
DETERMINING CONTRACTUAL JURISDICTION IN TELEPHONIC COMMUNICATION: A CASE COMMENT ON BHAGWANDAS GOVERDHANDAS KEDIA V. GIRDHARILAL PARSHOTTAMDAS AND CO. AND OTHERS

Kshitij Kumar, LL.B. (Hons.), Chanakya National Law University (CNLU), Patna, Bihar

ABSTRACT

This case comment examines the Supreme Court of India resolved a case in ‘Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.’¹, where it ruled there was a contractual relationship formed by the telephone call occurred between the two parties while arguing about the higher-level question of what happens when technology affects the way contracts are offered and accepted. The court stated that telephone calls are different from the traditional methods of communication because contracts were considered formed when acceptance was communicated and not merely when acceptance was posted to the intended party. This case comment analyzes the rationale of the majority opinion of the judge(s) and compares that to the rationale of the dissenting opinion while examining the contrast of judicial interpretation of statute for the purposes of achieving a desired outcome versus applying the statute literally. The paper will also critique the court’s attempt to reconcile the rules set forth in the Indian Contract Act of 1872 with respect to types of communications that were previously unanticipated when the law was originally enacted. The comment will further evaluate how this ruling will change the understanding of jurisdiction in establishing contracts through instantaneous methods of communication. The author believes that this case represents an important change in Indian contract law because it shows how the judiciary is able to adapt to changing commercial circumstances while maintaining the fundamental contractual principle of consensus ad idem. The comment concludes with an analysis of how the results in this court case will affect future cases involving issues associated with communication via technology.

¹ Bhagwandas Goverdhandas Kedia vs. M/s. Girdharilal Parshottamdas and Co. and Ors., 1966 AIR 543

INTRODUCTION

On July 22, 1959, Girdharilal Parshottamdas of Khamgaon and Bhagwandas Goverdhandas Kedia of Ahmedabad had a conversation on the phone about cottonseed cakes with a value of ₹31,150. After one of the parties breached the agreement, the Plaintiff filed a lawsuit against the defendant in Ahmedabad. The Plaintiff claimed that the contract was established in Ahmedabad because that was where the acceptance was sent. The Defendant argued that because the Defendant was in Khamgaon, and they originally spoke about the acceptance there, it follows that a contract was established there, which would mean that Ahmedabad Courts lacked territorial jurisdiction. The Trial Court and the Gujarat High Court determined that the Courts of Ahmedabad had jurisdiction based on the acceptance of the original agreement as communicated via instantaneous communications, which indicates that the place where the acceptance is communicated represents the place of the contract. The Supreme Court confirmed this principle, which is consistent with the principle established in Entores Ltd., that acceptance by telephone is only accepted when it is received by the offeror. This ruling provides jurisdictional guidance and establishes a framework for any contracts established through new communication technologies.

FACTS OF THE CASE

On the 22nd of July, 1959, Khamgaon's Girdharilal Parshottamdas and Ahmedabad's Bhagwandas Goverdhandas Kedia spoke over the phone to supply cotton seed cakes for the amount of rupees 31,150/-. Through verbal telephonic communication, the agreement was made between the two parties, and the defendant was to receive payment for the goods at Ahmedabad². The plaintiff, Girdharilal Parshottamdas, sued Kedia Ginning Factory and Oil Mills for not delivering cotton seed cakes as per the agreement. The plaintiff filed the lawsuit at the Ahmedabad City Civil Court on the grounds of breach of contract. The main issue was where the conversation formed a contract, Khamgaon or Ahmedabad. The defendants claimed that Khamgaon was the place where the contract was formed by the telephone acceptance of the offer; hence, the Ahmedabad Court had no jurisdiction. The plaintiff argued that The Ahmedabad Court should have jurisdiction because the contract was created at the time when the communication of acceptance was delivered from him to the Defendants and this was

² Supra Note 1, Bhagwandas Goverdhandas Kedia vs. M/s. Girdharilal Parshottamdas and Co. and Ors., 1966 AIR 543

upheld by the City Civil Court as well as by The Gujarat High Court. The Defendants have now appealed to The Supreme Court of India raising their jurisdictional and contractual issues for final determination.

PROCEDURAL HISTORY

Ultimately, the matter ended at City Civil Court, Ahmedabad where new suit filed by plaintiff for breach of Telephonic Contract against defendants. Defendants argued on limitation and jurisdictional grounds that contract was concluded at Khamgaon and performance must therefore occur at Khamgaon. Plaintiff claimed the contract came into effect when acceptance was communicated to and accepted by plaintiff at Ahmedabad.

Upon consideration of the matter, City Civil Court determined that in cases of acceptance by telephone, the place where the offeree receives the acceptance via telephone shall be the place the contract is made. Finding that this was sufficient for City Civil Court to have jurisdiction over the action, City Civil Court rendered judgement accordingly. Dissatisfied with this result, defendants sought to review judgement of City Civil Court before Gujarat High Court which dismissed defendants' application for review and upheld City Civil Court determination. Defendants thereafter sought leave from Supreme Court and raised both jurisdictional issue and principles of law applicable to telephonic contracts before Supreme Court for final determination.

LEGAL ISSUES

The main issues raised at the Supreme Court were:

- i. If the parties had telephoned each other across a long distance, in which situation was the contract made?
- ii. If a telephone offer is accepted, is the contract concluded at the moment of pronouncement of acceptance or at the moment of perception?
- iii. If the postal norm applies to electronic correspondence, and if Sections 3 and 4 of the Indian Contract Act, 1872 establish the location of a contract established over the phone.

ANALYSIS OF THE JUDGMENT

A. Judgement and Rationale

The court's decision was divided, with Justice Shah and Justice Wanchoo forming the majority, resolving the issues of jurisdiction and contract formation arising from telephonic communication and Justice Hidayatullah delivering the minority opinion.

1. Contract Formation Through Telephone

- a. The court's question was whether a contract formed through a telephone conversation was subject to the same guidelines as those governing the postal conversation or to different rules applicable to the instantaneous communication.
- b. The majority of justices pointed out that the Indian Contract Act's drafter had not taken telephone usage as a method of private talk amid both sides living apart and thus could not have planned to create any regulation to that effect.
- c. The court remarked that the issue was whether the general rule that treats a contract as completed only when acceptance is communicated would be applied, or the rule with its exception regarding proposals and reception by post and telegrams would be the one to be accepted.

2. Principles Governing Telephonic Contracts

- *Nature of Telephonic Communication*
 - a. The court pointed out that if the vital nature of telephone communication is considered, it would be rational to say that both sides are somewhat being in each other's presence, and discussions are done by immediate communication, then the communication of reception becomes a significant portion of the contract formation.
 - b. The court cited the case of Entores Ltd., where the ruling was "where a contract is made by instantaneous communication, e.g., by telephone, the contract is complete only when the acceptance is received by the offeror, since generally an acceptance must be notified to the

offeror to make a binding contract; ".³

- c. Consequently, the court reached the verdict that in a telephone dialogue, the contract gets completed only when the acceptance is passed by the offeree, and the latter listens to it.

• ***Difference from the Postal Rule***

- a. The court explained that in the case of a contract made through mail, it is a recognised rule among all shared law nations that the acceptance is regarded as be whole right when the message is dropped in the mailbox, and that is the location of contract formation. It stated, "that the rule about instantaneous communications between the parties is different from the rule about the post. The contract is only complete when the acceptance is received by the offeror, and the contract is made at the place where the acceptance is received."⁴
- a. In contrast, phone conversations are almost instant and fall into a different category compared to the postal service.
- b. The court pointed out that in most European countries the doctrine of consensus ad idem is applied, whereby a contract is considered to be in the place where the offeree's acceptance has been communicated to the offeror, irrespective of the medium employed, i.e., mail or telegraph or telephone.
- c. Therefore, the court ruled that the contract in this case was made in Ahmedabad, where the reception was connected by telephone to the petitioners.

• ***Jurisdictional Determination***

- b. The court noted that the making of an offer in one location and its acceptance in another does not give rise to any part of the reason to act in a case for costs for breach of contract.
- c. By looking at Section 4 of the Contract Act, the court interpreted that although the Act refers to communication, acceptance, and revocation of proposals, it does not explicitly indicate the location where the contract is actually made.

³ Entores Ltd. v. Miles Far East Corporation. [1955] 2 Q.B.D. 327

⁴ Supra Note 1, Bhagwandas Goverdhandas Kedia vs. M/s. Girdharilal Parshottamdas and Co. and Ors., 1966 AIR 543

- d. The court deduced that Section 4 does not suggest that the contract is formed in respect of the proposer at one place and in respect of the acceptor at another. The contract becomes full when the notice of acceptance is given to the proposer.
- e. Thus, the Trial Court was right to believe that a portion of the cause of action originated within the jurisdiction of the City Civil Court, Ahmedabad, where the plaintiffs were informed of acceptance over the phone.

B. Dissenting Opinion

Justice Hidayatullah, in his dissenting opinion, held that the contract was made at Khamgaon (where the acceptance was communicated) and not Ahmedabad (where it was received) under section 4 of the Indian Contract Act, 1872. He found that the addressee of the acceptance completed its communication against the acceptor by virtue of the fact that it had been sent in a manner that was beyond the control of the acceptor. When the acceptance was given by telephone in Khamgaon there could no longer be revocation as the contract would have been complete at that location.

Justice Hidayatullah argued that the Contract Act makes no distinction between modes of communication be they by post, telegram, telephone, or wireless, therefore there should be no basis for the importing of common law rules from England into this context, as the statute provides adequate guidance. By following the plain meaning of the Contract Act he found that the contract had been completed at Khamgaon and that there were numerous instances in foreign jurisdictions of private conflict of law rules that were also in agreement with this conclusion.

KEY TAKEAWAYS

Contract formation through instantaneous communication means, like phone calls, is subject to different rules than postal communications. It illustrates that contract law has to change with technology while not losing the basic principles of offer, acceptance, and communication. The difference between instantaneous and non-instantaneous communication is very important for the determination of when and where a contract is made. The legal security and the actual practices of modern communication demand that, in the case of telephonic conversations, acceptance must be communicated to the offeror for the contract to be deemed completed. The

postal rule, which was based on commercial factors for delayed communication, does not apply to phone conversations where parties are practically in each other's presence. The exception ought not to be applied mechanically without taking the essential nature of the communication method used into account. Statutory interpretation will have to take into consideration those technological developments that the legislature did not envision, but at the same time, it will have to be based on the exact wording and the purpose of the statute. Courts will need to strike a balance between sticking to a statutory text and meeting the demands of modern commercial transactions.

CRITICAL ANALYSIS

In *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, the Supreme Court examined the issue of when and where acceptance is complete under Sections 3 and 4 of the Indian Contract Act when there is instantaneous communication. The majority of the Court regarded telephone communications as analogous to face-to-face communications, rejecting the defendant's contention that acceptance is complete where it is spoken. Acceptance must be received, actually heard, by the offeror, aligning with *Entores*. This position preserved certainty in business transactions and avoided mechanically applying the postal rule beyond the historical rationale of preventing delays in the postal system.

The primary strength in the majority's reasoning is pragmatic recognition that modern communication requires a doctrinal change. It rejected the exact statutory language governing instantaneous exchanges, continuing to be founded on mutual experience rather than on dispatches. The majority's reasoning enhanced predictability when determining jurisdiction and appropriate contractual analysis.

Justice Hidayatullah's dissent may express a strict interpretative approach to the statute, but it illustrates the tension between legislative text and the advent of new technology. His insistence that all forms of communication be considered equally, irrespective of the Act, raised a valid concern: whether courts should create exceptions to the mix by using English common-law principles specifically rather than relying on the statute.

Overall, the judgment marks a pivotal moment where the Court balanced fidelity to statutory language with the practical needs of modern contracting. It clarified how the Act applies to instantaneous communication without abandoning its core principles, shaping a workable

framework for contemporary commercial exchanges.

CONCLUSION

The Supreme Court of India, in the case *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, provided a clear chance to rule on the principles of contract formation with the aid of modern communication technologies. The plaintiff had sued for breach of a contract which had been negotiated through long-distance phone calls and had the case tried at the Ahmedabad City Civil Court. The defendants put up a challenge to the court's jurisdiction, claiming that the contract was made in Khamgaon, where acceptance was notified. The Supreme Court of India, by majority, supported the jurisdiction of the Ahmedabad Court and laid down the principles governing contract formation through instantaneous communication. The court seemingly gave precedence to commercial certainty and practical realities rather than to the strict application of rules that had been developed for different communication contexts.

The majority opinion elucidated that consent and communication do not function in the same way in all the different modes of contract formation, and that the exception to the postal rule should not be extended to instantaneous communication where the parties are virtually present with each other. One party cannot argue that a contract was made at a location where the other party was not aware of the acceptance, either directly or through what is commercially expected.

Most importantly, *Bhagwandas Goverdhandas Kedia* showed how the principles of contract formation have to keep in step with the advancements in technology, but at the same time, unlock the theoretical door. The law, for all practical purposes, made a distinction between the communication methods that are delayed, such as post and telephone, which are instantaneous, and the case showed how the legal principles should change to accommodate the new realities of commerce while being considerate of the constitutional and statutory backwardness. The dissenting opinion delivered by Justice Hidayatullah pointed out an alternative interpretation.