

(vs Sh. Sanjay Nagore on 21 April, 2010

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IN THE COURT OF SH. PRASHANT KUMAR CCJ/ARC ROHINI COURTS
DELHI

SUIT No. 340/09

Sh. Braj Mohan Gupta
S/o Late Sh. R.S.Garg
Sole Proprietor of
M/s, BM Consultancy Services
At BM House , B-513, Street No. 4,
Majlis Park, Near Adarsh Nagar, Delhi.

(PLAINTIFF)

Versus

Sh. Sanjay Nagore
R/o. D-17, 2nd Floor, Acharya Niketan,
Mayur Vihar, Phase-1, Delhi 110091
Also At
DGM-HR & ADMN.
Continental Carbon India Ltd.
A-14, Ind. Area No. 10pp. NH-24,
South Side of G.T.Road,
Gaziabad.

(DEFENDANT)

JUDGMENT

1. By way of this Order I shall announce Ex-parte final judgment :-

The facts of the case in brief are as under :-

Plaintiff has filed a suit of recovery of Rs. 2,72,494/-

against the defendant alleging that plaintiff Sh. B.M.Garg is a professionally qualified Cost Accountant & Company Secretary . Plaintiff renders Executive Placement to different corporates/experienced professionals in consideration of agreed professional fees. Executive placement services in its ambit covers management of Large Data Bank of Resumes which are received through goodwill besides

advertisements on Job Portal Naukari.com etc. The defendant, a well qualified professional having over 15 years experience with different companies was working as Senior Manager-HR & IR with Maral Overseas Ltd. since December 2005. He visited the office of the plaintiff on 17.10.2006 for seeking a job in a company. He filled up a registration form and agreed to pay the professional fees to the plaintiff payable at different stages and signed one undertaking on 17.10.06 . Defendant also gave one cheque dated 10.11.06 for Rs. 11,224/- . Plaintiff organised the interview of defendant on 08.03.2007 with Machino Polymers Ltd. Thus, defendant became liable to make payment of Rs. 11,224/- . This cheque was dishonored on 21.04.07 due to insufficient funds . Defendant kept on following up with the plaintiff for a better job and also promised to pay agreed professional fees. This cheque was again dishonored . Defendant met with plaintiff and filled up another confirmation of placement on 24.03.2008. Plaintiff kept on following up for payment of balance agreed professional fees with the defendant and defendant promise to clear the balance. Part payment of Rs. 5500/- vide cheque dated 10.06.2008 was also paid. This cheque was encashed. Defendant , however left Minda Sai Ltd. on 15.07.2008 and joined Continental Carbon India Ltd. as DGM-HR and Admn. The defendant left Minda Sai Ltd. within six months of joining , therefore, he was however liable to pay as per undertaking dated 17.06.2006 signed by him. No payment has been made by the defendant till today , hence this suit.

2. It is important to mention here that originally a case was filed under order 37 CPC , however as per order dated 26.02.2009 after considering the merits of the case, prima facie this suit was treated as ordinary suit for recovery and summons of suit were issued to the defendant. Defendant was served by way of affixation . He did not appear on 20.07.2010, hence he was proceeded Ex-parte. Following issues in Ex-parte evidence were framed vide order dated 20.07.2009 which are as under :-

1. Whether the plaintiff is entitled for the recovery as prayed for ?
2. Any other relief as prayed for ?
3. My issue wise findings are under :-

Issue no. 1

1. Whether the plaintiff is entitled for the recovery as prayed for ?

Onus of proof of this case is upon the plaintiff . Plaintiff has examined only one witness i.e. Brij Mohan Garg in this case. Brij Mohan Garg has stated that he is the professionally qualified and Cost Accountant and company secretary having over 10 years experience at Executive Placement Services to different corporates/experienced professional in consideration of agreed professional fees . The defendant a well qualified professional having over 15 years experience with different companies was working as Senior Manager- HR & IR with Maral Overseas Ltd. since December 2005 . He

visited his office on 17.10.06 for seeking a job in the company. One undertaking on 17.10.2006 which is Ex. PW 1/1 was signed by him. He gave one cheque dated 10.11.06 for the sum of Rs. 11,224/- . This cheque was duly encashed. One interview of defendant was organised in Minda Sai Ltd. wherein he got the job of annual salary of Rs. 10,24,000/- as per registration form/undertaking dated 17.10.06 . Another cheque of Rs. 11,000/- was handed over to the plaintiff towards part payment of professional fees which was again dishonored . Defendant had paid part payment of Rs. 5,500/- however by way of cheque encashed . Defendant subsequently left the job of Minda Sai Ltd. on 15.07.08 i.e. within the period of six months. Thus, he became liable to pay a Rs. 1,02,400/- again as per registration form of the undertaking dated 17.10.06 signed by him.

4. It is important to mention here that so far as facts of this case are concerned, defendant is Ex-parte here in this case. This fact thus remains uncontroverted and cannot be questioned by the Court , however, the plaintiff is to satisfy the Court on the issues of law. The counsel for plaintiff during arguments has been asked to explain that whether any such agreement which is allegedly entered into by the plaintiff with the defendant is legally enforceable as per Indian Contract Act or not.

5. The counsel for plaintiff with regard to this issue of law which is implied in this case and which has to be discharged by the counsel for plaintiff as per law has stated that the suit filed by him is maintainable in the eyes of the law as the agreement entered into in between the parties is a contract as per Section 2(h) of Indian Contract Act. Section 2(h) of Indian Contract Act pertains to the contract as under :-

Section 2(h) "Contract"- An agreement enforceable by law is a contract.

Section 2(j) is important to mention here . Section 2 (j) "Void Contract" - A contract which ceased to be enforceable by law becomes void when it ceased to be enforceable.

Section 2(e) "Agreement" - Every promise and every set of promises forming the consideration for each other, is an agreement.

6. Chapter 2 of Indian Contract Act defines the contract voidable contract and void agreements. Section 10 of Chapter 2 of Indian Contract Act defines "what agreements are contract."

7. Section 23 which comes under chapter 2 of Indian Contract act is an important Section which is relevant here to mention. Section 23 of Indian Contract Act is :

"what considerations and objects are lawful, and what not."

The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it is immoral, or opposed to public policy. In each of these cases, the consideration of object

of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

8. The first requirement of Section 23 is not applicable here in this case as there is no specific law by which any such agreement is forbidden. It is further important to mention here that as there is no provision of any law available as mentioned in any of the statute then it cannot be said to have defeat the provisions of any law, if permitted. The third requirement of Section 23 is not applicable here in this case as there is no specific law of liability by which any such agreement is forbidden. It is further important to mention here that as there is no provision of any law available as mentioned in any of the statute then it cannot be said to have defeat the provisions of any law, if permitted. The third requirement of Section 23 is that after the consideration of object is fraudulent then it is enforceable. It is further important to mention here that after careful perusal of the record, the proposal and acceptance in between the parties have been made with the free consent of the parties. Defendant is ex-parte in this case and there is nothing from the side of the defendant , therefore, by which it could be said that consent for defendant was obtain by some other means and the consent was not free. The next ground mentioned in Section 23 Indian Contract Act is analysed . The facts and circumstances of the agreement entered into in between the parties also does not come under the purview though it involves or implies the injury to the person or property on another. So far as injury to a person or property is concern, such an objection has to come from the side of the defendant. The defendant is however is Ex-parte . The last ground of Section 23 of Indian Contract Act is " the Court reflects it has an immoral or opposed to public policy".

9. The expression "public policy" refers to an includes a wide range of topics, such as trading with the enemy in time of war stifling prosecutions, champerty and maintenance, and various other matters which include certain other recognized matters. The doctrine is public policy is difficult to define. One can easily understand what it is that the range of understanding may vary individuals . Public policy is that Principal of law according to which no subject can lawfully do that which has a tendency to be injurious to the public or against the public goods, which may be termed the policy of law or the public policy in relation to Administration of law.

10. A contract can be said to be illegal if it is opposed to a statute or public policy , What is public policy is difficult to define. One can easily understand what it is though the range of understanding may vary with individuals.

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.

So far as the ingredients of agreement as mentioned in Section 2 (e) of Indian contract are concern the present alleged agreement in between the parties stands to the test of an agreement as it is a promise and set of promises forming consideration for each other. In the present case the defendant had made a promise and set of promises forming consideration for each other i.e. 'if plaintiff arrange

a suitable job to him then he shall pay accordingly to him as per the agreement. It is important to mention here that every agreement entered in between the parties may not necessarily be a contract as per u/sec. 2 (h). A contract which ceased to be enforceable by law becomes void as it is defined u/sec. 2 (j) of Contract Act. IN other words an agreement which is not enforceable by law or ceased to be enforceable by law is not a contract in the eyes of law. So far as the proposal and offer as mentioned above, both the parties as well as consideration is involved therein, is concerned, there is no illegality in them as the plaintiff has simply assure the defendant to arrange some job to him and the defendant has accepted his offer. The consideration involved herein in this case, however is to be tested to the test of Section 23 and other relevant sections of Indian Contract Act that whether the consideration and object herein in this present agreement in between the parties is lawful or not.

10. In case Tanson Vs. Direfontein Consolidated Mines, Limited, (1902) AC 484 . It was held that Court cannot invent a new head of public policy . But there is nothing to affect the application of the doctrine to new case within its recognized bounds. The determination of what is contrary to public policy necessarily varies from time to time. Many transactions are now upheld which a former generation would have avoided as being contrary to the supposed public policy of the law.

11. In case Kedar Nath Motani Vs. Prahlad Rai AIR 1960 SC 213 . Hon'ble Supreme Court of India exhaustively death with the doctrine of public policy in the following terms:-

"The law was stated as far back as 1775 by Lord Mansfield in Holman Vs. Johnson in the following words:

' The principle of public policy is this : *ex dolo male non oritur actio*. No Court will lend its aid to a man who found his cause of action upon an immoral or an illegal act. If from the plaintiff's own stating or otherwise, the cause of action appears to arise *exturpi causa*, or the transgression of a positive law of this country, there the Court says he has no right to be assisted .It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for, where both the equally in fault, *potior est conditio defendantis*' "There are, however, same exceptions or 'supposed exceptions' to the rule of *turpi causa*. In Salmond and William on Contracts, four such exceptions have been mentioned, and the fourth of these exceptions is based on the right of *resitutio in integrum*, where the relationship of trustee and beneficiary is involved.

12. Thus, it has been observed from time to time by the Higher Courts of Law inducting to public policy must changed with passage of time as regards the true concept of public policy it appears that the law relating to public policy would not remain static in a developing society like India where the content of socio-economic policy of the States, as envisaged in the Constitution , is , based on social control of means of production and where having regard to the almost total crisis of character among those engaged in industry, trade and commerce , there was extensive fraud of the revenues and the widening pernicious influence of the black economy was casting its evil influence in

polluting the entire system to the point of posing a threat to its very stability. Thus, various heads are covered under this doctrine of public policy from time to time.

13. Few Examples are given which are considered to be against the public policy, hence not enforceable. In *Pandian N.V.P. Vs. M.M. Roy* AIR 1979 Madras 42 it has been held that the public has an interest to see that in the selection of candidates for a seat in the Medical College the fittest persons should be selected. The law will not uphold an agreement whereby a person has agreed to use his influence or position for the purpose of securing a title, contract or some other benefit from the Government .

14. In another case *Mahesh Chandra Vs. Kishan Prakash Gupta* (1981) 2 A. L.J. II 1250. It has been held that the liberty to enter into a contract for payment of any amount by way of *Pagri* , for giving up possession of any premises to the outgoing tenant , in the present context of scarcity of accommodation, has without doubt the harmful tendency of involving an incoming tenant in unavoidable harassment. Such an agreement would clearly be void u/sec. 23 of Indian Contract Act.

15. It is further important to mention here that it is a contrary to public policy to induce public officers, for money or other valuable consideration, to use their position and influence to procure a benefit. It has been observed in *Manindra Chandra Vs. Aswini Kumar Acharjya* AIR 1921 Calcutta (185). Similar is the situation with regard to an agreement to bargain or traffic regarding to a public office is opposed to public policy since such a course tends to the prejudice of the public service by interfering with the appointment of persons best qualified. It amounts to trafficking in public office. Similar analogy is applicable to an agreement to pay money to a public servant in order to offer inducement to him to retire from this office which is hit by Section 23 of Indian Contract Act.

16. Similar is the situation involved here in this case. In the present case the plaintiff is stated to have been running private consultancy service and under that consultancy service a job of the applicant in some of the office is arranged. The plaintiff is stated to have been charging for his service. So far as charging for his service provided to the applicant is concern it is not hit by any law or any statute and it was not hit by any public policy as it does not involve any illegality in it. The plaintiff by way of a present agreement with the defendant has extended to a further extent. He had demanded another share from the salary of the defendant. He further extended to the extent that if the defendant was to leave the job and procured by plaintiff before time prescribed then he was again to pay the plaintiff certain some of money.

17. It is important to mention here that it is the duty of public official charged with making appointments to make the best appointments possible without reference to private interests, and as it is expedient that those occupying public office shall have such inducements as its emoluments afford for the faithful performance of their duties, a bargain to make a certain appointment or to influence the making of an appointment by such an official , or that an official will share the emoluments of his office with another, is invalid.

18. Thus, the professional man ought to charge remuneration for his services in a straight forward manner. His charges must be commensurate with the volume and character of his exertions . He

must not engage in a kind of gambling, as on a percentage of profits or as contingent on results. Such an agreement is illegal in nature. It has been observed in R.B.Basu Vs. P.K.Mukherji AIR 1957 Calcutta 49.

19. Similar is the situation involved here in the present case. The plaintiff has entered into an agreement of similar nature as mentioned in above cited authority of Calcutta High Court wherein he has specified his share in the form of percentage upon the salary/income/profit earned by the defendant in his service. Therefore, such an agreement cannot be said to be enforceable by law and is hit by provisions of Section 23 of Indian Contract Act as such an agreement as per Section 23 of Indian Contract Act, as per the reasonings given above is opposed to public policy. Therefore, I am of the considered opinion that the agreement which has been entered in between the plaintiff and defendant is not enforceable by law as the object and consideration of the agreement entered into in between the parties is not enforceable in nature as it is opposed to public policy as laid down u/sec. 23 of Indian Contract Act.

20. In the light of above mentioned reasons I am of the considered opinion that with regard to the issue of law which is implied any civil suit and the onus of which lies upon the plaintiff to be discharged as per the law, has not been discharged by the plaintiff. Thus, as the agreement Ex. PW 1/1 which had entered in between the parties is hit by Section 23 of Indian Contract Act being opposed to public policy thus it cannot be enforced as per the law. The entire plaint of the plaintiff is relied upon this contract Ex. PW 1/1 which is declared to be opposed to the public policy by the Court. Thus, as the agreement itself is not enforceable then any consequences flowing from that also cannot be looked into. Thus, under these circumstances I am of the considered opinion that the agreement on which the plaint has relied upon and the entire claim of the plaintiff is resting upon this agreement is not enforceable by law. Hence, he cannot claim any relief subsequently from such an agreement. Under these circumstances, therefore, the suit filed by the plaintiff is not maintainable in the eyes of law, hence it is dismissed.

File be consigned to Record Room.

Announced in Open Court
Dated 21.04.2010

(Prashant Kumar)
CCJ-cum-ARC/North-West
Rohini Courts, Delhi

21.04.2010 Present : Plaintiff alongwith the counsel.

Defendant ex-parte.

Ex-parte final arguments heard. Ex-parte final judgement is pronounced vide separate order sheet.
Suit is dismissed.

File be consigned to the record room.

(Prashant Kumar) CCJ/ARC/Delhi 21.04.2010