

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

APO NO. 53 OF 2022

With

CS No.41 OF 2022

IA GA NO.1 OF 2022

KLG TRADEFIN PRIVATE LIMITED

Vs.

ASHOKA HAWAI AND SHOES PRIVATE LIMITED

And

APO NO. 54 OF 2022

With

CS No. 40 OF 2022

IA GA NO.1 OF 2022

K.P. CREDIT AND TRADERS PRIVATE LIMITED

Vs.

ASHOKA HAWAI AND SHOES PRIVATE LIMITED

Appearance:

For the Appellant :

Mr. Suresh Sahni, Adv.

Mr. Soumik Ghosh, Adv.

Ms. Karuna Bose, Adv.

For the Respondent :

Mr. Anirban Ray, Adv.

Mr. VVV Sastry, Adv.

Mr. Tridip Bose, Adv.

Ms. Vidhi Sharma, Adv.

Judgment On : **15.7.2022**

Harish Tandon, J.

The seminal point involved in the instant appeal is whether the Court can pass an order directing the Income Tax authority to make an investigation over the transactions between the parties to be unconscionable and opposed to public policy and submit the report for further course of action, in a suit simplicitor for recovery of money lent and advanced by the plaintiff to the defendant.

The plaintiff has approached the Division Bench with an Intra-Court appeal under Clause 15 of the letters patent assailing the said order primarily raising an above point and not on the ground of refusal to pass an appropriate interim orders which, according to the plaintiff may be dealt with at the time of final disposal of the interlocutory application. Therefore, the consideration is restricted to the above point and the competence and jurisdiction of the Court to embark its journey to such so-called difficult terrain beyond the conceivable limits and jurisdiction bestowed upon it under the law.

The prelude to the litigation is required to be adumbrated and ensued when the plaintiff-appellant advanced a sum of Rs. 65 lakhs through bank transactions in favour of the defendant-respondent with clear stipulation that the aforesaid amount is repayable together with an interest at the rate of 12 per cent per annum. The aforesaid amount was lent and advanced on diverse dates between 18th January, 2020 and 18th September, 2020

corroborated with the documentary evidence more particularly, the bank statement of the plaintiff's bank account. It is undeniable that the part payment to the tune of Rs. 1, 37, 650/- was made on 10th October, 2020 on account of the repayment of interest and the TDS was also deducted of the specified amount from time to time during the Financial Year 2019-2020 and 2020-2021. The suit was filed when the plaintiff-appellant demanded the return of the said amount together with an interest and the defendant neglected and failed to pay the said amount.

It is pertinent to record that the letter of demand for repayment of the amount together with an accrued interest thereupon was called upon the defendant-respondent which has been duly replied to. Interestingly, a plea was taken by the defendant-respondent in the said reply that the alleged transaction was not real but is an accommodated entry or "Jamma Kharji" and, therefore, the claim is fraudulent and fictitious as the plaintiff-appellant never actually gave the said amount from its own resources or the income but the unaccounted money in cash was given by the defendant-respondent to the plaintiff-appellant and, therefore, there was no real transactions entered into by and between the parties. Even the same defence has been projected and/or repleated in the written objection filed by the defendant-respondent to an application of the plaintiff-appellant under Order 39, Rule 1 and 2 read with Order 38, Rule 5 of the Code of Civil Procedure.

Such being the basic facts discerned from the restrictive pleadings of the parties, the Trial Court not only refused to pass an interim order on an application but upon noticing the startling facts emerged from the respective

stands of the parties directed the member (investigation), Central Board of Direct Taxes to cause an investigation into the monetary dealing being the subject matter of the suit to file a report on the returnable date. The sole basis of passing the aforesaid direction as appeared from the findings returned in the impugned order that the parties have precipitated an illegal transaction expressly forbidden by law and the Court upon a prime facie finding cannot act as a mute spectator.

Ironically not only the plaintiff-appellant appears to be critical on the direction passed by the Trial Court in the impugned order but the defendant-respondent also, though feebly, accepted the stand of the plaintiff in supporting the arguments so advanced at the Bar.

Since the important and vital aspects over the competence and jurisdiction of the Court in passing such directions are raised we feel that such point should be decided and invited the parties to address the Court thereupon.

Mr. Sahni, learned Advocate appearing for the plaintiff-appellant vociferously submits that the pleading of the parties are the important facets of adjudication of the disputes in adversial system and the Court cannot travel beyond the four corners thereof in passing a direction which is uncalled for and unwarranted. He further submits the field of public policy originating from a common law cannot be expanded, more particularly in a civil suit beyond the procedural law and the provisions contained therein. According to him, public policy principles can only be expounded through a judicial precedents as opposed to the expansion of his horizon based upon a

perception of a Judge having a larger impact both in a positive or negative way.

In support of the aforesaid contention, Mr. Sahni relies upon a Constitution Bench decision rendered in case of ***Gherulal parakh vs. Mahadeo Das Maiya & Ors. reported in AIR 1959 SC 781***. It is further submitted that the doctrine of public policy can be activated only in case of a breach of a common law and does not *ipso facto* invalidate the contract. Mr. Sahni arduously submits that although the principles governing the public policy is capable of an expansion or modification but such principles are guided by the principles underlying the fundamental rights and the directive principles enshrined in our Constitution and placed reliance upon a judgment of the Apex Court in case of ***Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. Reported in (1986) 3 SCC 156*** which is further reiterated in a subsequent decision rendered in case of ***PASL Wind Solutions Pvt. Ltd. VS GE Power Conversion India Pvt. Ltd. reported in (2021) 7 SCC 1***. According to him, the concept of public policy is not rigid and varies with the changing times and needs of the society, more particularly in relation to a contract unless it tends to injure the public interest or the public welfare as envisaged under Section 23 of the Contract Act and relied upon a judgment of the Apex Court in case of ***Gurmukh Singh Vs. Amar Singh reported in (1991) 3 SCC 79***. Mr. Sahni vociferously submits that both the parties knowing fully well the antecedent of the transactions entered into a contract which cannot be said to be perse illegal but later on the defendant-respondent tried to resile therefrom taking a plea of invalidation and/or illegality which is

impermissible unless the Court after a full-fledged trial declared such contract to be illegal and relied upon a judgment of the Supreme Court in ***BOI Finance Ltd. Vs. Custodian & Ors. reported in (1997) 10 SCC 488.***

It is further submitted that once the contract is clear and explicit and exposes the intention of the parties without any ambiguity brought in it, the Court cannot add or insert any word nor perceive omission if it conveys an intelligible result and placed reliance upon judgment of the Supreme Court in case of ***Raghunath Rai Bareja & Anr. Vs. Punjab National Bank reported in (2007) 2 SCC 230.*** Mr. Sahni further submits that the Court should not exercise the inherent power enshrined under Section 151 of the Code of Civil Procedure when there is a specific provisions provided in the statute and placed reliance upon a judgment of the Supreme Court in case of ***National Institute of Mental Health and Neuro Sciences vs. C. Parameshwara reported in (2005) 2 SCC 256.*** To sum up, Mr. Sahni submits that the Court should restrict its order on the pleadings made in the application filed by either of the parties and cannot resort to an extraneous factor and pass a direction unconnected and/or unrelated with the reliefs claimed therein. The public policy principles is not unbridled and/or unfettered but are guided by the precedents and may only apply in case of the contract being forbidden by law or any incident perceived under Section 23 of the Contract Act. Such power can be exercised with the restricted modification and not on an individual's perception. He thus submits that the impugned order so far as it relates to the direction upon the authority to investigate and submit the report to the Court is illegal and cannot be sustained.

Mr. Anirban Ray, the learned Government Pleader submits that the inherent power contained under Section 151 of the Code of Civil Procedure cannot be exercised to override the substantive rights of the litigant nor should pass an order directing the Commissioner to seize the books of accounts beyond the subject matter of the suit. He further submits the inherent power cannot be exercised to invade the private rights of the parties as held by the Supreme Court in case of ***Padam Sen & Anr. Vs. State of UP reported in AIR 1961 SC 218***. He further submits that power exercised by the Court must be within the strict four corners of the pleadings and not beyond it. He thus submits that in a civil suit the pleading plays an important role and one of the cardinal principles in this regard can be seen from a judgment of the Supreme Court in case of ***Sayed Muhammed Mashur Kunhi Koya Thangal vs. Badagara Jumayath Palli Dharas Committee And Others, reported in (2004) 7 SCC 708*** and, therefore, any reliefs de hors the pleading is impermissible.

On the conspectus of the above facts and the submissions so advanced it would be apposite to record that both the Counsels of the respective parties are *ad idem* to the stand that such direction was unwarranted and should not have been passed in absence of any pleading as well as the reliefs claimed in the suit yet we decided to proceed with the hearing of the appeal after noticing the unusual stand taken by the defendant-respondent that the transaction was not real and was mere ostensible and, therefore, no right is created upon the plaintiff to seek recovery of the said amount.

At the very outset we must record that such being the defence taken and ultimately proved after full-fledged trial in the suit or otherwise, has a larger impact on the society as well as the economic development of the country. Precisely for such reason, we intend to decide the said issue keeping in mind that whether the Court should remain a mute spectator even if perceived a sinister attempt on the part of the parties to get away with the offence having committed in other law and seeks blessing of the Court to decide the issue within the circumference of the civil rights.

Apparently, the contract appears to be within the ordinary course of the commercial dealings but have a hidden illegal objects and may amenable to further action under the Fiscal Law. It is beyond the cavil of doubt that evasion of the tax will impact the development and further progress of the country or the society in particular and cannot be said to be not opposed to a public conscience or a public policy. The economic development of the country is dependent upon the contribution of the citizenry in the form of a tax. An evasion cannot be dealt with the soft hands. The public policy concept though traces its origin from common law yet capable of being furthered and expounded with the necessary changes and the change in the policy decided from time to time. The public policy is never considered to be static or rigid or inflexible but since its advent to be dynamic and capable of being moulded with the change in policy. The concept of the tax charged from the citizenry is since the advent of the monarchy and have been engulfed in a democratic polity as well as the Constitution adopted by the people of this country. The broad concept of imposition of tax in a commercial dealing or otherwise is to facilitate the Ruling Government in

development of the society or the country in many spheres. The public policy varied with the political decisions and sometimes what may not be the public policy at one point of time becomes a policy. Broadly the public policy is considered to be the principles and standards regarded by the legislature or by the Courts as being of fundamental concern to the state and whole of the society and can be succinctly in a narrower sense may imbibe a principle that a person should not be allowed to do anything that would tend to injure the public at large.

The Apex Court in case of ***Gherulal Parakh (Supra)*** was considering a matter whether the wagering contract can be struck down on the ground of public policy. The Apex Court held that though the concept of public policy is comprehensive and measured on a political, social and economic policies of the welfare state as well as the traditions of the ancient history of the country based on the philosophy of the philanthropists yet it forms a treacherous and unstable ground for the legal decisions and, therefore, unless the Court finds that the contract is a harmful thing and backed with harmful tendencies, in unequal terms held that though the Judge stands on a slippery ground but has a firm footing in the event the contract is called a harmful thing and found on the harmful tendencies. The principles of the public policy can be applied in a clear and incontestable cases of harm to the public at large.

“The same view is confirmed in Bhagwant Genuji v. Gaugabisan Ramgopal, ILR (1941) Bom 71: (AIR 1940 Bom 369) and Gopi Tihadi v. Gokhei Panda, ILR (1953) Cut 558: (AIR 1954 Orissa 17). The doctrine of public policy may be summarized thus:

Public policy or the policy of the law is an illusive concept; it has been described as “untrustworthy guide”, “variable quality”, “uncertain one” “unruly horse”, etc; the primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the Court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and, just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be involved in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days.”

Ironically, neither the “public policy” nor “opposed to public policy” have been given a definite meaning in the Indian Contract Act. In absence of such definition, it would be very difficult to give precise meaning to such expressions. It is equally true that such concept is well recognised in the

Indian judicial parlance and, therefore, have expanded his horizon through a judicial precedents or a common law.

The Apex Court in ***Central Inland Water Transport Corporation (Supra)*** succinctly held that the public policy connotes such matter which concerned the public good and the public interest capable of being varied from time to time depending upon the policies of the welfare state. There has been a divergence of views on the concept of public policies as one school of thought perceived such policy in a narrower way; the other have expanded it in a more broader manner. The Apex Court held that underlining the public policy must be capable of expansion or modification on the proper occasions and in absence of any legal precedent the only guiding factor that should weigh to the Court is the principle underlying the fundamental rights and the directive principles enshrined in the Constitution in these words:

“It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental

Rights and the Directive Principles enshrined in our Constitution.

93. The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of A. Schroeder Music Publishing Co. Ltd. v. Macaulay, however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In Kedar Nath Motani v. Prahlad Rai, reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at page 873) :

The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be

allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose what achieved, then, unless it be of such a gross nature as to outrage the conscience of the court, the plea of the defendant should not prevail.

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void.”

In ***Gurmukh Singh vs. Amar Singh reported in (1991) 3 SCC 79*** the Apex Court taking aid of Section 23 of the Contract Act held that if the Court finds that the agreement is opposed to public policy it is void under the aforesaid provision. The Apex Court succinctly held that the word ‘object’ appearing in the said section would mean the purpose and design being the object of the contract if opposed to public policy tending to defeat the provision of law or the purpose of law for which it becomes unlawful. Even after having said so, the Apex Court held if the intention is to defeat the right of a third party or a Government, such contract would fall under the mischief of the aforesaid provision and there is no fetter on the part of the Court in applying the principle of the public policies in the following:

“3. In Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao, Subba Rao, J., as he then was, while considering the word “object” in Section 23 of the Contract Act in the context of enforceability of the debt secured to celebrate the marriage of the minor which was prohibited by the Child Marriage Restraint Act, held that the word “object” in Section 23 meant “purpose” or “design” of the contract. The purpose of borrowing was unlawful as it was opposed to the public policy of celebrating the marriage of a minor in violation of the statutory provisions, and therefore, the promissory note was held to be unenforceable. An agreement between A and B to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. But if there is an agreement between all the competition between the two. But if there is an agreement between all the competition bidders at the auction sale, but it of the court sale or revenue sale, or sale by the government of its property or privilege and formed a ring to peg down the price and to purchase; the property at knock out price, the purpose or design of the agreement is to defraud the third party, namely the debtor or government whose property is sold out at the court auction or revenue sale, or public welfare. The object or consideration of the contract, oral or written, to share such property is unlawful. There is also implied “injury to the debtor” within the meaning of Section 23. Thereby the contract was fraudulent. The contract thus is also opposed to public

policy and is void. Take for instance four persons participated at an auction sale; pursuant to their previous agreement, they made a pretext of participation in the auction; bid up to an agreed price though the real value of the property is much more than what they had offered for. Here the design or object of their forming a ring is to knock out the property for a song to defraud the debtor or public. What is the object of the public policy in this regard? The scope of public policy was classified into five groups in paragraph 1134 at p.686 of Chitty on Contract (26th edn., Vol. I) thus:

‘Objects which on grounds of public policy invalidate contracts may, for convenience, be generally classified into five groups; first, objects which are illegal by common law or by legislation; secondly, objects injurious to good government either in the field of domestic or foreign affairs; thirdly, objects which interfere with the proper working of the machinery of justice; fourthly, objects injurious to marriage and morality; and, fifthly, objects economically against the public interest.’ ”

In Paragraph 7 of the said report the Apex Court held that the concept of public policy is not static or rigid but varied with the changing times and the need of the society in these words:

“7. The ratio in Kayjay Industries (p) Ltd. v. Asnew Drums (P) Ltd. is of no assistance to the appellant. Therein the executing court, on the previous occasion, with a view to secure better price did not confirm the sale, the conduct of the second sale,

therefore, was held not to be vitiated by any material irregularity. The general principles of public policy discussed by this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly and one of us (K. Ramaswamy, J.) in Delhi Transport Corporation v. D.T.C. Mazdoor Congress are of no assistance on the facts in this case. The public policy is not static. It is variable with the changing times and the needs of the society. The march of law must match with the fact situation. A contract tending to injure public interest or public welfare or fraudulent to defeat the rights of the third parties is void under Section 23 of the Contract Act.”

In a recent judgment the Apex Court in **PASL Wind Solutions Pvt. Ltd. (Supra)** accepted the principles on public policy laid down in **Central Inland Water Transport Corporation (Supra)** and held that it is capable of being modified and/or varied and may be expanded depending upon the public conscience, public good and the public interest and, therefore, is not a rigid principles solely based on the common law or the precedents in past. It would be profitable to quote the relevant observations made in Paragraph 71 of the said report which runs thus:

71. This Court’s judgment in Central Inland Water Transport Corpn. V. Brojo Nath Ganguly, after referring to the case law on the subject, then held:

“92. The Contract Act does not define the expression “public policy” or “opposed to public policy”. From the very nature of things, the expressions “public policy”, “opposed to public

*policy”, or “contrary to public policy” are incapable of precise definition. Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognised head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought – “the narrow view” school and “the broad view” school. According to the former, courts cannot create new heads of public policy whereas the latter countenances judicial law-making in this area. The adherents of “the narrow view” school would not invalidate a contract on the ground of public policy unless that particular ground had been well-established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in *Janson v. Driefontein Consolidated Mines Ltd.*, AC at p. 500: ‘Public policy is always an unsafe and treacherous ground for legal decision.’ That was in the year 1902. Seventy-eight years earlier, *Burrough, J.*, in *Richardson v. Mellish*, Bing at p. 252; ER at p. 303; All ER Rep at p. 266 described public policy as ‘a*

very unruly horse, and when once you get astride it you never know where it will carry you'. The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus, he said in Enderby Town Football Club Ltd. v. Football Assn. Ltd., Ch p. 660: 'With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles.' Had the timorous always held the field, not only the doctrine of public policy but even the common law or the principles of Equity would never have evolved. Sir William Holdsworth in his History of English Law, Vol. III, p. 55, has said:

'In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them.'

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of

public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution.”

The law as expounded in the above noted report can be succinctly summarised that though the principle of public policy traces its origin from the common law yet the said principles have been expanded in the judicial parlance and may apply in deserving cases. It is inconceivable that the Court would remain a mute spectator where the contract between the parties is a harmful thing, having harmful tendencies, having ramification on the interest of the welfare state in the realm of a freedom of contract. The concept of public policies broadly is founded on public good or public interest and in the changing times may extend it to any transaction which affects the public at large. It is sometimes regarded as an unruly horse and the Judges remained on a slippery road, yet had a firm footing in a patent case of injury to a public at large. It cannot be said to be a rigid or a static principles but capable of being expanded or modified on a proper occasion in consonance with the public conscience and in keeping with the public good and the public interest. It may apply to a case where the contract

shocked the conscience of the Court being unfair and unreasonable having a large impact on the society or the development of the society and/or a country.

In the backdrop of the aforesaid enunciation of law let us consider whether the Trial Court was justified in directing Central Board of Direct Taxes to investigate into the monetary dealing and submit the report before the Court. At the very outset, we must record that there is no reflection of any extraneous facts in the plaint or an application filed by the plaintiff-appellant. However, the defendant took a very unusual defence that it was not a real transaction but ostensible one in the guise of the accommodated entry or a "Jamma Kharji". Such defence can be viewed as an evasion of the tax and conversion of an illegal thing to a legal. Broadly, concept of imposition of tax by the welfare state and providing facilities and amenities as well as the development of the society and the country largely depend upon the same whether the defendant would be able to prove such fact is a matter to be decided after a full-fledged trial. Equally this Court cannot overlook such defence if taken to be prima facie correct having an impact on the public at large and invasion impacted the welfare state and its resources required for development of the country both economically and otherwise.

Will the Judge still confine to a pleading and the reliefs claimed therein having noticed the aforesaid fact discerned from the record traces its answers under the public policy and repository of the powers assumed by the Court under the Constitution. There is no fetter on the part of the Court after noticing the startling facts discerned from the record to activate the process of law and directing the authorities to investigate into the matter.

The report as called for may not be a sole basis for deciding the issues involved in the suit yet it is as good as a piece of evidence in juxtaposition with the other evidence that may be brought by the respective parties.

It is no longer *res integra* that Court should seldom exercise the inherent powers enshrined under Section 151 of the Code when there is a specific provision contained in the Code yet sometimes the Court for securing the ends of justice i.e. *ex-debito justitiae* may invoke such power necessitated by circumstances. Ordinarily, the Court decides the cause pleaded in the respective pleadings and the reliefs claimed therein, yet it has not brindled the power of the Court after noticing the special facts in passing an order under the public policy to secure the interest of the welfare state.

We thus do not find any infirmity and/or illegality in the impugned order. The appeal is dismissed.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Shampa Dutt (Paul), J.)

Later:

After the judgment is delivered in open Court, Mr. Sahni, learned advocate appearing for the appellant, makes an oral prayer for the certificate for appeal to the Supreme Court.

According to Mr. Sahni, the point which is raised in the instant appeal has a larger impact and, therefore, assumes the character of a substantial question of law of general importance.

After hearing Mr. Sahni and after going through the questions that have been raised, we do not find that it is a fit case where a certificate under Article 134A of the Constitution of India can be issued.

Accordingly, the prayer for certificate is hereby refused.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)