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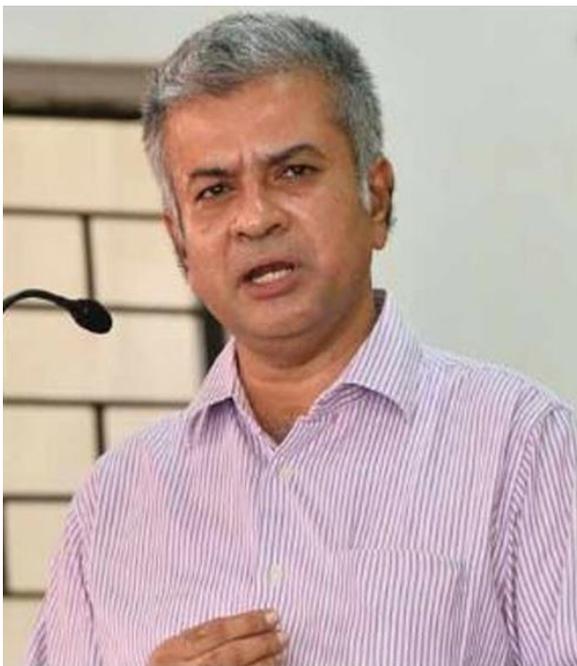
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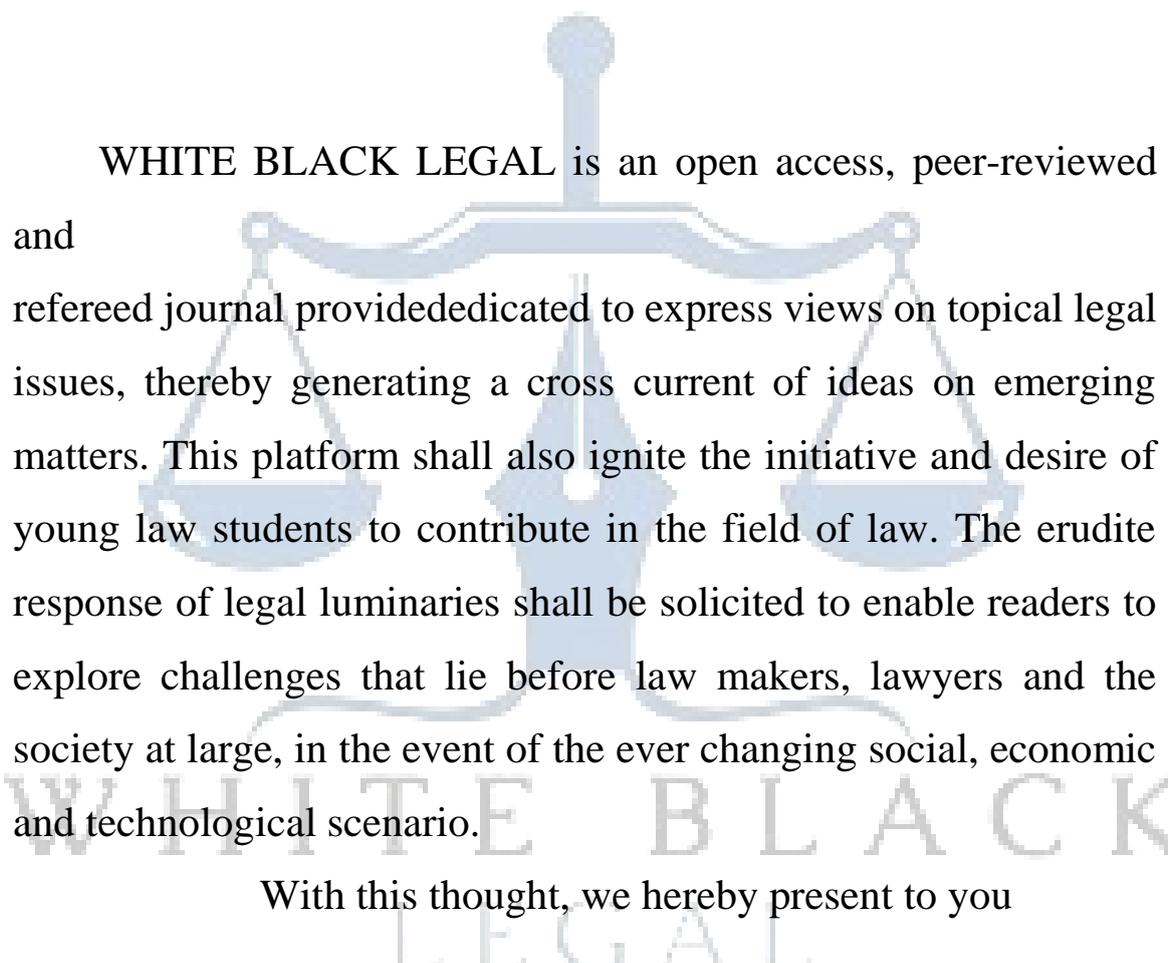


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FREEMAN AND LOCKYER v. BURKHUST PARK PROPERTIES LTD. (MANGAL)

AUTHORED BY - SAMIYA CHOUDHARY

1. FACTS OF THE CASE:

In this case, the plaintiff side is the firm, i.e., Freeman and Lockyer, and the defendant or the appellant is the company, i.e., Buckhurst & Park Properties Ltd. The plaintiffs carried the business of architecture and surveyors. The defendant company was formed by the person Shiv Kumar Kapoor, who was a gentleman carrying the business of property development, i.e., to purchase the properties for the purpose of developing them. Mr. Kapoor formed this defendant company to purchase and then resell a large estate. In September 1958, Mr. Kapoor entered into a contract to purchase Buckhurst Park Estate for a sum of 70,000 Euro, but because of a lack of sufficient resources to purchase the estate, he obtained the assistance of a person, namely Nimarjit Singh Hoon, who was ready and willing to advance a sum of 40,000 pounds to him. Therefore, the company was formed by Mr. Kapoor and Hoon on 11 October 1958 with a nominal capital of 70,000 pounds, which they were to subscribe in equal shares. They decided to include both of them, and one member was nominated by each of them to be the director of the company so formed. In Article 12 of the company's Article of Association, it was provided that Mr. Kapoor, Mr. Hoon, Mr. Cohen, and Mr. Hubbard were to be the company's directors. Mr. Cohen and Mr Hubbard were the nominees of Kapoor and Hoon. Mr. Hoon after the agreement went abroad and was not involved in the internal management of the company it was Mr. Kapoor who was personally took the transactions and other obligations of the management of the company, and the sole involvement of Mr. Hoon was only with respect to advancing of loan to Kapoor and was to be reimbursed on the resale of the property. There was a requirement to appoint a managing director of the company as provided in the AOA, but none was appointed. Moreover, the articles provided for the quorum of four for the resolution of the meeting of the company as per Article 19 of the company's AOA.

In 1959, Mr. Kapoor instructed an architect, namely Haylor, to apply for planning permission for certain developments regarding the estate, which was rejected. Then he approaches the plaintiff's firm to act on his behalf and make a fresh application for the same. So, the said

application was made on behalf of Kapoor, In the meantime, the plaintiffs undertook several other works for Mr. Kapoor. They undertook certain works in connection with Buckhurst Park estate but were not paid the due out of it. The work so done with respect to this estate includes- i) application for planning permission on behalf of Mr. Kapoor. ii) preparing an appeal against the refusal of the first application. iii) preparing plans for each floor. Thus, for this work, as instructed by Mr. Kapoor, Mr. Freeman provided the evidence on behalf of the plaintiff's firm, which was further corroborated by Mr. Mackay.

No resolution was passed by the board authorizing Mr. Kapoor to employ the plaintiffs. The plaintiffs worked entirely on behalf of Mr. Kapoor in his personal capacity. This implies that they considered him as the owner of the estate.

In addition to all the facts mentioned, the first meeting of the board was held on December 11, 1958 wherein it was decided that the company's seal would be used in any conveyance deed. Also, Mr. Kapoor and Mr. Hoons have agreed between them that the matters pertaining to the pending resale of the property and the expenses for the maintenance of the property were to be incurred by the second defendant, i.e., Mr. Kapoor personally and for these he will get the reimbursement from the profits of the sale.

2. ISSUE INVOLVED:

Whether the second defendant himself or the defendant company is liable to make the payment to the plaintiffs for the services they provided?

3. JUDGEMENT OF TRIAL COURT:

JUDGE HERBERT: The trial of the case took before Honor Judge Herbert at Westminster county court in 1963. Thus, the judgment by Judge Herbert stands in favor of the plaintiffs that they are entitled to the fee for the work done by them in favor of the defendants and held that although Kapoor was never appointed as managing director, he acted as such to the knowledge of the board of directors. Mr. Freeman gave the evidence that he was instructed by Mr. Kapoor, on behalf of the defendant company, this evidence that he simply identified the second defendant with the defendant company in his own mind, which was further corroborated by Mr. Mackay and thus was accepted by the judge. Therefore, the judge found out that although Mr. Kapoor was never appointed as a managing director of the company but he was throughout

the times acting as such in employing agents and taking several steps to find the purchaser to fulfill the objects of the company and thus, all these facts were known to the board. The judge gave the judgment by basing his decision on the principles which are laid down by L.J., LOPES in the case of *Biggerstaff V. Rowatt's Wharf*¹.

The defendant company against whom the orders were passed were not satisfied with the court's orders and thus preferred an appeal. There were several grounds put by the defendant company for the appeal.

4. GROUNDS OF APPEAL:

- The defendant company contended that there was no such evidence at the time of making the contract in question that the second defendant, i.e., Mr. Kapoor, has any apparent authority to act on behalf of the defendant company in employing the plaintiffs for the work in connection to the property.
- Secondly, they contended that there was no evidence that could show that the plaintiffs relied on the ostensible or apparent authority of the second defendant, and thus, they didn't rely on such authority.
- That there was no evidence that could show that the second defendant asked the plaintiffs for the work to be done for the defendant company.
- There is no evidence that shows that the plaintiffs thought that they were being instructed by the second defendant on behalf of the defendant company.
- That there was no evidence which the judge could believe that the second defendant was acting as a managing director or was acting as a managing director with the knowledge of the board. Therefore, these were the grounds for appeal put before the court against the orders of Judge Herbert, which was against the defendant's company.

5. CONTENTIONS OF THE PLAINTIFF'S

The Plaintiffs contended that Kapoor had the actual authority to engage them on behalf of the defendant company and he was held out by the company as having ostensible authority so that the company might be estopped from denying its responsibility with respect to the transaction between them.

¹ *Biggerstaff v Rowatt's Wharf*. (1896) 2 Ch. 93 (Appeal taken from Chancery Division of H.C).

6. CONTENTIONS OF THE DEFENDANT COMPANY

The defendants in this case contended that Kapoor was at all the material times the director of the company but the company denied that he was authorized to enter into any agreement with the plaintiffs for or on behalf of the company. The company also contended that Kapoor acted without their knowledge and outside the scope of his authority as a director of the company.

In the appeal, they contended that with regard to the concept of Ostensible authority, a company has to act through its officers and the powers and duties of these officers are provided in the AOA of the company, and anyone dealing with the company are presumed to have knowledge of the AOA and the MOA of the company they are dealing with it. The defendant company also relied on the case of *Royal British Bank V. Turquand*². They even relied on 3 decisions, i.e, *Rama*³ case, *British Thomson Houston*⁴ case and the *Kreditbank* case.⁵

7. JUDGEMENT

The bench, in this case, includes LJ. Wilmer, Pearson, and Diplock. The case was ruled by LJ. Herbert and the defendant company brought his decision on appeal. The County Court Judge held that although Kapoor was never appointed as managing director, he acted as such to the knowledge of the board of directors, and therefore, he gave the judgment in favor of the plaintiffs.

JUSTICE WILMER: Justice Wilmer dealt with the question of whether the liability of paying the fee was of the second defendant or the defendant company. The defendant company appeals that the liability is not theirs, but it is of the second defendant. Hence, the question before him remains whether the second defendant acted on behalf of the company and whether the company is bound by his acts.

Justice Wilmer doesn't accept the contentions of the plaintiffs that the second defendant has the actual authority to employ the plaintiffs. He observed that actual authority can be express or implied. If the second defendant was expressly given the power, it could have been express

² *Royal British Bank v. Turquand*, (1855) 5 E. & B. 248 (Appeal taken from Queen's Bench).

³ *Rama Corporation Ltd. V Proved Tin & General Investment Co.*, 1952, ALL AER 552 (Appeal taken from QBD).

⁴ *British Thomson Houston Co. Ltd. V. British Insulated and Helsby Cables Ltd.*, (1924) 1 Ch. 203 (Appeal taken from Court of Appeal).

⁵ *Kreditbank Cassel G.M.B.H. v. Schenkers*, (1926) 2 K.B. 450(Appeal taken from KBD).

authority, while if was appointed to the office which carried this function, it would have been implied authority given to him. However, there is no such authority is given and there is no resolution of the board that authorized him to employ the plaintiffs. Though the Articles of Association of the company has incorporated Article 102⁶ and Article 107⁷ of Table A, Part I of the Companies Act, 1948 where under Article 102, the board has been given the power to delegate their powers to any of the committee and under Article 107, they can appoint anybody to the office of the managing director. However, no such resolution was passed in the exercise of these powers provided in the AOA. Thus, based on all these facts, it cannot be said that second defendant was having the authority to employ the plaintiffs.

Also, Justice Wilmer did not accept the contentions of the defendant company in the appeal that there was no evidence which can show that the second defendant acted as managing director to the knowledge of the board. He didn't support this viewpoint or contention based on the following. Firstly, that the property in the case was nothing but entirely related to and in connection to the affairs of Mr. Kapoor. It was he only who contracted to buy the property with the purpose of reselling it at a higher profit, and the assistance of Mr. Hoon was taken for this purpose, and hence the company was so formed thereof. Thus, it is in the interest of the company to have planning permission to develop the property and hence, it is desirable to employ the plaintiffs to act on behalf of the company. Moreover, Mr. Hoon, for most of the time, was outside the country, and an inference can be drawn from this that it was the second defendant who had the responsibility to see and manage the affairs of the property, i.e., in particular, to find a purchaser. The agreement between them pertaining to the maintenance of the property, which will be Mr. Kapoor's responsibility to manage his personal expenses, also further substantiates the point. These all provided him with the incentives to find the purchaser to quickly as possible. Apart from this, an evidence was also provided by Mr. Hubbard who was the nominee. He gave the evidence that the second defendant had the authority for day-to-day management. This was based on the letter, which stated that the second defendant should bear the responsibility of managing the property.

Thus, the judge in this appeal ruled that it was the defendant company's own case that the second defendant was acting throughout as if he himself was the owner of that estate. Thus, the second defendant was acting as a managing director throughout the transaction with the

⁶ The Companies Act 1948, A. 102 (UK).

⁷ The Companies Act 1948, A. 107 (UK).

plaintiffs. Also, a local authority wrote to the defendant company that an application on the name of the second defendant has been received, the company never replied on it that he isn't the owner of the property with respect to which the application is submitted and no suggestions were made in that regard that he is not acting within his powers or acting without the authority of the board. Therefore, the judge ruled that the second defendant was acting throughout as managing director to the knowledge of the board. Judge pointed out that the cases that are referred by the defendant company have narrower viewpoints and are of unusual transactions, which don't revolve around the authorities of officers acting on behalf of the company. The judge held that the decisions relied on by the company were just illustrations of the principles that the party who seeks to set an estoppel must show that he, in fact, has relied on the representation that he alleges.

Hence, the Judge, relying on the principles of the Biggerstaff case, ruled that the plaintiffs were not entitled to enquire whether the second defendant was properly appointed or not, and thus, the second defendant's act of employing the plaintiffs was within the ambit of the authority of a managing director and thus dismissed the appeal. Judge observed that in my judgement a company is bound by the acts of the persons who take upon themselves with the knowledge of the directors to act for the company provided that such persons acted within the limits of the apparent authority and strangers dealing bona fide with such persons have a right to assume that they have been duly appointed.

JUSTICE PEARSON: also dismissed the appeal stating that in his view, the principles of the Rama case apply in this case too.

JUSTICE DIPLOCK: Justice Diplock primarily focused on the concept of agency, which creates contractual rights and liabilities between the principal and the contractor through the agent. He also focused on distinguishing actual authority and apparent or ostensible authority. He observed that both these are independent of each other. Actual authority is the legal relationship between the principal and the agent that is created by consensual agreement. In this, the contractor might be ignorant of the existence of any authority on the part of the agent. If the agent has got this authority, it would create legal rights and liabilities between the principal and the contractor. While on the other hand, apparent authority is a legal relationship between the principal and the contractor created by representation made by the principal to the contractor intending that the agent has the authority to act on behalf of the principal into

contract so that the principal can be rendered liable to perform his obligations created by the contract, made by the agreement within his apparent authority. Such a representation made by the principle to the contractor acts as an estoppel which prevents the principle from asserting that he isn't bound by the act of the agents.

The information pertaining to the authority can be derived either by the principle or agent or both. Thus, the contractor will rely either on the representation of the principle which is known as apparent authority or by the representation of the agent which is known as warranty of authority. But in the present case where the principle is not a natural person but a company, i.e., a fictitious person, this further includes two characteristics. Firstly, the corporation is limited to its constitution, i.e., incorporated under the Companies Act or by its memorandum or article of association. Secondly, the corporation cannot do any act that includes making a representation except through its agent. But such limitations on the power of corporation are absolute as per the doctrine of ultra virus which affects the rule of apparent authority of agent. As no such representation can operate to estop the corporation from denying the authority of the agent to do on behalf of the corporation an act which the corporation isn't permitted to do. Also, that conferring of the power to the agent is itself an act of the corporation, the corporation cannot be estopped from denying that it has conferred on a particular agent authority to do acts which by its constitution, it is incapable of delegating to that particular agent. Therefore, the contractor dealing with the corporation is presumed to have the constructive notice of the constitution of the company and thus, the rule of estoppel will be applicable to prevent him from denying the fact that he is not aware of the constitution of the company.

The issue pertaining to the representation by the corporation for the authority of the agent is that the representation so made must be made by the person or persons who have actual authority by the corporation to make such representation. The most common form of making the representation by the authorized persons, i.e in case of company the board of directors is by conduct, i.e. by permitting the agent to act in the management of company's business. Thus, the company would be estopped from denying to anyone who has entered into contract with the agent by relying on the apparent authority that the agent had the authority to contract on behalf of the company.

Therefore, the judge focused on four conditions which were fulfilled in this case case and thereby based on those conditions dismissed the appeal. The conditions are as follows-

- i. That the board knew that the second defendant throughout been acting as a managing director responsible for employing the purchaser and that they permitted him to do so and by such conduct represented by the board that he had the authority to enter into contracts of a kind which a managing director is responsible for would in normal course be authorized to enter into on behalf of the defendant company.
- ii. The Articles of Association conferred full powers on the board of directors to manage the affairs of the company.
- iii. The plaintiff found that the second defendant was authorized by the defendant company to enter into a contract on behalf of the company for the services in connection to the company.
- iv. The Articles of Association that contained powers of the board, including the power to delegate their powers pertaining to the management to the managing director, didn't deprive the company of delegating its power to the second defendant to enter into contracts on behalf of the company.

8. ANALYSIS OF THE CASE:

The case, in essence, primarily deals with the authority of the directors and position of the third party dealing with the company. The main issue on which the case is based pertains to the liability aspect, i.e., who will be liable for the payment of the fee under the contract entered into with the third party? Although the contract was entered into with the 3rd party or the plaintiffs by one of the directors who was not the managing director but he entered into such contract for the sake of the company, i.e. to fulfill the objects or the purpose for which the company is formed. He didn't do it for his own personal benefit; no doubt the company was the sole affair of the second defendant, and it was just a means to achieve the profits that he formed the company. However, the company is always considered to be an independent corporate personality that has a separate existence of its own as distinguished from its members, and thus, based on these very facts, it can be said that we cannot say that the second defendant will be liable and not the company as the company was formed for his own profits and purposes, i.e. to purchase the property.

So, the court at both levels, i.e., in the original suit and in the appeal as well observed the same that the company and not the second defendant is liable for the payment of the fee. Mr. Kapoor was acting as a managing director but was not actually the managing director and thus, had

been this issue, then also it is the company's own affair or its own irregularity or that the company has certain issues in the internal management where the directors or other members are not acting within the powers and duties provided to them in AOA and MOA. This implies that the 3rd party or the plaintiffs dealing with him are at no fault. If they are acting legally and under the provisions of the laws governing their transaction, they can be protected, provided they acted in good faith. This can be further substantiated with the help of legal principles applied in this case by the court, i., the doctrine of indoor management and the doctrine of constructive notice. The plaintiffs were required to read the public documents or the fundamental document of the company, i.e., AOA and MOA, under the Doctrine of Constructive Notice. It is irrelevant in this case as per the facts that they read it or not because there it was provided under Article 12 of AOA that the company is required to appoint a managing director. The plaintiff would obviously believe that if this had been provided in the AOA, then the company would have appointed the same. It is not their duty to look into the internal affairs that whether there is proper appointment or not. Hence, they are protected under the doctrine of indoor management, which is an exception to this general rule of constructive notice.

The question pertaining to the principle of agency and the rule of ostensible authority, as highlighted by Justice Diplock, also holds great importance in the case. As it is very evident that the company is not a natural person and cannot do any work on its own. It is a fictitious entity that works or gets run with the help of natural persons. There is the applicability of the principle of agency between the company and the persons through whom the company works. They are the agents of the company and act on behalf of the company within the powers and authority. In this case, by explaining the concept of apparent authority, Justice Diplock has beautifully tried to balance the contentions or claims of the parties, pertaining to the question of the authority and powers of the second defendant. There was contention from one side that the contract entered into by Mr. Kapoor was outside his scope of powers and authority provided by the AOA of the company. However, Justice Diplock explained it very well that the authority can be expressed or implied. Applying his legal concepts and based on the facts of the case, it can be said that the second defendant had apparent authority because of certain reasons. Although it is irrelevant to mention here, it is just to support this point that the actions of Mr. Kapoor were for the benefit and interest of the company and not for himself, even though the company was formed for his own affairs. Also, there was an agreement between the directors that Mr. Kapoor would be the one who would manage the affairs of the company and would

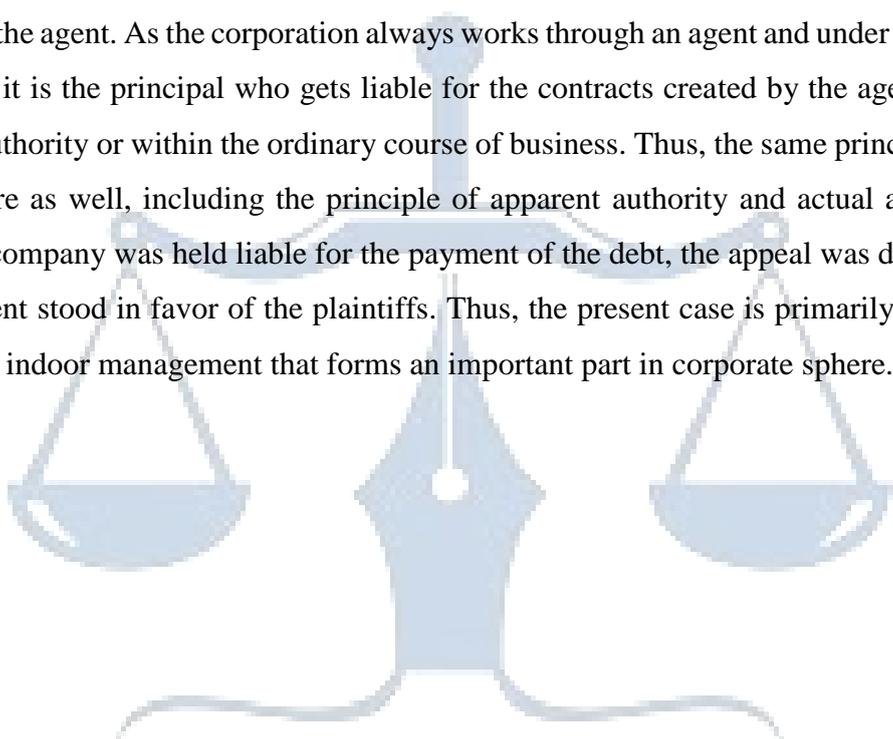
be reimbursed for the resale of the property. Moreover, Mr. Hoon remained outside the country, which further substantiated the point that when there was no as such appointment of a managing director for the company and every work was being handled and dealt including employing of the plaintiffs, was to be done by Mr. Kapoor, there can be no objections or questions pertaining to his personal liability or that he did not have authority to enter into a contract and also for that matter that the board was having no knowledge of this fact. So, if a director purported to act as managing director as in the present case, the plaintiffs are entitled to rely on such representation and can assume that he would have been duly appointed.

Therefore, the case clearly provided for the application of important doctrines, which are of great importance for subsequent cases of similar facts. It would definitely act as a precedent for the cases. These principles are also applied in the case of *Hely -Hutchinson v. Brayhead Ltd.*⁸, which shows the significance of the case. Most importantly, it protects the interests and rights of third parties who are no-fault and are acting in good faith and provides them with the chance to claim their rights or the fee in the present case for the services provided to the defendants. It also clearly lays down the applicability of the principle of agency with respect to the relationship of the company with the persons through whom it works, and thus, the company is bound by the acts of the agents. Further, the case also provides for the application of an important legal principle, i.e., the rule of holding out or estoppel, which states that the company will be estopped from denying its obligations or liabilities or responsibilities so created through the agent. Thus, in the present case, the company acted as a principal, and the second defendant acted as an agent; therefore, the company was bound by the acts of the second defendant. Hence, the company cannot escape its liability except in cases where it can prove that such contract or such action was ultra vires or outside its capacity with regards to MOA and AOA or in cases where they can provide that they don't have authority to delegate such power and hence in these exceptional cases, the company will get protected. However, in all others, the company is bound by such acts. Thus, it is the matter of the company itself pertaining to the appointment or the limits of the powers or authority of the second defendant, and plaintiffs have no role to play in these internal irregularities of the company; they did their work and, thus, are entitled to the payment at any cost.

⁸ *Hely -Hutchinson v. Brayhead Ltd.* (1967) 2 All ER 14 (H.L) (Appeal taken from QBD).

9. CONCLUSION

Thus, the present case dealt with the board of directors and their powers, as well as the doctrine of indoor management, constructive notice, and ultra-vires, which plays an important role when it comes to the question pertaining to a corporation. Thus, the case tries to explain these doctrines and the concept of actual and apparent authority. It protected the plaintiff's rights and observed that they were not entitled to enquire deeply into the internal affairs of the company pertaining to the proper appointment of the managing director, and it made it clear that the rule of estoppel applies where the company will be stopped from denying to fulfill the obligations created by the agent. As the corporation always works through an agent and under the principles of agency, it is the principal who gets liable for the contracts created by the agent within the scope of authority or within the ordinary course of business. Thus, the same principle has been applied here as well, including the principle of apparent authority and actual authority, and hence the company was held liable for the payment of the debt, the appeal was dismissed, and the judgment stood in favor of the plaintiffs. Thus, the present case is primarily based on the doctrine of indoor management that forms an important part in corporate sphere.



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