IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AD-COM 8 of 2024

With

CS-COM 69 of 2024

Amazon Seller Services Private Ltd.

Vs.

Pioneer Property Management Limited and Anr.

For the appellant	:	Mr. Jishnu Chowdhury, Sr. Adv. Mr. Harsh Hiroo Kursahani, Adv. Mr. Adarsh Kumar, Adv. Mr. Sayandeep Pahari, Adv. Ms. Sanskriti Agarwal, Adv. Mr. Alminhaz Karim, Adv.
For the respondent No. 1	:	Mrs. Suparna Mukherjee, Sr. Adv. Mr. Sankarshan Sarkar, Adv. Mr. Ratul Das, Adv. Ms. Abhipriya Sarkar, Adv.
For the respondent No. 2	:	Ms. Jayati Chowdhury, Adv. Mr. Jitendra Mehta, Adv.
Hearing concluded on	:	08.12.2025
Judgment on	:	29.01.2026

2026:CHC-OS:21-DB

Md. Shabbar Rashidi, J.:-

1. The appeal at the behest of defendant No.1 in the original Civil Suit is directed against the judgment and decree dated April 16, 2024 passed in CS COM 69 of 2024 (Old Suit No. 02 of 2016 and CS No. 45 of 2024).

2. By the impugned judgment and decree, the learned Trial Judge decreed the suit being CS-COM 69 of 2024 holding both the defendants jointly and severally liable. The learned Single Judge, in the impugned judgment and order, held to the following:

> *"The defendants are directed to pay jointly and severally a sum of ₹34,00,000/- along with interest @ 12% per annum from 7th January, 2016 till the realization of the said amount along with service tax to the plaintiff.*
> *CS-COM 69 of 2024 (Old Nos. CS 2 of 2016 & CS 45 of 2024) is thus disposed of. Decree be drawn accordingly."*

3. Learned advocate for the appellant submitted that the impugned judgment was passed by learned Single Judge without appreciating the true facts. The same is also erroneous application of settled law.

4. Learned advocate for the appellant further submitted that the learned Trial Judge committed error by not appreciating that in the business of real estate and brokerage, the information with regard to a particular property remains available with so many brokerage

firms/agents and in fact, such information is available in public. It is submitted that the learned Single Judge committed error in arriving at a finding that there was a concluded contract between the appellant and the respondent No.1, in so far as the appellant was not able to prove at the trial that the respondent No.1 accepted the proposal sent.

5. Learned advocate for the appellant also contended that the learned Single Judge erroneously held respondent No. 2 as agent of the appellant. The relationship between the appellant and respondent No.2 flowed out of an independent agreement or the Master Service Agreement executed by and between the appellant and respondent No.2. At the same time learned Judge was not justified in upholding the validity of a non-disclosure agreement. Such agreement was never executed between the appellant and respondent No.1. Learned advocate for the appellant referred to clause 6 of Master Service Agreement which specifically provided that respondent No.2 will act as independent service provider and nothing will be construed to create any relationship like principal and agent.

6. Learned advocate for the appellant further submitted that learned Single Judge erroneously relied upon the statement of respondent No.1 to the effect that respondent No.2 was agent of the appellant without any evidence in this regard. The appellant specifically denied such relationship with respondent No. 2 in his written statement. Respondent No.2 was engaged by the appellant as

a logistic service provider independently and entered into a Master Service Agreement with respondent No.2 in this regard. The appellant outsourced his requirement to such respondent and in doing so; the appellant introduced respondent No.2 with respondent No.1.

7. Learned advocate for the appellant also referred to clause 4 of the Master Service Agreement which provided that for any claim in respect of finalizing the warehouse requirement, the appellant would not be liable for any act of respondent No.2. It precisely provided that the appellant would not be vexed for any transaction between respondent No.2 and any third party. In that view of the facts, the learned Single Judge was not justified in holding the appellant liable for the compensation to respondent No.1.

8. Learned advocate for the appellant further submitted that the learned Single Judge overlooked the fact that respondent No.1 was specifically intimated beforehand that the requirement of warehouse properties of the appellant were outsourced to respondent No.2. It was also contended that the learned Single Judge arrived at an erroneous conclusion that warehouse requirement of the appellant was finalized on the basis of Master Service Agreement. It was an independent transaction by respondent No.2 with respondent No.1. There was no business transaction between appellant and respondent No.1 and as such, the appellant could not have been held liable for the acts or omissions of respondent No.2.

9. According to learned advocate for the appellant, learned Single Judge erred in holding that there was a valid concluded contract between the appellant and respondent No.1. In fact, the mutual Non-Disclosure Agreement was never executed. An un-executed contract could not be held to be a valid concluded contract, though; acceptance of such contract was neither communicated nor executed on the part of the appellant. The mutual Non-Disclosure Agreement does not contain the basic ingredients in terms of the provisions of Indian Contract Act, 1872 to be a valid contract. There is no concept of deemed acceptance in the Act of 1872.

10. Per contra, learned advocate for respondent No.1submitted that initially, the appellant approached the respondent No.1 seeking his services for its requirement of warehouse property in and around Kolkata. The appellant entered into a Mutual Non-Disclosure Agreement with respondent No.1. Respondent No.1 rendered the services, provided the appellant with requisite information about several properties and made arrangements for site inspection of such properties by the appellant. However, the appellant, upon availing the services of the respondent No.1, entered into an agreement directly with the landlord and did not pay them the requisite services charges as agreed.

11. Learned advocate for respondent No.1 further contended that the appellant utilized the services rendered by them in the form of

information regarding the whereabouts of the properties likely to be hired without paying the agreed charges to respondent No.1. Such respondent spent his resources in terms of money as well as otherwise in providing services to the appellant in derogation of the terms of Non-Disclosure Agreement. It was submitted that learned Single Judge was quite justified in holding that there was valid concluded contract between the appellant and respondent No.1 and therefore, rightly awarded the damages.

12. Learned advocate for respondent No.1 also contended that respondent No.1 acted as agent of the appellant and exploited the services rendered by respondent No.1 in arranging for the warehouse requirement of the appellant. The appellant acted in breach of Mutual Non-Disclosure Agreement in so far as he disclosed the information regarding the properties searched by respondent No.1 to respondent No.2.

13. An officer of the appellant approached respondent No.1 on October 14, 2014 looking for its brokerage services intending to hire a large warehouse in and around Kolkata. Respondent No.1, through its Director, agreed to provide such service to the appellant concern on usual terms more specifically, on condition to charge one month's rental with applicable service tax, both from the tenant as well as from landlord upon finalization of the deal or on handing over of possession whichever is earlier. The appellant agreed to avail of the brokerage

services on such terms. It was also agreed between the parties that in the event the appellant agreeing to utilize the brokerage services rendered by respondent No.1, the appellant will not enter into direct negotiations or agreement with the landlord of the properties which would be shown or particulars whereof would be provided by respondent No.1.

14. In pursuance of such understanding, the appellant/ defendant No.1, by an email, sent a draft agreement to be known by '*Mutual Non-Disclosure Agreement*' which was acknowledged by respondent No.1/plaintiff by an email dated October 18, 2014. The plaintiff suggested some modification in the draft '*Mutual Non-Disclosure Agreement*' and by the self-same email requested the appellant to express its view on the proposed modifications. Such modifications in the draft agreement were accepted by the appellant by an email dated December 4, 2014. At the same time, respondent No.1 was requested to send the signed copy of such agreement. Accordingly, the '*Mutual Non-Disclosure Agreement*' was prepared by respondent No.1 in duplicate on requisite stamp papers. Both the copies were signed on behalf of respondent No.1 and it were sent to appellant for execution under a covering letter dated December 16, 2014 with a request to return one copy of such agreement after signing for the purpose of records.

15. Respondent No.1, acting in furtherance of the '*Mutual Non-Disclosure Agreement'*, started sharing the details of properties including photographs, to the appellant which could meet the requirements of appellant. It was also urged by respondent No.1 that in pursuance of the '*Mutual Non-Disclosure Agreement',* the appellant, by an email dated October 27, 2014, forwarded a checklist to respondent No.1 asking it to fill up the details of the properties in the format of checklist. Respondent No.1 acknowledged such request of the plaintiff and by two several emails dated October 28, 2014 filling up the details of two properties situated at Bantala and Dhulagarh together with photographs thereof.

16. The plaintiff/respondent No.1 also shared the details of another warehouse property at Sreerampore, Delhi Road, Hooghly, to the appellant/defendant No.1, by an email dated December 31, 2014 which was then occupied but about to be vacated. By an email dated January 12, 2015, the appellants asked for the postal address of Sreerampore warehouse belonging to Keola Associated Private Limited. Respondent No.1 furnished the details as sought by the appellant, by an email dated January 13, 2015 and discussions over the Keola warehouse continued between the parties from time to time.

17. The suit being CS 2 of 2016 was filed by the plaintiff/respondent No. 1 seeking for the following reliefs:-

(a) "Decree for Rs. 1,15,92,877/- as pleaded in paragraph 35 above against the defendant no. 1;

(b) In the alternative, decree for Rs. 1,15,92,877/- as pleaded in paragraph 35 above against defendant no. 2;

(c) Further interest, Interim interest and interest upon judgment at 18% per annum;

(d) Judgment upon admission;

(e) Attachment before judgment;

(f) Receiver;

(g) Injunction;

(h) Costs;

(i) Further and/or other relief or reliefs."

18. Reliefs were sought in the suit against the appellant/defendant No. 1 and in the alternative, similar reliefs were sought against respondent No. 2/defendant No. 2. The learned Trial Judge had passed the impugned judgment and decree against both the defendants in the suit, holding them jointly and severally liable, thereby granting both the prayers (a) and (b) in the plaint simultaneously. In such view of the facts and particularly the prayers of the plaint requiring a decree in the alternative, at the time of hearing, we enquired from the learned Senior Advocate appearing for respondent No. 1 as to which of the reliefs was the respondent No. 1 seeking, in appeal. In response, learned Senior Advocate submitted that the plaintiff/respondent No. 1 was not pressing for the alternative relief sought in the original suit, as against the respondent No. 2/defendant No. 2. It was contended in response to our query that

respondent No. 1 was limiting its prayers as against the appellant/defendant No. 1 only. In such conspectus, the hearing of the instant appeal was confined to prayers (a), (c) to (i) of the plaint sought against the appellant/defendant No. 1 in the suit.

19. According to the case made out by the plaintiff/respondent No.1, in January, 2015, the appellants informed respondent No.1 that it had appointed respondent No.2/ defendant No.2, as its agent who will finalize the warehouse requirement of appellant on its behalf. It was also informed that respondent No.2 would be contacting and getting in touch with respondent No.1 over the issue. Accordingly, representative of respondent No.2, by an email dated February 3, 2015 requested respondent No.1 to share the details of Sreerampore property. Such request was duly responded by respondent No.1 on February 3, 2015 itself. The details of the property, as requested by respondent No.2, were also shared by respondent No.1 on February 3, 2015.

20. By a separate email dated February 3, 2015, respondent No.1 requested the appellant to confirm a visit to the property concerned. Date of visit was fixed on February 5, 2015, by respondent No. 2; however, the visit could not materialize due to late arrival of the representative of respondent No.2. Later, respondent No. 2 informed respondent No. 1 that they were not interested in finalizing the hiring of Sreerampore property and asked to supply the details of some

alternative properties. In pursuance of such request, respondent No. 1 furnished the details of four other properties to respondent No.2 by an email dated February 20, 2015.

21. Respondent No.1 also came up with a case that on May 22, 2015 they were informed by the appellant that since respondent No.1 could not arrange a site visit by respondent No.2 on February 5, 2015, respondent No.2 had refused to enter into any further negotiation with respondent No.1 in respect of the Sreerampore property. However, on May 28, 2015, the representatives of respondent No.1 visited the Sreerampore property and came to learn that respondent No.2 had directly entered into a tenancy agreement in respect of the said property with Keola Associates Private Limited, avoiding respondent No. 1 which according to respondent No. 1 was violation of the agreement of '*Mutual Non-Disclosure Agreement*' entered into between the appellant and respondent No.1, respondent No.2 having been acting as an agent of the appellant.

22. Defendant No.1 on the other hand came up with a case that the defendant No. 1 was looking for a warehouse space and he was in regular touch with different real estate brokerage firms as also individuals. It was not limited to the plaintiff, defendant No. 2 or CBRE. It was further stated that by an email and letter dated October 25, 2014, respondent No. 1 sent proposals on a couple of properties together with its schedule and fees that was likely to be charged as

commission on finalization of either of the properties. Such proposal was, however, rejected by the appellants. It was further case of the appellant/defendant No. 1 that in view of an inordinate delay in finalizing its requirements, it engaged the third party logistics service for its requirements. Accordingly, the appellant handed over the responsibilities to finalize the location for the warehouse to respondent No. 2. In the process, the appellant introduced respondent No. 2 to the plaintiff/respondent No. 1.

23. It was further case of the appellant in the original suit that the appellant entered into a Master Service Agreement with respondent No. 2. Clause – 4 of such argument guaranteed an indemnity to be provided by respondent No. 2 to the appellant against any claim based on loss, damages, settlement, costs, expenses and any other liability. It was urged that in terms of such Master Service Agreement, no liability existed against the appellant and it could not have been implicated for any business relationship or transaction between respondent No. 2 and any third party. The appellant also made out a case that by an email dated December 31, 2014 sharing details of the property involved in the case was overlooked by the appellant due to Master Service Agreement between it and respondent No. 2. The appellant did not require any service from respondent No. 1/plaintiff. By its email dated January 12, 2015, the appellant

relegated respondent No. 1 to the respondent No. 2 for finalization of the deal.

24. The appellant specifically stated in its written statement that no concluded contract was executed between the appellant and respondent No. 1. The details of the property were openly available with different real estate brokerage firms/agents. The appellants also alleged that since there was no concluded contract between it and respondent No. 1, no claim of confidentiality is sustainable.

25. Respondent No. 2, in the written statement, made out a case that the appellant and respondent No. 2 shared a business relationship since December 22, 2014 in the form of a Master Service Agreement executed by and between them. Under such agreement, respondent No. 2 was responsible to provide logistic support to the appellant.

26. It was further case of respondent No. 2 that on December 22, 2014, the appellant contacted respondent No. 2 for the availability of a ready warehouse space in Kolkata which was responded by respondent No. 2 through its email dated December 23, 2014. By another email dated December 24, 2014, respondent No. 2 informed the appellant of two individual sites at Calcutta. Since then, there has been several email correspondences between the appellant and respondent No. 2 between December 30, 2014 and January 28, 2015. In the meantime, respondent No. 2 had been communicating with its

listed real estate agent, CBRE, seeking assistance in respect of warehouse requirement of the appellant. Consequently, details of several properties were furnished to the appellant.

27. It was specific case of respondent No.2 that the lead to subject property was provided by CBRE to it and both of them were coordinating to arrange a site visit by the appellant. It referred to an email dated February 3, 2015 by respondent No.2 to CBRE. Accordingly, respondent No.2 visited the property site with the assistance of CBRE on February 4, 2015 and a site visit to be taken by respondent No.1 was also arranged on February 6, 2015. Referring to emails dated February 5, 2015 and June 17, 2015, respondent No.2 set out a case that they had informed respondent that they would not consider the proposal for Sreerampore property by respondent No.1 if they failed to arrange a site visit on February 5, 2015. The site was thereafter, visited by the appellant and respondent No.2 through the services of CBRE. The deal was ultimately finalized by the appellant on April 17, 2015 and according to the terms; one month's rental was paid to CBRE by the landlord/owner of the property Keola Associates Private Limited as commission.

28. Based on the pleading, so put in by the parties, the learned Single Judge framed as many as 12 issues for the adjudication of the disputes involved in the lis. The issues framed by the learned Trial Judge are as follows:

1. "Is the suit bad or not maintainable in its present form or is liable to be dismissed as alleged by the defendants in their written statements?

2. Is the defendant No.2 an agent of the defendant No.1?

3. Does the instant suit suffer from lack of or non-disclosure of cause of action as alleged by the defendants in their written statements?

4. Was the defendant No.1 after orally accepting the terms and condition of brokerage services of the plaintiff and thereafter acted in furtherance to such acceptance by forwarding the 'Mutual Non-Disclosure Agreement', not bound and obliged to honour the terms thereof as stated in paragraph 5 of the plaint?

5. Was not acceptance of the terms of 'Mutual Non-Disclosure Agreement' by defendant No.1 final and binding after exchange of emails dated 4th December, 2014 as stated in paragraph 7 of the plaint?

6. Did the defendants in consent and connivance of each others violating the terms of 'Mutual Non-Disclosure Agreement' on one hand and taking full advantage of the plaintiff's services on the other hand acted to the prejudice and detrimental of the plaintiff?

7. Is the defendant No.2 bound by any contractual obligation or otherwise with the plaintiff?

8. Whether any concluded contract was entered into in between the plaintiff and the defendant No.1 which can entitle the plaintiff to obtain a decree of ₹1,15,92,877/- as against the defendant No.1?

9. Are not the defendants liable to compensate the plaintiff as per the particulars as stated in paragraph 35 of the plaint?

10. Is the plaintiff entitled to any interest @ 18% on the sum of ₹1,00,00,000/- on and from 31st December, 2014 till 18th November, 2015 from the defendants?

11. Whether the plaintiff is entitled to a decree as prayed for?

12. To what other reliefs is the plaintiff entitled to?"

29. The materials on record exhibits that the appellant/defendant No.1 approached respondent No.1 for brokerage services for the purpose of its warehouse requirements in and around Kolkata. Both the parties negotiated over the issue for some time. There was an understanding between the parties that respondent No.1 will be providing the brokerage services to the appellant and the appellant shall pay a sum equal to one month's rental of the property hired by it to respondent No. 1, as brokerage, in case the deal is finalized. In turn, the appellant also gave out that he would not disclose the details of the properties furnished by respondent No.1 to any other person and shall not enter into direct agreement with the landlord/owner of such properties.

30. According to the case of respondent No.1 there was a concluded contract between the two parties in this regard in the name of '*Mutual Non-Disclosure Agreement*', which is of course, disputed by the appellant. It is the case of the appellant that he did approach respondent No.1 seeking its brokerage services for hiring property for their warehouse requirements. The alleged '*Mutual Non-Disclosure Agreement*' was however never executed by the appellant resulting into a concluded contract.

31. The appellant ultimately hired a warehouse property at Sreerampore by entering into an agreement directly with the owner of

such property. According to the case of respondent No.1, details of the property hired by appellant was furnished by it to the appellant. However, in blatant violation of the terms of the contract concluded between appellant and respondent No.1, the appellant proceeded to hire the property directly from the landlord/owner. It was also contended that the property was hired by the appellant availing the brokerage services rendered by respondent No.1, in order to evade its due commission as agreed between the parties. The suit was filed by respondent No.1 seeking a decree for such brokerage charges together with damages on account of loss of reputation etc.

32. On the contrary, the appellant denied the existence of any concluded contract between it and respondent No.1. It was also contended by appellant that besides seeking brokerage services of respondent No.1, it also sought such services of respondent No.2. In fact, according to the appellant, the brokerage services of respondent No.2 was hired by the appellant in terms of a Master Service Agreement on pan India basis and such relationship was on the terms of principal to principal basis instead of principal and agent. It is in this capacity, respondent No.2 was introduced to respondent No.1 with intimation that any deal regarding the requirements of the appellant of the warehouse property would be independently negotiated with respondent No.2, it being an independent brokerage service provider on the rolls of appellant company.

33. Respondent No.2 acting as independent brokerage service provider, hired another company under the name and style of CBRE to obtain lead of properties open for hiring and in fact, lead of the property at Sreerampore, hired by the appellant was provided by CBRE to respondent No.2. It was also contended that it is not uncommon that details of same property, open for hiring, may be available to more than one service provider. Accordingly, on the basis of lead provided by CBRE to respondent No.2, property was shown to the appellant and it was finally hired by the appellant.

34. Respondent No.2 and CBRE also arranged for site visit of such property conducted by the appellant company on February 6, 2015, independent of any involvement of respondent No.1. Involvement of respondent No.1 in the deal was ruled out, at least on two counts. Firstly that respondent No.1 was duly intimated by the appellant, well beforehand, that they had placed their requirements with respondent No.2 and therefore, any negotiation in this regard was directed to be made with respondent No.2 and secondly, since respondent No.1 failed to arrange the site visit by the appellant, respondent No.1 was intimated that respondent No.2 was not interested in proceeding with the deal any more.

35. Issue No.1 was decided by learned Single Judge in favour of the plaintiff/respondent No.1 holding that the suit was maintainable in its present form. Maintainability of the suit was not pressed by

either of the parties at the time of hearing of this appeal. In such view of the facts, since we are not called upon, we are not minded to go into the maintainability of the suit.

36. As regards issue No. 2 i.e. respondent No. 2 acting as an agent of the appellant/defendant No.1, the learned Trial Court decided this issue in favour of the plaintiff/respondent No. 1. While deciding such issue, the learned Trial Judge apparently took into consideration various clauses of the Master Service Agreement between the appellant and respondent No.2 on December 22, 2014. It was also observed that inspite of the existence of Master Service Agreement, the appellant continued to negotiate with respondent No.1 at least till mid February 2015. Learned Single Judge also held that the execution of such Master Service Agreement between the appellant and respondent No.2 was never intimated to respondent No.1. On such score, learned Single Judge came to a conclusion that respondent No.2 was acting as an agent of the appellant.

37. There are rival contentions by the parties as to the position of respondent No.2. According to respondent No.1, respondent No. 2 Kuehne & Nagal (India) Private Limited, was acting as an agent of the appellant Amazon Sellers Services Private Limited in the transaction relating to hiring of the warehouse. On the contrary, the appellant has come up with a case that, besides hiring the services of respondent No.1, Pioneer Property Management Limited, the appellant also

engaged respondent No.2, as an independent service provider, to render services in respect of finalization of its warehouse requirements. To this effect, the appellant also entered into a Master Service Agreement with respondent No.2. The said respondent No.2 never acted as agent of the appellant rather it was acting as an independent service provider.

38. According to the appellant, such appointment of respondent No.2 was duly intimated to respondent No.1 and thereafter it has been communicating with respondent No.2 for the property requirements of the appellant. Although, no definite evidence has been brought on record to establish that respondent No.1 was dealing with respondent No.2 as agent of the appellant but it is evident that a series of email communications were exchanged directly between respondent No.1 and respondent No.2 over the requirement of appellant, ranging from details of property to request for arrangement of site visit, legal and technical requirements etc. and that too, in some of such email communications, addressed to respondent No. 2, the appellant was referred to as the 'client' of respondent No.2.

39. The purport of such email communications, generated from respondent No.1 clearly indicates that respondent No.1 was dealing with respondent No.2 independently and that it was acting as independent service provider serving its clients, like the appellant. To our view, non-disclosure of Master Service Agreement entered into

between the appellant and respondent No.2 before respondent No.1 is of no consequence. The appellant, as an entity, was at liberty to engage as many service providers for its requirements as it liked. Therefore, learned Trial Judge was not justified in holding that respondent No.2 was acting as an agent of the appellant.

40. The other issues which are contentious between the parties are issue No. 4 to issue No. 8 as framed in the suit. These issues relate to the concluding nature of a contract of non-disclosure entered into between the appellant and respondent No. 1 and violation thereof. The original suit was based on the allegation of violation of a concluded contract. The appellant has disputed the existence of a concluded contract between them and respondent No. 1.

41. From the case made on behalf of the parties, it transpires that the appellant approached respondent No. 1 for brokerage services for its requirement of a warehouse in and around Kolkata. The respondent No. 1 agreed to provide to such brokerage service. According to the case made out by respondent No. 1, the appellant agreed with respondent No. 1 that the appellant agreeing to avail brokerage services of respondent No. 1, would not enter into negotiations and agreement directly with the landlord/owner of the properties which would be shown or any particulars of the properties would be provided by respondent No. 1. On such understanding, appellant and respondent No. 1 drafted an agreement in the form of

'Mutual Non-disclosure Agreement' and shared it with respondent No. 1. Respondent No. 1, in turn, after going through the draft, suggested certain modifications in the draft agreement and sent back the draft agreement with modifications asking the appellant to express its views in the proposed modifications. It was further case of respondent No. 1 that appellant accepted the modifications and asked respondent No. 1 to send the signed copies of such agreement. Such communication was allegedly made by the appellant by an email message. In pursuance of such communication, respondent No. 1 prepared two copies of the agreement and sent it across to the appellant after signing it. It was also requested that one copy of such agreement be transmitted to respondent No. 1 after signing for the purpose of their records. It was the contention of respondent No. 1 that since the appellant sought respondent No. 1 to send the signed copy of the agreement and it was accordingly sent to the appellant for their signature, a contract between the appellant and respondent No. 1 was concluded.

42. On the other hand, according to the case made out by the appellant, the 'Mutual Non-Disclosure Agreement' was never signed by the appellant. Therefore, there was no concluded contract between the parties binding upon them. The materials go to show that the agreement was actually never signed by the appellant although it was sent to it by respondent No. 1. Respondent No. 1 had already signed

the said agreement and sent it across to the appellant for their signature with a request to send the duplicate copy of such agreement after its signing by the appellant which was never done.

43. The principles with regard to completion of communication in respect of an offer or acceptance thereof or with regard to revocation of such offer or acceptance have been dealt with under Section 4 of the Indian Contract Act, 1872. It would be appropriate to set out Section 4 of the Act of 72 which is as follows:-

> *"**4. Communication when complete**.—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*
>
> *The communication of an acceptance is complete,—*
>
> *as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;*
>
> *as against the acceptor, when it comes to the knowledge of the proposer.*
>
> *The communication of a revocation is complete,—*
>
> *as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;*
>
> *as against the person to whom it is made, when it comes to his knowledge.*
>
> *Illustrations*
>
> *(a) A proposes, by letter, to sell a house to B at a certain price.*
>
> *The communication of the proposal is complete when B receives the letter.*
>
> *(b) B accepts A's proposal by a letter sent by post.*
>
> *The communication of the acceptance is complete,*
>
> *as against A when the letter is posted;*

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him."

42. In the case at hand, respondent No.1 communicated the term of proposed Non-Disclosure Agreement through email. The appellant made certain modifications in such terms and conditions and sent it across to the respondent No.1 for its views on such modifications. The modifications were accepted by respondent No.1 and thereafter, respondent No.1 executed the agreement in duplicate, with a request to send a copy thereof, after execution by the appellant. However, such agreement was admittedly, never executed by the appellant. Therefore, in view of the provisions contained in Section 4 of the Act of 1872 no concluded contract came into being in between the appellant and respondent No.1 because it was not executed by the appellant and its acceptance was neither communicated nor came to the knowledge of respondent No.1. Mere communication of the terms of agreement and incorporating certain modifications therein cannot amount to a concluded contract, especially when the parties intended execution of such document in writing.

43. Proposing or accepting modification in a document to be used as an agreement and acceptance of the terms of an agreement by executing it cannot be equated. In such view of the facts, learned Trial Judge was not justified in holding that there was a concluded contract between respondent No.1 and the appellant. The learned Trial Judge held the 'Mutual Non-Disclosure Agreement' binding between the parties on the premise that the appellant, upon receipt of the draft agreement did not expressly intimate that it will not execute the agreement. The relevant finding of the learned Single Judge reads thus:

> *"Considering the above facts and circumstances this Court finds that even after receipt of Mutual Non-Discloser Agreement by the defendant No.1, the defendant No.1 had never informed the plaintiff that the defendant No. 1 will not execute the agreement or does not agree with the terms and conditions of the agreement. There is no evidence to prove that the defendant No. 1 has informed that the defendant No. 1 is not intending to continue with any deal with the plaintiff, thus this Court safely held that there is concluded contract between the plaintiff and the defendant No.1"*

44. However, it is evident that the parties intended a signed agreement in writing. The draft copies of such document were sent to the appellant for their signature and sending a copy thereof to respondent No.1 for their records. The said draft was never signed by the appellant and was not sent back to respondent No.1. Where the

parties intended a signed agreement in writing, it cannot be said to be binding on the parties until it was signed and duly communicated to respondent No.1.

45. We have noted hereinbefore that the appellant informed respondent No.1 well beforehand that it had hired the services of respondent No.2 on pan-India basis for their warehouse requirements by entering into a '*Master Service Agreement'*. The materials on record reveal that respondent No.1 had been communicating with respondent No.2. There appears no iota of evidence that respondent No.1 was dealing with respondent No.2 as a mere agent of appellant and not an independent entity as instructed by the appellant. The terms and conditions of the '*Master Service Agreement',* admitted in evidence, demonstrate that respondent No.2 was acting as an independent service provider instead of a mere agent of the appellant. There was no contract between respondent No.1 and the appellant and as such, the appellant cannot be held responsible for breach of any contract or liable to pay damages for such breach.

46. The parties have adduced evidence which contain email communication between them. It transpires from such evidence that respondent No.1 had been communicating with respondent No.2 over the warehouse requirements of the appellant. In turn, respondent No.2 also availed the services another entity in the name of CBRE. There are email communications to that effect as well. Such

communications become relevant in view of the case made out by respondent No.2 to the effect that details of properties are available with many brokers/property dealers working in the field and that the lead to the property in question was provided by CBRE and not by respondent No.1.

47. Be that as it may, since on the basis of materials on record, we are of the view that there was no concluded contract legally binding between the appellant and respondent No.1, the appellant could not have been held liable for any breach thereof. In such view of the facts, issue nos. 4 to 8 ought to have been decided against respondent No.1/plaintiff. Consequently, in absence of a legally enforceable contract between the appellant and respondent No.1, the appellant was not liable to pay any brokerage service charges to the plaintiff/respondent No.1. On the same reasoning respondent No.1 was not entitled for any damages towards breach of contract. Accordingly, we are of the opinion that issue nos. 9, 10 and 11 could not have been decided in favour of the plaintiff/respondent No.1.

48. Therefore, on the basis of discussions hereinabove, we set aside the impugned judgment and order. Consequently, AD-COM 8 of 2024 is hereby allowed, however without any order as to costs. Connected applications, if any, shall also stand disposed of.

49. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

50. I agree.

[DEBANGSU BASAK, J.]