



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
SECOND APPEAL NO. 03 OF 2019

APPELLANT :- Pradeep S/o Baburao Wasnik
Ori. Defendant
(On RA)
Aged About 43 years,
R/o, Telghani, Modi Padav, Kamptee
Distt. Nagpur.

..VERSUS..

RESPONDENT :- Smt. Reeta W/o Sharik Ansari
Ori. Plaintiff
(On RA)
Aged About 31 years,
R/o C/o., Prakash Bhagade,
Telghani, Modi Padav,
Kamptee Distt. Nagpur.

Mr. Abhishek Kapoor, Advocate h/f. Ms.S. N. Thakur, Advocate for appellant.
Mr. Y. Y. Humne, Advocate for respondent

CORAM : **ROHIT W. JOSHI, J.**

DATE : **26.09.2025**

JUDGMENT :

- 1) Heard finally by consent of learned counsel for the respective parties.
- 2) The present Second Appeal takes exception to the concurrent judgments and decrees passed in a suit for recovery of money filed by the respondent against the present appellant.
- 3) It is the case of the respondent that, under misrepresentation that appellant will be able to provide

government employment to the respondent, the appellant obtained an amount of Rs. 60,000/- from the father of respondent. It is stated that the appellant had asked for an amount of Rs. 1,50,000/-, out of which Rs. 60,000/- was paid. However, since the appellant could not get employment for the daughter of the respondent, the respondent filed a suit for recovery against the appellant. The said suit came to be registered as Regular Civil Suit No.5 of 2010, it was decreed ex-parte vide judgment and decree dated 04.05.2013 passed by the learned Civil Judge, Junior Division, Kamptee.

4) The present appellant preferred an appeal challenging the said decree, being Regular Civil Appeal No.467 of 2015, which is dismissed vide judgment and decree dated 22.06.2018. The present second appeal is filed against the said concurrent decrees.

5) Notice in the present appeal was issued vide order dated 07.12.2021, in which following substantial questions of law were framed:-

1) Whether the suit was barred by Section 23 of the Indian Contract Act, 1872?

II) Whether both the Courts below have rightly considered the fact of service of notice to the defendant on the basis of endorsement on the returned envelope “not claimed”?

6) The learned Advocate for the appellant has advanced submissions with respect to substantial question of law pertaining to Section 23 of the Indian Contract Act, 1872 only.

7) It is the contention of the learned Advocate for the appellant that, on the face of the pleadings, the agreement between the parties is clearly against public policy and therefore, hit by Section 23 of the Indian Contract Act. He contends that suit for recovery of amount filed under such agreement will not be maintainable and as such, the suit was liable to be dismissed. He has placed reliance on the judgments of this Court in the matter of *Pradeep Yashwant Nagrale...Vs...Vyankanna s/o. Laxmanna Gorantiwar and another*, reported in (2023) 6 MhLJ, 276, and in the matter of *Suhas s/o. Bhanudas Jadhav...Vs...Sachin s/o. Murlidhar Tarkase and another*, reported in 2016(1), MhLJ, 492 and judgment dated 25.01.2021 passed in *Criminal Application*

APPA No. 201 of 2018.

8) Per contra, the learned Advocate for the respondent/plaintiff contends that although the agreement is illegal, the suit was not for enforcement of the agreement. He contends that the suit was only for recovery of the money and as such, claim was not barred in view of Section 23 of the Contract Act.

9) The learned Advocate further contends that the respondent was tricked into parting with money under an inducement of providing government employment to her. The learned Advocate contends that the case is one of unjust enrichment and therefore the concurrent decrees should not be disturbed.

10) I heard the rival submissions as aforesaid. It is not in dispute that the agreement in question is not a legal or valid agreement. It is clearly against public policy of India as well. The learned First Appellate Court has also held that the agreement is illegal. However, the learned First Appellate Court has observed that the suit is not for enforcement of the agreement, but only for recovery of amount parted under the

agreement.

11) Having held so, the learned First Appellate Court has found that such a claim is not prohibited under Section 23 of the Contract Act.

12) The judgments on which the learned Counsel for the appellant has placed reliance pertain to offence under Section 138 of the Negotiable Instruments Act, where cheques issued pursuant to illegal agreements were dishonoured. In these cases, this Court has held that a claim for money based on an illegal agreement is not a legal and valid claim and therefore cheque issued towards payment of such money cannot be set to be issued in discharge of legal liability.

13) Illustration (f) to Section 23 of the Contract Act is also relevant to the facts of the present case. In the opinion of this Court, the agreement was clearly illegal and against public policy and, therefore, monetary claim based on such agreement is clearly not maintainable.

14) As regards, the judgment in the matter of *Mahabir Kishore...Vs...State of M.P.*, reported in *1989 4 SCC 1*, in the

opinion of this Court the said judgment will not be applicable to the facts of the present case were the agreement itself is illegal. A person can invoke Section 72 of the Contract Act only when the agreement is legal and valid. With respect the ratio of the said judgment cannot be applied to the facts of the present case, where the agreement is hit by Section 23 of the Contract Act.

15) In view of the above, the substantial question of law at Sr.No.I needs to be answered in favour of the appellant/defendant and against the respondent/plaintiff.

16) Therefore, the Second Appeal is allowed.

17) The judgment and decree dated 22.06.2018 passed by the District Judge-15, Nagpur in Regular Civil Appeal No. 467 of 2015 and judgment and decree dated 04.05.2013 passed by the learned Civil Judge, Junior Division, Kamptee, Dist. Nagpur in Regular Civil Suit No. 5 of 2015 are quashed and set aside.

18) In the result, the parties to bare their own cost.

(ROHIT W. JOSHI, J.)

Tanmay..