IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.1260 of 2015

1.E.Ramalingam
2.R.Anandan
3.R.Nirmala
4.E.Lakshmi
5.J.Babu
6.S.Subramani
7.S.K.Neelamegan
8.D.Deepa
9.S.Baskaran
10.S.Suresh
11.P.Raja
12.C.Ravindar .. Appellants/Plaintiffs

vs.

1.H.Sukumaran
2.P.Haridoss
Selvakumar (died on 20.12.2012)
[set ex parte on 03.11.2006] .. Respondents/Defendants

Appeal under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree made in O.S.No.1856 of 2012 on the file of the XVIII Additional District and Sessions Judge, FAC XIX Additional District and Sessions Judge, Chennai dated 01.08.2015.

For Appellants : Mr.T.S.Rajamohan

For Respondents : Mr.A.G.Rajan

J U D G M E N T

The First Appeal on hand is directed against the judgment and decree passed by the learned XVIII Additional District and Sessions Judge, FAC XIX Additional District and Sessions Judge, Chennai in O.S.No.1856 of 2012 dated 01.08.2015.

2. The appellants are the plaintiffs and the respondents are the defendants in the suit.

3. The plaintiffs claimed damages along with interest in the suit against the defendants on the ground that the plaintiffs had paid a sum to the defendants for securing public employment in the Ministry of Defence, Government of India.

4. The facts, in nutshell, narrated by the plaintiffs in the suit, are that the second defendant was working in the Railways, ICF, and he informed that one Mr.Selvakumar, who is also a Railway employee, represented that he knew Officers in the Defence Ministry and that appointments are being made in Defence Ministry. The second defendant represented that if the first plaintiff can spend money, his children will get employment in the Ministry of Defence. The second defendant informed the first plaintiff that he would arrange job in coordination with one Mr.Selvakumar and is known to the first plaintiff. The plaintiffs state that Rs.1,20,000/- was paid to the second defendant, since he claimed that the same is required for medical, training and other expenses.

5. The first plaintiff contributed a sum of Rs.90,000/- towards the share of his son R.Anandan, his daughter R.Nirmala, besides his sister E.Lakshmi, who are the plaintiffs 2, 3 and 4 respectively. When the second plaintiff narrated the above facts to his friends, his friends, who are the other plaintiffs herein, also agreed to pay Rs.30,000/- each and accordingly, a total sum of Rs.4,20,000/- was paid to the second defendant. Seven other persons namely A.M.Makeshkumar, R.Kamesh, N.Govindarajan, E.Neelakandan, A.Rajan, A.Ayyappan and E.Jayakumar paid a sum of Rs.30,000/- each to the second defendant. Therefore, a total sum of Rs.5,40,000/- was paid to the second defendant in the presence of the first defendant, as on April 2004.

6. During February 2004, the plaintiffs and other seven persons totally 18 persons received communication alleged to have been sent by Ministry of Defence. The communications state that they are all selected and appointed in various posts. The plaintiffs believed those communications. The letters state that the plaintiffs will have to undergo training, the plaintiffs were waiting for communication to undergo the so called training. During May 2004, the plaintiffs received another letter from the second defendant, which stated that the plaintiffs will have to join duty on 07.05.2004.

7. Again the plaintiffs received letters on first week

of July 2004 by post, which stated that the plaintiffs were appointed in different categories. In fact, the plaintiffs were all taken to the Defence Ministry Office at Teynampet, Chennai-18. The plaintiffs were asked to stand in the Bus Stop. The defendants 2 and 3 informed the plaintiffs that they will have to wait until July 2004 to join duty. When the plaintiffs wanted to meet the Officers, they were informed that since the plaintiffs have all come on recommendation and quota, the plaintiffs should not see the Officers. The plaintiffs got suspicion, since they were not taken inside the Office.

8. The plaintiffs started inquiring with the Defence Department. The plaintiffs were all informed that there is no recruitment drive and the order of appointment stated above are all false and bogus. The plaintiffs believed the second defendant. Now after coming to know that the second defendant has played fraud on the plaintiffs and seven other persons in collusion and conspiracy with the third defendant and when the plaintiffs questioned the second defendant, he admitted that he cheated the plaintiffs and agreed to return back their money.

9. Pertinently, the first defendant executed letter of declaration and undertaking dated 17.06.2004 that if his father, that is the second defendant, does not secure job to the plaintiffs and seven others, he will stand guarantee for the abovesaid sum paid to the second defendant.

10. Having come to know that the defendants 2 and 3 had cheated the plaintiffs, when the plaintiffs started demanding return of money with all the defendants, the defendants pleaded time to pay the money. In spite of repeated requests and demands for return back of their money, the defendants were very evasive and started avoiding them. Particularly, the first defendant disclaimed his liability in spite of the declaration and undertaking given by him.

11. Under these circumstances, since it was firmly understood that the second defendant in active collusion and conspiracy with the third defendant had cheated the first plaintiff and other plaintiffs, who have contributed money, the plaintiffs lodged complaint before the Commissioner of Police, Egmore, Chennai-8 on 16.07.2004. The plaintiffs complaint were received on file by the Commissioner of Police, Central Crime Branch, Team VI, Office of the Commissioner of Police, Egmore, Chennai-8 under FIR Crime No.410 of 2004 dated 02.08.2004 for he alleged offences under Sections 468, 471, 406 and Section 420 IPC.

12. The Commissioner of Police, Egmore, Chennai-8 and the Inspector of Police, Central Crime Branch, Team VI, Office of the Commissioner of Police, Egmore, Chennai-8 having registered the said complaint seems to have enquired the matter. The plaintiffs state that on 04.08.2004, the plaintiffs were called upon by the Commissioner of Police, Egmore, Chennai-8 and the Inspector of Police, Central Crime Branch. They were shocked to hear from the police authorities that they have conducted enquiry and that the third defendant herein scot-free. Several steps were taken by the plaintiffs to realise the money paid to the second defendant. However, they are unable to succeed and the third defendant by stating certain false facts and informations could able to escape from his liability and that is why they were constrained to file the civil suit for recovery of money along with interest.

13. The defendants filed the written statement denying the allegations set out in the plaint stating that the second defendant is working in Railways, ICF is true. The other averments in the plaint are denied specifically by stating that all the facts narrated are false and contradictory. It is contended that the suit itself is not maintainable for want of non-joinder of necessary parties. Even the receipt of Rs.1,20,000/- was denied by the second defendant. that the second defendant informed the first plaintiff that he would arrange job in coordination with one Mr.Selvakumar is specifically denied.

14. They relied on the investigation of the Police Officials and contended that only culprit is the third defendant and therefore, the second defendant is not responsible for any damages or recovery of money. The second defendant himself is the victim to the cheating committed by the third defendant, who also had given a sum of Rs.1 lakh to the third defendant on the promise made by him that he would secure jobs to his sons and relatives from the Ministry of Defence. When the second defendant came to know that he had been cheated by the third defendant, he lodged a complaint through his son on 28.06.2004 before the Central Crime Branch, Egmore, which were being investigated. Under these circumstances, the suit itself is not maintainable and made a request to dismiss the suit.

15. The further contentions of the defendants are liable to be rejected on the ground of non-joinder of necessary parties.

16. The following issues are re-casted and the same read as under:-

"(1) Whether the transaction between the plaintiffs and the defendants is opposed to public policy under the Indian Contract Act ?

(2) Whether the suit claim is barred under the Indian Contract Act ?

(3) Whether the suit is hit by the principles of mis-joinder of parties ?

(4) Whether the plaintiffs are entitled to recovery of suit amount ?

(5) Whether the plaintiffs are entitled for interest of Rs.27,180 ?

(6) Whether the defendants are liable to pay damages to the plaintiffs as prayed for in the plaint ?

(7) To what other relief is the plaintiffs entitled ?

17. The Trial Court adjudicated the issues with reference to the documents and evidences. The Trial Court mainly relied upon the enquiry conducted by the police that the third defendant was the reason for collection of amount from the plaintiffs as well as the second defendant for the purpose of securing appointments in the Ministry of Defence, Government of India. Though the plaintiffs alleged that the second defendant is actively involved in perpetration of the crime, the same was not established before the Trial Court. The first defendant, who is the son of the second defendant, has executed a letter of undertaking under Ex.A-3 for the due repayment of money.

18. The Trial Court relied upon the judgment of the Hon'ble Supreme Court of India that once the maintainability of the civil suit, more specifically, when the entire transactions are in relation to bribe to be given to the public authorities. The primary question raised before the Trial Court was that in respect of the transaction of demand and acceptance of bribe or offer, for the purpose of securing public employment, where the suit can be entertained for recovery of money.

19. When the very agreement itself is invalid and void as the same is opposed to public policy, the suit cannot be entertained at all. If any person offer illegal consideration for the purpose of securing public employment by way of bribe in an illegal manner, such transaction would not be construed as within the provisions of the Indian Contract Act. All such illegal contracts are opposed to public policy and in violation of the provisions of the Indian Contract Act.

20. The agreement between the parties must be a valid one and in the event of establishing that the nature of agreement is opposed to public policy or in violation of the provisions of the Indian Contract Act, then such a stand cannot be enforced before the competent civil court. It is a preliminary issue, which is to be decided by the Civil Court whether the agreement is a valid one in the eye of law and is capable of being enforced with reference to the provisions of the Statute. If the parties are unable to establish the genuinity and validity of the agreement, then the question of granting the relief would not arise at all.

21. Admittedly, in the present case on hand, the plaint averments reveals that the plaintiffs have parted some money with the second defendant and the third defendant for the purpose of securing public employments in the Ministry of Defence. Both the plaintiffs as well as the defendants are aware that the public appointments are made in accordance with the Recruitment Rules in force. Thus, both the parties have entered into an illegal agreement for the purpose of securing public employment in an illegal manner and therefore, such agreement or contract cannot be held as an illegal contract or enforceable document, so as to entertain the suit for recovery of money.

22. The Trial Court also relied on certain judgments in this regard and finally arrived a conclusion that the plaintiffs knowing fully that the money which they part with only for the purpose of bribing the officials. The legal maxim "In pari delicto potrior est conditio possidentis" is applicable to the plaintiffs. The plaintiffs are not entitled for any relief in the suit as the suit itself is not maintainable in view of the fact that the contract is void and opposed to public policy.

23. The suit was not rejected on the ground of non-joinder of necessary parties. However, the question may not have much relevance in view of the fact that the maintainability of the suit itself is also decided on the ground that the agreement between the parties are opposed to public policy.

24. The Hon'ble Indore Bench in the case of Ranjeetsingh Murlisingh vs. Ramlal Shivlal [AIR (38) 1951 Madhya Bharat 113(1) (C.N.51)] held that "the agreement which was in nature of bribe offered by the plaintiff to the defendants 2 and 3 to secure a job was at its inception void as being opposed to public policy. Further it is held that the agreement, in the case on hand, is manifestly void from its inception. It was void because its subject matter was incapable of being enforced

because it was opposed to public policy and morality". Relying on the judgment of the Indore Bench, cited supra, the Trial Court dismissed the suit.

25. This Court is of the considered opinion that there is no perversity or infirmity in respect of the principles adopted by the Trial Court as well as the conclusion arrived. The Trial Court judgment is a well considered one and the legal principles to be followed are totally applied with reference to the facts and circumstances established both by the plaintiffs and the defendants before the Trial Court.

26. This being the factum, this Court has no hesitation in coming to the conclusion that there is no infirmity, as such, in respect of the findings of the Trial Court for the purpose of interference by this Court in the present First Appeal.

27. Accordingly, the judgment and decree passed by the learned XVIII Additional District and Sessions Judge, FAC XIX Additional District and Sessions Judge, Chennai in O.S.No.1856 of 2012 dated 01.08.2015 is confirmed and consequently, the present First Appeal stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The XVIII Additional District and Sessions Judge/
FAC XIX Additional District and Sessions Judge,
Chennai.

+1cc to Mr.T.S.Rajamohan, Advocate SR.101547
+1cc to Mr.A.G.Rajan, Advocate SR.101534

A.S. No.1260 of 2015

SSI(CO)
CB(04/09/2020)