
CASE COMMENTARY: ARE POST CONTRACTUAL OBLIGATIONS VALID IN PERCEPT D'MARK (INDIA) PVT. LTD. V. ZAHEER KHAN & ANR.

Eshan Chauhan, Symbiosis Law School Noida

ABSTRACT

Percept D'Mark Pvt. Ltd v. Zaheer Khan is seen as an important case in the field of sports law that stresses on the validity of post contractual obligations in player endorsement contracts. This case has largely influenced how sports contracts are drafted, with emphasis on legality, fairness and contractual clarity in player endorsement contracts. This case intersects itself with contract law while setting a precedent for future cases regarding athlete's contractual disputes in India. By doing a through case analysis, I will also highlight the case's significance in sports law.

Introduction

The case of *Percept D'Mark Pvt. Ltd v. Zaheer Khan* is an important example of the unauthorised restrictions placed on an athlete after their contract has expired and the issues that surround the rights of the athletes. Athletes have the right to be enter and exist into a contract freely and must not be bound by the unfair terms which are imposed upon them. In the sports world, athletes enter into contractual agreements with brands to use their image for promotional purposes. However, the frequency with which athletes are stuck in these biased contracts leads to questions on the protections available to these athletes. This case focusses on the rights that are available to athletes when stuck in such contracts. Emphasis is also laid on the risk's companies also take when they engage in unfair contractual relationships. This case serves as a reminder to companies to be aware of the repercussions and legal consequences when misusing an athlete's right as it may lead to potential brand damage.

Facts

Percept D'Mark, a company incorporated under the Companies Act 1956¹, entered into a 3-year contractual agreement with Zaheer Khan as his agent for media, consulting and marketing

¹ Companies Act, 1956

services on 1st November 2000 with the contract expiring on 29th October 2003. Clause 31(b) of the agreement (Right of First Refusal) stipulated that Zaheer Khan was to inform D' Mark before signing any 3rd party endorsement so that D' Mark could match that offer. On 28th October 2003, Zaheer argued that Clause 31(b) was in violation with his rights under Section 27 of the Indian Contract Act² which prohibits restraint of trade. After the expiration of the contract, Zaheer Khan entered into a new agreement with another company (Respondent 2). Percept then filed for an interim injunction to stop Khan from signing any new deal with a third party under Section 9 of the Arbitration and Conciliation Act, 1996.³ The single judge of the High Court granted the temporary injunction, but the division bench of the High Court overruled the decision of the single judge on 19th December 2003, thus cancelling the injunction. Percept then approached the Supreme Court.

Issue

1. Whether the Right of First Refusal Clause is valid under Section 27 of the Indian Contract Act?

Contentions

Appellant (Percept D' Mark) Contentions

Misrepresentation of Section 27

Mr. Desai, counsel of the appellant stated that the High Court has not correctly interpreted Section 27 of the Indian Contract Act, 1872. He stated that the High Court incorrectly concluded that the agreement between the appellant and respondent is a restraint of trade. He stated that the "right of first refusal" clause present in the Promotion Agreement is an integral part of the commercial arrangement between the parties, made to protect the appellant's investment in the respondent. Mr. Desai stated that the High Court incorrectly treated the clause like it restricted Zaheer Khan's ability to manage his business freely, which was not the case.

² Indian Contract Act 1872, S27

³ Arbitration and Conciliation Act 1996, S9

Nature of the "Right of First Refusal"

This clause allows the appellant the first option to match any offer by a third party. If the appellant is unable to match this offer, the appellant is allowed to enter into any agreement with a third party. As a result, Zaheer Khan can enter into a contract with the third party. This arrangement does not restrain Zaheer Khan's freedom, showing that it is not a restraint of trade under Section 27.

Protection of the Agent's Investment

Such clauses are frequently used in contracts of celebrity because agents take monetary risks while endorsing a celebrity. In this case, the appellant invested in Zaheer Khan's career, and the clause ensures a just return. It does not stop Zaheer Khan from taking endorsements independently, if the appellant is given the first chance.

Nature of the Agreement

Mr. Desai stated that the High Court incorrectly took into consideration the agreement as a contract of service. He argued that it was a commercial contract that existed between equal parties, not a traditional employer-employee relationship. Thus, the reasonableness of the clause should be looked into differently.

Interim Relief under Section 9

Mr. Desai argued that the interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, can be granted against a third party if it impacts the arbitration's subject matter. The section does not restrict relief solely to the parties involved in the arbitration agreement.

Respondent (Zaheer Khan) Contentions

Restraint of Trade

The council of the respondent's stated that the Clause 31(b) in his contractual agreement with D'Mark was overly restrictive which impacted his professional freedom and choices. This impacted his relationship with other businesses. The council also claimed that the clause was a restraint of trade and void under Section 27 of the Indian Contract Act, 1872.

Ambiguity of Contract Terms

The respondents stated that the terms of the contract were ambiguous which allowed for excessive interpretation. The lack of clarity in the contract made it hard to decide whether the endorsement of other products conflicted with those which were marketed by D'Mark.

Post Contractual Obligations

The respondents questioned the obligations that had to be fulfilled after the contract expired. They debated that the post contractual obligations like the 'Right of First Refusal' was invalid under Section 27 of the Indian Contract Act as it bounded the respondent even after the expiration of the contract.

Lack of Mutuality

The respondents deemed the contract to be unfair and one sided. There was lack of mutuality in the contract as the restrictions in the contract were imposed on him and not the same on D'Mark such as the Right of First Refusal clause.

Judgement

The Supreme Court in its decision agreed with the division bench of the High Court holding that D'Mark was in restraint of trade as clause 31(b) does not extend after the contract has expired and granting an injunction would go against the provisions laid down in the Specific Relief Act 1963⁴. The court while examining the Right of First Refusal clause observed that on the balance of convenience that both the parties had suffered losses, and the interim injunction would negatively affect Zaheer Khan's cricket career. The court also added that an individual cannot be forced to be in a contract against his wishes. There was a standard principal-agent setting where D'Mark was the agent and Zaheer was principal so forcing the principal to follow the Right of First Refusal was beyond the scope of authority held by the agent. Thus, Zaheer Khan was allowed to enter into a new agreement with another company.

⁴ Specific Relief Act 1963

Significance to Sports Law

The case of *Percept D'Mark v. Zaheer Khan* is significant in the field of sports law, especially regarding player endorsement contracts. It emphasised on issues such as trade restraint and the enforceability of exclusivity clauses in contracts between sports athletes and management companies. This case highlighted the importance of drafting balanced, clear and fair contracts, particularly when engaging with famous athletes whose value is closely linked to their freedom to enter endorsements. Moreover, the position of the Supreme Court on post-contract obligations, like the right of first refusal, highlighted the need for clauses to be rational and not step on the player's rights after the contract expiration. This judgment also stressed that contracts must not foist disproportionate burdens on players, thus taking care of their professional freedom. This case set a standard for examining the reasonability of contractual restraints in the setting of sports management agreements.

Conclusion

In conclusion, the case of *Zaheer Khan vs Percept D'Mark* serves as a landmark judgement in the sphere of contract law as well as sports law, stressing the importance of considering contractual obligations with player's freedom. The Supreme court's judgement reinforced the principle that contracts which impose unreasonable restrictions are not valid, especially when the right to trade or profession under Indian law is violated. It emphasised that clauses that extended beyond the contract's expiration, like the right of first refusal, must be examined to see they do not bind the athlete after the contract's expiration. This case set a standard for drafting transparent and fair contracts in the sports field, especially when handling management and endorsement rights. It serves as a reminder that while protecting the commercial interests are essential, it should not come at the cost of the player's career growth and liberty.