

MANU/TN/0269/1935

Equivalent/Neutral Citation: AIR1936Mad135, 1935 MWN 1203

IN THE HIGH COURT OF MADRAS

Decided On: 15.08.1935

Doraswamy Iyer **Vs.** Arunachala Ayyar and Ors.

Hon'ble Judges/Coram:

Cornish, J.

ORDER

Cornish, J.

1. This Civil Revision Petition arises out of a suit in which the trustees of a temple sought to recover a contribution promised by a subscriber to a subscription list for the repairs of a temple. It appears upon the facts found in the lower Court that the plaintiffs—the present respondents—the trustees entered into a contract for the necessary repairs in the month of February 1928, and the maistry of the contractor was supplied with money from village common funds. As the work proceeded more money was required, and to raise this money subscriptions were invited and a subscription list raised. This was in October. The present petitioner put himself down in the list for Rs. 125, and it is to recover this sum that the suit was filed. The lower Court has decreed the suit. The plaintiff founds the consideration for this promise as follows : That plaintiffs relying on the promise of the subscriber incurred liabilities in repairing the temple. The question is, does this amount to a consideration ? The definition of consideration in the Contract Act is that where at the desire of the promisor the promisee has done or abstained from doing something, such act or abstinence is called consideration. Therefore, the definition postulates that the promisee must have acted on something amounting to more than a bare promise. There must be some bargain between them in respect of which the consideration has been given. In *Kedarnath Battacharjee v. Gorie Mohamed* (1887) 14 Cal 64 the position is put thus:

The subscriber by subscribing his name says in effect.... In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe by name....

2. And it was observed that that is a perfectly good contract. I think, it cannot now be accepted that the mere promise to subscribe a sum of money or the entry of such promised sum in a subscription list furnishes consideration. There must have been some request by the promisor to the promisee to do something in consideration of the promised subscription. This is the rule to be deduced from the only other case that I have been able to discover relating to the recovery of a promised subscription on the basis of a contract. That case is *In re Hudson* (1885) 54 LJ Ch 811. The promise there was to contribute a large sum of money to the Congregational Union for the payment of Chapel debts. The promisor paid a large instalment of his promised contribution and then died. The Congregational Union then sought to make the promisor's executors liable. The contention was that on the strength of the promise the Committee of the Union had incurred liabilities and that this amounted to consideration. It was held that the claim was unsustainable inasmuch as the promisee had not undertaken any liability

as part of the bargain with the promisor. Pearson, J., in his judgment said:

What is the consideration for the promise which was to make it a contract ? There was no consideration at all. Mr. Cookson says that there really was a consideration, because the consideration was the risks and liabilities which the parties were to undertake who composed themselves into a committee and became the distributors of the fund. In the first place there was no duty between themselves and Mr. Hudson (the promisor) which they undertook at that time; there was no binding obligation between themselves and Mr. Hudson.

3. In the present case it is not pleaded nor is there evidence that there was any request by the subscriber when he put his name in the list for Rs. 125 to the plaintiffs to do the temple repairs or that there was any undertaking by them to do anything. In my opinion this was a bare promise unsupported by consideration, and the suit ought to have been dismissed. The petition is allowed with costs throughout.

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