PETITIONER:
SIR CHUNILAL V. MEHTA AND SONS, LTD.

Vs.

RESPONDENT:
THE CENTURY SPINNING AND MANUFACTURING CO., LTD.

DATE OF JUDGMENT:
05/03/1962

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SINHA, BHUVNESHWAR P.(CJ)
KAPUR, J.L.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1962 AIR 1314 1962 SCR Supl. (3) 549
CITATOR INFO :
F 1963 SC 361 (8)
RF 1979 SC 798 (9)

ACT:
Supreme Court Appellate Jurisdiction of--Appeal against decree of affirmance--Substantial question of law--Construction of agreement, if such a question--Breach of contract--Liquidated damages--Constitution of India, Art. 133(1).

HEADNOTE:
The appellants were appointed managing agents of the respondents for 21 years. Under cl. 10 of the agreement the appellants were entitled to a remuneration equal to 10% of the gross profits of the respondents subject to a minimum of Rs. 6,000 per month. Clause 14 provided that if the agreement was terminated otherwise in accordance with the provisions thereof the appellants would be entitled to liquidated damages "of not less than Rs. 6,000" per month for the unexpired portion of the agreement. The respondent wrongfully terminated the agreement before the expiry of the stipulated period. The appellants filed a suit for recovery of damages for breach of contract on the basis of 10% of the gross profits of the respondents. The trial judge granted a decree for Rs. 2,34,000 calculating the amount at Rs. 6,000 per month. On appeal by the appellants the High Court affirmed the decree. The appellants applied 'to the High Court for a certificate of fitness for appeal to the Supreme Court but it declined to grant the same on the ground that though the question involved in the case relating to the interpretation of the agreement was a question of law it was not a substantial question of law as required by Art. 13(1) of the Constitution.
Held, that the case involved a substantial question of law and the appellants were entitled to the certificate as of right. A substantial question of law is one which is of general public importance or which directly and substantially affects the rights of the parties and which have not been finally settled by the Supreme Court, the

Privy Council or the Federal Court or which is not free from difficulty or which calls for discussion of alternative views. The question involved in the present case as to the construction of the agreement was not only one I of law but' it was neither simple nor free from doubt and was a substantial question of law within the meaning of Art. 133(1).
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Kaikhushroo Pirojsha Ghaira v. O.P. Syndicate Ltd.,(1948) I.Bom. L. R. 744 ; Raghunath Prasad Singh v. Deputy Commissioner of Partapgarh, (1927) 54 1. A. 126 and Dinkarrao v. Battansey, f. L. R. (1949) Nag. 224, referred to.
Rimmalapudi Subba Rao v. Noony Veeraju, I. L. R. 1952 Mad. 264, approved.
Held, further that upon a proper construction of cl. 14 of the agreement the appellants were entitled to damages at the rate of Rs. 6,000 per month only. The words "not less than Rs. 6,000" in cl. 14 could not be construed as meaning 10% of the gross profits as provided in cl. 10. When in cl. 14 the parties named a sum of money to be paid as liquidated damages, it excluded the right to claim an unascertained sum as damages.

JUDGMENT:
CIVIL APPELLATE JURISDICTION :Civil Appeal No. 417 of 1957.
Appeal by special leave from the judgment and decree dated March 14, 1956, of the Bombay High Court in Appeal No. 94 of 1955.
AT. A. Palkhiwala, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellants.
M. C. Setalvad, Attorney General of India, R. J. and B. P. Maheshwari, for the respondent.
Porus A. Mehta and R. H. Dhebar, for the Intervener.
1962. March 5. The Judgment of the Court was delivered by
MUDHOLKAR, J.-This is an appeal by special leave against the Judgment of the High Court of 'Bombay in an appeal from the judgment of a single Judge of that Court. The claim in appeal before the High Court was for about 26 lakhs of rupees. Being aggrieved by the decision of the High Court, the appellant applied for a certificate under Art. 133(1)(a) of the Constitution. The judgment of the High Court in appeal was in affirmance of the judgment of the learned single Judge dismissing the appellant's suit for damages and therefore, it was
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necessary for the appellant to establish that a substantial question of law was involved in the appeal. On behalf of the appellant it was contended that the question raised concerned the interpretation to be placed on certain clauses of the managing agency agreement upon which their claim in the suit was founded and that as the interpretation placed by the appeal court on those clauses was erroneous and thus deprived them of the claim to a substantial amount the matter deserved to be certified by the High Court under Art. 133(1)(a) of the Constitution. The learned Judges dismissed the application without a judgment apparently following their previous decision in Kaikhushroo Pirojsha Ghaira v. C. P. Syndicate Ltd. (1). The appellants, therefore, moved this Court under Art. 136 of the Constitution for grant of special leave which was granted. In the application for special leave the appellant had raised a specific contention to the effect that the view taken by the High Court with

regard to the application for certificate under Art. 133 (1) (a) of the Constitution was wrong, that the appellant was entitled to appeal to this Court as a matter of right and that while considering the appeal this question should also be decided. The appellant pointed out that the view taken by the Bombay High Court on the point as to what is a substantial question of law runs contrary to the decision of the Privy Council in Raghunath Prasad Singh v. Deputy Commissioner of Partabgarh (2) and the decision of some High Courts in India and that therefore, it is desirable that this Court should pronounce upon the question in this appeal and set the matter at rest. We think that it is eminently desirable that the point should be considered in this appeal.

It is not disputed before us that the question raised by the appellant in the appeal is one of law because, which the, appellant is challenging is the interpretation placed upon certain clauses of the

(1) (1948) L. Bom. L.R. 744.
(2) (1927) 54 I.A. 126, 128.

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managing agency agreement which are the foundation of the claim in suit. Indeed it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law.

The next question is whether the interpretation of a document of the kind referred to above raises a substantial question of law. For, Art. 133(1) provides that where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-cl. (c) an appeal shall lie to this Court if the High Court certifies that the appeal involves some substantial question of law. To the same effect are the provisions of s. 110 of the Code of Civil Procedure. In the old Judicial Commissioner's Court of Oudh the view was taken that a substantial question of law meant a question of general importance. Following that view its successor, the Chief Court of Oudh, refused to grant a certificate to one Reghunath Prasad Singh whose appeal it had dismissed. The appellant, therefore, moved the Privy Council for special leave on the ground that the appeal raised a substantial question of law. The Privy Council granted special leave to the appellant and while granting it made the following observation in their judgment:

> "Admittedly here the decision of the Court affirmed the decision of the Court immediately below, and, therefore, the whole question turns upon whether there is a substantial question of law. There seems to have been some doubt, at any rate in the old Court of Oudh, to which the present Court succeeded, as to whether a substantial question of law meant a question of general importance. Their Lordships think it is quite clear and indeed it was conceded by Mr. De Gruyther that that is not the meaning, but that "substantial
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> question of law" is a substantial question of law as between the parties in the ease involved."

Then their Lordships observed that as the case had occupied the High Court for a very long time and on which a very elaborate judgment was delivered the appeal on its face

raised as between the parties a substantial question of law. This case is reported in Raghunath Prashad Singh v. Deputy Commissioner of Partabgarh(1). What is a substantial question of law as between the parties would certainly depend upon the facts and circumstances of every case. Thus for instance, if a question of law bad been settled by the highest court of the country the question of law however important or difficult it may have been regarded in the past and however much it may affect any of the parties would cease to be a substantial question of law. Nor again, would a question of law which is palpably absurd be a substantial question of law as between the parties. The Bombay High Court, however, in their earlier decision already adverted to have not properly appreciated the test laid down by the Privy Council for ascertaining what is a substantial question of law. Apparently the judgment of the Privy Council was brought to their notice though they do not make a direct reference to it, they have observed as follows:

> "The only guidance that we have had from the Privy Council is that, substantial question is not necessarily a question which is of public importance. It must be a substantial question of law as between-the parties in the case involved. But hero again it must not be forgotten that what is contemplated is not a question of law alone; it must be a sub-stantial question. One can define it nega-tively. For instance, if there is a well established principle of law and that principle is
> (1)(1927) 54 1. A. 126, 128,
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> applied to a given set of facts, that would certainly not be a substantial question of law. Where the question of law is not well settled or where there is some doubt as to the principle of law involved, it certainly would raise a substantial question of law which would require a final adjudication by the highest Court."

One of the points which the learned judges of the Bombay High Court had to consider in this case was whether the question of construction to be Placed upon a decree was a substantial question of law. The learned Judges said in their judgment that the decree was undoubtedly of a complicated character but even so they refused to grant a certificate under s. 110 of the Code of Civil Procedure for appeal to the Federal Court because the construction which the Court was called upon to place on the decree did not raise substantial question of law. They have observed that even though a decree may be of a complicated character what the Court has to (lo is to look at its various provisions and draw its inference therefrom. Thus according to the learned Judges merely because the inference to be drawn is from a complicated decree no substantial question of law would arise. Apparently in coming to this conclusion they omitted to attach sufficient weight to the view of the Privy Council that a question of law is "a substantial question of law" when it affects the rights of the parties to the pro-ceeding. Further the learned Judges seem to have taken the view that there should be a doubt in the mind of the Court as to the principle, of law involved and unless there is such doubt in its mind the question of law decided by it cannot be said to be "a substantial question of law" so as to entitle a party to a certificate under a. 1 10 of the

Code of Civil Procedure. It is true that they have not said
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in so many words that such a doubt must be entertained by the Court itself but that is what we understand their judgment to mean and in particular the last sentence in the portion of their judgment which we have quoted above.

As against the view taken by the Bombay High Court there are two decisions of the High Courts in India to which reference was made before us. One is Dinkkarrao v. Rattansey (1). In that case applying the Privy Council's decision the High Court held that a question of law is substantial as between the parties if the decision turns one way or another on the particular view taken of the law. If the view taken does not affect the decision then it cannot be substantial as between the parties ; but it would be otherwise if it did, even though the question may be wholly unimportant to others. It was argued before the High Court on the basis of certain decisions that no question of law can be substantial within the meaning of s. 110 of the Code of Civil Procedure unless the legal principles applied in the case are not well defined or unless there can be some reasonable divergence of opinion about the correctness of the view taken and the case involves, a point of law such as would call for fresh definition and enunciation. Adverting to those cases Bose C. J., (as he then was) whom Delivered the judgment of the Court observed as follows :

> "In the first case cited, it was also held that a misapplication of principles of law does not raise any substantial question of law so as to attract the operation of s. 1 10.....
> There can be no doubt that that is a view which has been held by various High Courts in India, but the decision cited' omit to consi- der two decisions of' their Lordships of the Privy Council on this very point which. in our
> (1) 1. L. R. (1949) Nag. 224
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> opinion, very largely modify the views taken in the cases cited and which of course it is impossible for us to ignore." (p. 226)

Referring to the Privy Council case the learned Chief Justice observed as follows :

> "In the Lucknow case the only question was whether the defendant there obtained an absolute interest or a limited interest under a will. That again was a question which was of no interest to anyone outside the parties to the suit. Nevertheless, their Lordships considered in both cases that the questions were substantial questions of law because they were substantial as between the parties. We can only consider this to mean that a question of law is substantial as between the parties if the decision turns one way or another on the particular view taken of the law. If it does not affect the decision then it cannot be substantial as between the parties. But if it substantially affects the decision then it is substantial as between the parties though it may be wholly unimportant to others." (p. 228)

It maybe that in the case before it, the Nagpur High Court was justified in granting certificate because of the points involved was the construction of a deed of compromise and the High Court had interpreted that deed differently from

the court below. But it seems to us that some of the observations of Bose C. J., are a little too wide. We are prepared to assume that the learned Chief Justice did not intend to say that where a question of law raised is palpably absurd it would still be regarded as a substantial question of law merely because it affects the decision of the case one way or the other. 'But at the same time his observation that the view taken in the cases cited before him requires to be modified in the light of the Privy Council decision would imply that a question of law
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is deemed to be a substantial question of law even though the legal principles applicable to the case are well defined and there can be no reasonable divergence of opinion about the correctness of the view taken by the High Court. If we, have understood the learned Chief Justice right, we think that he has gone further than was warranted by the decision of the Privy Council in Raghunath Prasad Singh's case (1).
The other case relied upon was Rimmalapudi Subba Rao v. Noony Veeraju (2). In that case the test of the kind suggested by Bose 'C.J., was rejected on the ground that logically it would lead to the position that even a palpably absurd plea raised by a party would involve a substantial question of law because the decision on the merits of the case would be directly affected by it. What was, however, said was that when a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative view, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.
We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by. the Bombay High Court is rather narrow the. one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it
(1) (1927) 54 I.A. 126. 128.
(2) I.L.R. 1952 Mad. 264.
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directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general. principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.
Applying the tests it would be clear that the question involved in this appeal, that is, the construction of the Managing Agency agreement is not only one of law but also it is neither simple nor free from doubt. In the circumstances we have no hesitation in saying that the High Court was in error in refusing to grant the appellant a certificate that the appeal involves a substantial question of law. It has to be borne in mind that upon the success or the failure of the contention of the parties, they stand to succeed or fail

with respect to their claim for nearly 26 lakhs of rupees.
Now as to the merits. The relevant facts may be briefly stated. Chunilal Mehta & Co., Bombay were appointed Managing Agents of the respondent company for a term of 21 years by an agreement dated June 15, 1933. By a resolution passed by the respondent company in October 1945, Chunilal Mehta & Co., were permitted to assign the benefits of the aforesaid.agreement to the present appellant, Sir Chunilal V. Mehta & Sons Ltd. On April 23, 1951, the Board of Directors of the Company terminated the agreement of 1933 and passed a resolution removing the appellant as Managing Agents on April 23, 1951. The appellant thereupon filed a suit on the original side of the Bombay High Court
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claiming Rs. 50 lakhs by way of damages for wrongful termination of the agreement. Eventually with the permission of the Court it amended the plaint and claimed instead Rs. 28,26,804/-. The company admitted before the Court that the termination of the appellants' employment was wrongful and so the only question which the learned Judge before whom the matter went had to decide was the quantum of damages to which the appellant was entitled. This question depended upon the construction to be placed upon cl, 14 of the Managing Agency agreement.
That clause runs thus

> "In case the Firm shall be deprived of the office of Agents of the Company for any reason or cause other than or except those reasons or causes specified in Clause 15 of these presents the Firm shall be entitled to receive from the Company as compensation or liquidated damages for the loss of such appointment a sum equal to the aggregate amount of the monthly salary of not less than Rs. 6,000/- which the Firm would have been entitled to receive from the Company, for and during the whole of the then unexpired portion of the said period of 21 years if the said Agency of the Firm had not been determined."

In order to appreciate the arguments advanced before us it would, however, be desirable to reproduce the two earlier clauses cls. 10 and 12. They run thus

> 10.The Company shall pay to the Firm by wry of remuneration for the services to be performe
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> by the Firm as such Agents of the Company under this Agreement a monthly sum of Rs. 6,000/- provided that if at the
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> close of any year it shall be found that the total 0remuneration of the firm received in such year shall have been less than 10 per cent of the gross profits of the Company for such year the Company shall pay to the Firm in respect of such year such additional sum by way of remuneration as will make the total sum received by the Firm in and in respect of such year equal to 10 per cent of the gross profits of the Company in that year. The first payment of such remuneration , shall be made on the first day of August 1933.
> "12. The said monthly remuneration or salary shall accrue due from day to day but ,shall be payable by the company to the Firm monthly, on the first day of the month immediately

succeeding the month in which it shall have been earned."

The learned trial judge upon the interpretation placed by him on el. 14 awarded to the, appellant a sum of Rs. 2,34,000/-, calculating the amount it Rs. 6,000/- p.m. for the unexpired period of the term of the Managing Agency agreement and also awarded interest thereon. Now according to Mr. Palkhivala for the appellants, the interpretation placed upon el. 14 by the trial judge and the appeal Court is erroneous in that it makes the words "not less than" in el. 14 redundant. Learned counsel contends that on a proper construction of el. 14 the appellants are entitled to compensation computed on-the basis of the total estimated remuneration under cl. 10 for the unexpired period. Under that clause, he contends, the appellants are entitled to 10% of the profits of the company subject to a minimum of Rs. 6,000/- p.m. Alternatively learned counsel contends that el. 14 is not exhaustive of the appellant's right to compensation and the right to be compensated in respect of contingent remunera-

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tion based on 10% of profits is left untouched by that clause.

A perusal of el. 14 clearly shows that the parties have themselves provided for the precise amount of damages that would be payable by the Company to the Managing Agents if the Managing Agency agreement was terminated before the expiry of the period for which it was made. The clause clearly states that the Managing Agent shall receive from the Company as compensation or liquidated damages for the loss of appointment a sum equal to the aggregate amount of the monthly salary of not less than Hs. 6,000/- for and during the whole of the unexpired portion. of the term of Agency. Now, when parties name a sum of money to be paid as liquidated damages they must be deemed to exclude the right to claim an unascertained sum of money as damages. The contention of learned counsel is that the words "not less than" appearing before "Bs. 6,000/-" in cl. 14 clearly bring in el. 10 and, therefore, entitle the appellant to claim 10% of the estimated profits for the unexpired period by way of damages. But if we accept the interpretation, it would mean that the parties intended to confer on .the Managing Agents what is in fact a right conferred by a. 73 of the Contract Act and the entire clause would be rendered those. Again the right to claim liquidated damages is enforceable under is. 74 of the Contract Act and where such a right is found to exist no question of ascertaining damages really arises. Where the parties have deliberately specified the amount of liquidated damages there can be no presumption that they, at the same time, intended to allow the party who has suffered by the breach to give a go-by to the sum specified and claim instead a sum of' money which was not ascertained or ascertainable at the date of the breach. Learned counsel contends that upon this view the words "not less than" would be rendered otiose. In our opinion

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these words, as rightly-pointed out by the High Court, were intended only to emphasise the fact that compensation will be computable at an amount not less than Rs. 6,000 p.m. Apparently, they thought it desirable to emphasise the point that the amount of Rs. 6,000 p.m. was regarded by' them as reasonable and intended that it should not be reduced by the court in its discretion.

Mr. Palkhivala argued that what the appellants were entitled to was remuneration and remuneration meant nothing but

salary. The two words, according to him, have been used interchangeably in the various clauses of the agreement. If, therefore, salary in el. 14 is the same as remuneration, which according to him it is, then as indicated in el. 10 it would mean 10% of the gross profits of the Company subject to a minimum of Rs. 6,000/-p.m. In support of the argument that the two words wherever used in the agreement mean one and the same thing learned counsel relies on cl.12 which says that the monthly remuneration or salary shall accrue due from day to day. Then undoubtedly the two words clearly mean the same thing. But from a perusal of the clause it would appear that remuneration there could mean nothing other than Rs.6,000/-p.m. For, that clause provides that the amount shall accrue from day to day and be payable at the end of the month immediately succeeding the month in which it had been earned. Now, whether a company had made profits or not and if so what is the extent of the profits is determinable only at the end of its accounting year. To say, therefore, that the remuneration of 10% of the gross profits accrues from day to day and is payable every month would be to ignore the nature of this kind of remuneration. Therefore, in our opinion, when the remuneration and salary were equated in el. 12 nothing else was meant but Rs. 6,000/-and when the word salary was used in el. 14 we have no doubt that only that
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amount was meant and no other. It may be that under el. 10 the appellant was entitled to additional remuneration in case the profits were high upto a limit of 10% of the gross profits. That was a right to claim something over and above Rs.6,000/-and could be characterized properly as additional remuneration and not fixed or normal remuneration which alone was apparently in the minds of the parties when they drew up el. 14. In our opinion, therefore, the High Court was right in the construction placed by it upon the clause. Coming to the alternative argument of Mr. Palkhivala, we appreciate that the right which the appellant had of claiming 10% of profits was a valuable right and that but for cl. 14 he would have been (entitled in a suit to claim damages estimated at 10% of the gross profits. We also appreciate his argument that a party in breach should not be allowed to gain by that breach and escape liability to pay damage to a very much larger sum than the compensation payable under cl. 14 and that we should so interpret cl. 14 as to keep alive that right of the appellants. Even so, it is difficult, upon any reasonable construction of cl. 14, to hold that this right of the appellants were intended by the parties to be kept alive. If such were the intentions of the parties clearly there was no need whatsoever of providing for compensation in cl. 14. If that clause had not been there the appellant would indeed have been entitled to claim damages at the rate of 10% for the entire period subject to minimum of Rs. 6,000/- p.m. On the other hand it seems to us that the intention of the parties was that if the appellants were relieved of the duty to work as Managing Agent and to put in their own money for carrying on the duties of managing agents they should not be entitled to get anything more than Rs. 6,000/- p.m. by way of compensation. Clause 14 as it stands deals with one subject only
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and that is compensation. It does not expressly or by necessary implication keep alive the right to claim damages under the general law. By providing for compensation in express terms the right to claim damages under the general law is necessarily excluded and, therefore, in the face of

that clause it is not open to the appellant to contend that that right is left unaffected. There is thus no substance in the alternative contention put forward by the learned counsel.

Accordingly we affirm the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.