnity is fairly broad, and it can refer to any type of insurance contract, with the exception of life insurance, which is not considered an indemnity contract. The Indian Contract Act, 1872, narrows the meaning of indemnification by limiting it to circumstances where someone agreed to compensate the other only if the damage was caused

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<sup>1</sup> Indian Contract Act, 1872, ss 124, 125

<sup>2</sup> Indian Contract Act, 1872, s 124

<sup>3</sup> *Adamson v Jarvis* [1827] 4 Bing 66: 29 RR 503

by the promise to himself or any other person. The insurer's assurance to indemnify is unconditional. If the indemnity holder incurs an obligation that is absolute, he has the right to ask the indemnifier to relieve him of such liability by paying it off.<sup>4</sup> A contract of indemnity is contingent, i.e., if the loss happens, then the indemnifier would be called upon to make good the loss of the indemnity-holder.

## FACTS OF THE CASE

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 was in possession of 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 uses his right to the property he had with him at the time of the building materials supply.

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<sup>4</sup> *New India Assurance Co Ltd v State of Trading Corp of India AIR 2007, NOC 517(Guj)*

## LEGAL ISSUES

- When the liability of the indemnifier commences?
- Whether the suit premature?
- Is the plaintiff required to reveal any cause of action?

## ARGUMENTS GIVEN BY THE PARTIES

### *PLAINTIFF*

The plaintiff claimed that he retained the property under the mortgage and executed the deed of additional charge at Moreshwar Madan's request and that the defendants should indemnify him for the mortgage and deed because the leasing agreement was signed in his name. He further claimed that the defendant is required to get the plaintiff's release from the mortgage deed and future charge. The court may order the defendant to pay the amount necessary to pay off the mortgage debt, with the money brought into court being used to pay off the debt and any additional charges.

### *DEFENDANT*

The defendant's counsel contended that the indemnifier is not obligated to indemnify the indemnity-holder until and until the indemnity-holder has experienced a loss. His argument was based on an old English law that declared, "You must be damned before you claim indemnification." He claimed that indemnification should be given for the 'loss.' Indemnity cannot be claimed if there is no loss. His case was founded on a previous Bombay High Court decision in *Shankar Nimbaji v Laxman Supdu*<sup>5</sup>. The court concluded in this decision that under an indemnity contract, the cause of action begins when the damage that the indemnity is intended to cover occurs and that bringing a claim before the real loss occurs is premature. As a result, he contended that the plaintiff cannot claim indemnity because he has not yet lost his land or suffered any harm. As a result, he claimed, the litigation is premature and should be dismissed right immediately.

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<sup>5</sup> *Shankar Nimbaji Shintre v Laxman Supdu* (1940) 42 BOMLR 175

## OBSERVATIONS OF THE COURT

The court stated that sections 124 and 125 of the Indian Contract Act, 1872 do not contain the entire rule of indemnity. As a result, the court found that sections 124 and 125 of the Indian Contract Act of 1872 are insufficient. Section 124 deals with a specific type of indemnity, namely, the indemnifier's promise to the indemnity-holder to compensate him for losses incurred as a result of the indemnifier's or any other person's behaviour. It says nothing regarding the types of circumstances where indemnification arises from events that may or may not be attributable to the indemnifier's or any other person's actions. The court further points out that in this case, indemnity has arisen because the plaintiff has been liable as a result of something he did at the defendant's request. As a result, section 124 will not apply in this case. Section 125 discusses the indemnity-rights holder's when sued, although it is not the indemnity-complete holder's set of rights. Aside from the rights set forth in section 125, there are further indemnification rights. The case of *Osman Jamal and Sons. Ltd. v Gopal Purushottam*<sup>6</sup> was cited by Justice Chagla to justify the broad scope of indemnity that could not be contained simply in sections 124 and 125 of the Indian Contract Act, 1872. The plaintiff is also putting himself in jeopardy by mortgaging the land because Mr. Keshavdas can simply refuse to restore the deed to the land. However, because the plaintiff did it at the defendant's request, there is an implied assurance that the defendant will compensate the plaintiff for any losses.

## DECISION OF THE COURT

The reasons presented by both sides were carefully considered by Justice Chagla. Because the defendants' claims were founded on past rulings, Justice Chagla took his time deliberating his decision, as he intended to overturn the previous rulings. Sections 124 and 125 of the Indian Contract Act are not exhaustive of the law of indemnification in India, and Indian courts would adopt the same equitable principles as English courts. The court rejected the defendant's argument that the plaintiff had experienced no damage and thus could not seek indemnification, and concluded that the indemnity-holder has rights in addition to those set

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<sup>6</sup> *Osman Jamal and Sons Ltd. v Gopal Purushottam* AIR 1929, Cal 208

forth in the provisions. If the indemnified has incurred a liability that is absolute, he has the right to ask the indemnifier to save him from that liability and pay it off, according to Justice Chagla. 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.

## ANALYSIS AND CONCLUSION

This case is crucial for deciding the commencement of liability of the indemnifier. This case helps us to understand the fact that when the indemnifier becomes liable-after the loss of the indemnity holder or right when the fault has been made or loss to be incurred by the promisee. This decision expanded the definition of indemnification, stating that sections 124 and 125 do not cover indemnity in all situations and that when resolving issues that fall outside of these provisions, one should follow Common English Law and Equitable Principles. This declaration of following Equitable Principles was widely accepted. This case served as a model for a number of others. *Re Richardson Ex parte* and a number of other instances are notable examples. If the promisee has incurred an absolute responsibility and the indemnity contract covers that liability, the indemnity-holder can sue the indemnifier for specific performance of the indemnity contract even before the damage has been suffered.<sup>7</sup> Similarly, it was held in another case that when a person contracts to indemnify another for any liability that the latter may have assumed on his behalf, the other person may compel the contracting party to put him in a position to meet the liability that may be cast upon him in the future before actual damages are done.<sup>8</sup> As a result of this decision, indemnity now has a new dimension, and indemnity holders now have an additional right that is not specifically mentioned under sections 124 and 125 of the Indian Contract Act, 1872.

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<sup>7</sup> *Khetrapal v Madhukar Pictures* AIR 1956, Bom 106

<sup>8</sup> *Nobo Kumar Bhuttacharjee and Ors. v Kumar Nath Bhuttacharjee And Ors.* (1899) ILR 26 Cal 241