

(2005) 12 AP CK 0080
In the Andhra Pradesh High Court
Case No : SA No. 870 of 2005

Holy Faith International Pvt. Ltd. and Others

APPELLANT

Vs

Dr. Shiv K. Kumar

RESPONDENT

Date of Decision : 30-12-2005

Acts Referred:

Contract Act, 1872 — Section 23, 65, 70, 72
Copyright Act, 1957 — Section 13, 14, 16, 17, 18
Solicitors Act, 1974 — Section 31

Citation : AIR 2006 AP 198 : (2006) 3 ALD 216 : (2006) 3 ALT 319 : (2006) 33 PTC 456

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy and Ch. Samson Babu, for the Appellant; M. Ramchandra Reddy, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The second appeal is directed against the judgment and decree, dated 21-3-2005, passed by the learned DC Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad, in A.S. No. 168 of 2004.

2. The unsuccessful defendants are the appellants. The respondent herein filed the suit in O.S. No. 872 of 1998 on the file of the VII Senior Civil Judge, Hyderabad, for recovery of money of Rs. 1,25,000/- with interest at 24% per annum against the defendants and that suit having been decreed by the trial Court by its judgment, dated 1-12-2003, the defendants carried the matter in appeal and under the impugned judgment and decree the appellate Court confirmed the judgment and decree passed by the trial Court. As aforesaid, the defendants are assailing the same.

3. When the second appeal came up for admission, both the learned Counsel appearing for the parties agreed to address the arguments for final disposal of the appeal and accordingly arguments were addressed.

4. The case of the plaintiff was that he was former Vice-Chancellor of University of Hyderabad and a poet, novelist, short story writer of international repute and was conferred with the honour of "Padmabushan". The defendants 2 and 3, the chairman and regional representative of the first defendant company, approached him for revision of their book series entitled "Holyfaith Direct Approach to Interactive English" and offered to pay at the rate of Rs.50,000/-per each book. The plaintiff accepted the offer for revising the books to the satisfaction of the defendants. Accordingly, he revised the books and the defendants having collected the books in the month of September, 1997, paid only an amount of Rs.75,000/-, leaving the balance amount of Rs. 1,25,000/- to be paid. The plaintiff sent the reminder, dated 2-1-1998, to the defendants for payment of the balance and when the defendants failed to pay the same, he got a legal notice, dated 29-7-1998, issued to them and eventually filed the suit for recovery of the said amount with interest at 24% per annum.

5. The defendants contended that the plaintiff approached the third defendant and requested him to use his good offices by entrusting the work of revision of the book series and to pay an amount of Rs.75,000/- towards his remuneration in advance. As the plaintiff was in need of money and as he promised to revise the books and give them in one month, he was paid an amount of Rs.75,000/-, but the plaintiff could not submit the books within one month. He was requested to return the amount of Rs.75,000/-, as he was not evincing any interest. On account of the delay on the part of the plaintiff, the defendants were put to hardship and loss. Ultimately, books were returned virtually without any revision. No educational institution would accept the illegal corrections made by the plaintiff in the books and further he did the work in utter violation causing infringement of rights under the Copy Right Act and therefore the suit was liable to be dismissed.

6. The Court of first instance framed the following issues for trial :

1. Whether the plaintiff is entitled for recovery of sum of Rs.1,50,657.52ps from defendants ?

2. To what relief ?

7. The plaintiff examined himself as P.W.1 and got Exs.A1 to A15 marked. The third defendant examined himself as D.W.1 and got Exs.B1 to B8 marked. Appreciating the evidence, both oral and documentary, adduced on the point, eventually the trial Court held that the defendants offered to the plaintiff to pay at the rate of Rs.50,000/-for each volume and that the plaintiff could not be held to have violated the provisions of the Copy Right Act, inasmuch as the defendants being the publishers it was their bounden duty to obtain permission or authorization from the original writer of the books. Consequently, the suit was decreed as prayed for.

8. The appellate Court framed the following points for determination :

(1) Whether the plaintiff is entitled for recovery of the suit claim and if so ?

(2) Whether there are any grounds which are sufficient to interfere with the judgment and decree of the trial Court

9. Eventually, the appellate Court concurred with the trial Court and observed that the letters produced by the plaintiff would substantiate and buttress his claim and the trial Court rightly appreciated the same. In sequel thereto, the appellate Court dismissed the appeal, while holding that there were no merits to interfere with the judgment and decree passed by the trial Court. Having been aggrieved by the concurrent findings of both the Courts below, the defendants now seek to file the second appeal.

10. Sri V.L.N.G.K. Murthy, learned Counsel appearing for the appellants, contends that the so called oral agreement in between the parties inter se is hit by Section 19 of the Copy Right Act and the plaintiff, who is in part delicto is not entitled to claim any relief on the void contract.

11. Per contra, Sri M. Ramachandra Reddy, the learned Counsel appearing for the plaintiff, seeks to contend that having regard to the declaration contained on the books that "all rights reserved with the publishers only" it is not open to the defendants to contend otherwise and invoke the doctrine of in pan delicto.

12. In view of the rival contentions, the substantial questions of law that would arise for determination in this appeal are:

(1) Whether the contract between the plaintiff and the defendants for the revision of the books Exs.A1 to A4 is void having been entered into in violation of the provisions of the Copy Right Act?

(2) Whether the doctrine of in pari delicto is attracted in the instant case and would disentitle to the plaintiff to the suit claim.

13. There has been no gainsaying that the respondent-plaintiff is the former Vice-Chancellor of University of Hyderabad. From the material on record, it clearly emerges that the respondent is a Poet, Novelist, Short Story Writer, Play-Wright of international repute and the winner of Sahithya Academy. It further emanates from the record that the plaintiff was a Fellow of Royal Society of Literature (London). That part of the case of the plaintiff that he is a person of repute has not been controverted by the defendants.

14. It is the case of the respondent that the defendants approached him for the revision of their book series entitled "Holyfaith Direct Approach to Interactive English" and offered to pay at the rate of Rs.50,000/- per each book; that the plaintiff revised the books and delivered them in the month of September, 1997; and that he was paid in all a sum of Rs.75,000/-leaving a balance of Rs.1,25,000/-. The first appellant denied the said version. However, the third defendant inter alia in his written statement squarely admitted the entrustment of the work of revising the book series. But, it was the case of the third

defendant that the plaintiff requested the defendants to use his good offices and asked him to pay Rs.75,000/- towards his remuneration; that the said amount, was paid in advance; that the plaintiff although promised to revise the books and give them within one month, failed to do so and therefore the defendants requested him to return the amount; and that the plaintiff neither revised any books nor did return the amount. The pleas taken by the first defendant and third defendant inter alia in the written statements filed separately by them are obviously not consistent. There seems to be no specific case that can be discerned from the written statement filed by the first defendant except denying the plaint averments. Third defendant, however, admitted the entrustment of the work, but pleaded that it was for Rs.75,000/- and that the plaintiff did not do the job entrusted to him. The agreement to revise the books and entrustment of the books to the plaintiff pursuant thereto by the defendants thus, beyond any doubt. However, the case of the respondent that he was offered at the rate of Rs.50,000/- per each book and after having revised the books he delivered them to the defendants and he was paid in all an amount of Rs.75,000/-leaving a balance of Rs.1,25,000/- to be paid is now being disputed by the defendants. Their case seems to be that the plaintiff was paid a sum of Rs.75,000/- in advance for the work to be completed and the plaintiff failed to complete the work and failed to return even the amount to the defendants. The oral evidence on the point is that of P.W.1 and D.W.1 and as both the Courts observed rightly that it was a case of oath against oath. However, after having appreciated the oral and documentary evidence adduced on the point on either side, both the Courts were of the concurrent view that having regard to the reputation and conduct of the plaintiff; that having regard to Ex.A10 and Ex.A11 letters dated 2-1-1998 and 6-2-1998 respectively; that as the defendants failed to give any reply pursuant to those two letters; and that having regard to the fact that the entrustment of the books for revision being an admitted fact, the plaintiffs case was proved. This concurrent finding of both the Courts is a pure question of fact. It could not legitimately be assailed with any relevant material before this Court nor it could be shown that the said findings was perverse and not well founded. For the above reasons, the findings of both the Courts below that the plaintiff was entrusted with the work of revision of the four books with an offer to pay at the rate of Rs.50,000/-per each book cannot be interfered with. Therefore, what remains to be seen is whether the two questions of law raised by the learned Counsel are any manner substantiated.

15. The plea taken by the defendants 1 and 2 inter alia in the written statement was that the acts of the plaintiff were in utter violation causing infringement of rights under the Copy Right Act, for which the defendants reserved the right to take proper action at the relevant time. Earlier thereto in Para 4 defendants 1 and 2 pleaded that the original script prepared by Mr. D.P. Bhanot and Shelly Sangar was published by defendant No. 1 well before 1997 and the script of the same authors is continued by defendant No. 1 till date. It has not been explained in the written statement as to how the plaintiff violated or infringed the rights

under the Copy Right Act. The plea of the defendants appears to be that although the original authors are Bhanot and Shelly Sangar, the script had been with the defendants. Obviously the book was published by the defendants. They wanted the book to be revised by the plaintiff and the plaintiff was entrusted with the said job. Having regard to the above facts it is for the defendants to explain as to how the acts of the plaintiff in having revised the book is in utter violation of or infringement of rights under the Copyright Act. Having taken the plea in the written statement thus, D.W.1 did not whisper anything about the violation or infringement of copyrights. The defendants have not taken the plea that the original authors of the book are the necessary or proper parties to the suit and the suit is bad for non-joinder of necessary parties. The book was obviously published by the first defendant. On the top of the book the names of the authors Bhanot and Shelly Sangar are printed. At the same time the book also contains the words "all rights reserved with publishers only". Whatever may be the contract in between the original authors and the first defendant, it is obvious from the book that all rights over the book in question are reserved with publishers only. The publisher is obviously the first defendant. Under such circumstances, I am afraid that the defendants cannot validly take the plea that the act of the plaintiff in revising the books is in violation of any copyright.

16. Even otherwise, it is to be seen whether it is a case of any infringement of the copyright. Meaning of the expression "copyright" is given u/s 14 of the Copyright Act. Works in which copyright subsists is given u/s 13. Section 16 manifests that there is no copyright except as provided in the Act. Section 14 mandates that the author of the work shall be the first owner of the copyright. As per Section 18 a copyright can be assigned. As per Section 21 the author can relinquish his right. u/s 30 the owner of the copyright may grant any interest in the right by licence to anybody either to produce and publish a translation as can be seen from Section 32. Section 44 contemplates the registration of copyright. While Section 51 enumerates when copyright shall be deemed to be infringed, Section 52 enumerates which acts are not infringement of copyright. Section 57 deals with a special right of the author even after the assignment of the work. Section 63 prescribes the punishment for the infringement of the copyright. For brevity and better understanding, it is expedient to extract the relevant provisions of the Act to the extent necessary.

Section 14 reads thus :

14. Meaning of copyright :--(1) For the purposes of this Act, "copyright" means the exclusive right, by virtue of, and subject to the provisions of this Act,--

(a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely,--

work in any material form;

(ii) to publish the work;

(iii) to perform the work in public;

(iv) to produce, reproduce, perform or publish any translation of the work;

...

Section 13 reads thus :

13. Works in which copyright subsists :--

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,--

(a) Original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) records.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless,--

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication or in a case where the author was dead at that date, was at the time of his death, a citizen of India.

(ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of making of the work a citizen of India or domiciled in India; and

(iii) in the case of an architectural work of art, the work is located in India.

Explanation :--In the case of a work of joint authorship the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work..

(3) Copyright shall not subsist--

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may, be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

Section 17 reads thus :

17. First owner of copyright :--Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein :

Provided that--

(a) in the case of a literary, dramatic or artistic work made by the author in course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work insofar as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being published, but in all other respects the author shall be the first owner of the copyright in the work;

...

17. A peep into the above provisions shows what is meant by a copyright, in what works the copyright subsists, the rights of the author of the copyright, when that right is said to be infringed and when not, and the penal consequences of such infringement.

18. Copyright is a unique kind of intellectual property. The right which a person acquires in a work, which is the result of his intellectual labour, is called his copyright. The primary function of a copyright law is to protect the fruits of a man's work, labour, skill or test from being taken away by other people. Here in this case, the authors of the original work are D.P. Bhanot and Shelly Sangar. Therefore, it is their intellectual property right. However, the book was published admittedly by the first defendant sometime prior to 1997. Although it is not known as to under what authority the first defendant could publish the book and whether the act of the first defendant in having published the book was in utter infringement of the copyright of the original authors, it seems to be clear that there must have been an understanding in between the authors of the original work and the publisher. If at all there is any infringement of the copyright of the original authors, obviously it must be the act of the first defendant in having got it published. The act on the part of the plaintiff is only revising the work at the instance of the first defendant, which claims to have reserved all rights with it only. Such a right must have been acquired by the first defendant either by means of assignment as is envisaged under Sections 18 and 19 of the Act or by means of licence as envisaged u/s 30 of the Act. When there is no action obviously on the part of the original authors as against the first defendant in having published their work, it must be understood that the author might have relinquished his right. Therefore, the first defendant cannot now claim that the plaintiff has infringed the copyright of the original author, when the original authors are not at all in the arena.

19. When that be the clear position emanating from the record, it cannot legitimately be contended before this Court that the consideration for revising the book by the plaintiff pursuant to the agreement in between the plaintiff and the defendants cannot be said to be forbidden by law or immoral or opposed to public policy and therefore the agreement itself is void ab initio as can be seen from the Section 23 of the Contract Act. Consequently, the question of invoking the doctrine in pan delicto will not arise at all. Before invoking the doctrine of in paris delicto which disentitles the plaintiff to make any claim against the defendants legitimately, it must be shown that the plaintiff is also equally at fault.

20. There are two time-honoured principles. First, *ex trpi causa non oritur actio*, or in the vernacular "no right of action arises out of a shameful cause". Secondly, *in pari delicto potior est conditio defendentis*, or in the vernacular, "where both are guilty of wrongdoing, the position of the defendant is stronger". The maxim "in pari delicto potior est conditio possidentis" is a maxim of law established not for the benefit of plaintiffs or defendants, but is founded on the principles of public policy; that the Court will not assist an illegal transaction in any respect. It is more intimately connected with the more comprehensive rule of law "*ex turpi causa non oritur actio*"; meaning thereby no Court shall allow by itself to make the instrument of enforcing the obligation alleged to arise out of a contract or transaction which is illegal. An exception to the principle incorporated in the above maxim can be seen from Section 65 of the Contract Act, which reads as under :

65. Obligation of person who has received advantage under void agreement or contract that becomes void :--When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

21. Sri V.L.N.G.K. Murthy, the learned Counsel for the appellants, has taken pains to further the cause of his client and seeks to place reliance upon certain passages from the book entitled "The Modern Law of Unjust Enrichment and Restitution" by Gerard McMeel. It is profitable to extract certain passages from the said book at pages 199 and 200 thus :

The main source of public policy precluding the enforcement of obligations is statutory prohibition. In addition, the Courts have enumerated their own common law heads of public policy. Two major problems have blighted English law under this heading. First, the Courts have not always been sensitive in the exercise of statutory construction in ascertaining the public policy underlying the statute. In the result, often the very party which the statute intended to protect has suffered as a result of a blunt application of the illegality rule. Secondly, having regard to express or implied statutory prohibitions may have been less problematical in the pre-industrial age. However, in the modern regulatory state the proliferation of regulatory Acts and delegated legislation has posed problems for this topic, which the judiciary has not always been able to cope with

successfully. In the postwar period a new approach was developed, eventually yielding the "public conscience" test which in effect gave the Judges a discretion in considering whether or not to deny enforceability of obligations. That development was repudiated by the House of Lords in the early 1990s, signalling a return to the traditional rules (although these are often difficult to discern and apply). Any rationalization of this topic now requires legislative action, and the Law Commission has recently published a consultation paper : *Illegal Transactions : The Effect of Illegality on Contracts and Trusts* (LCCP No. 154, 1998).

With respect to illegality in the law of restitution, it is necessary to draw a distinction between causes of action and defences (although this is not easy to do). Illegality per se is obviously not a restitutionary cause of action. However, within this context there are arguably two distinct grounds for restitution. First, the unjust factor of "repentance" or repudiation of an illegal transaction (usually identified by the Latin tag, *locus poenitentiae*, or "time for penitence"), which despite its theological-sounding name appears to rest upon a public policy of encouraging withdrawal from illegal enterprises. However, its scope is something of a matter for debate. Secondly, where the parties are not equally steeped in wrongdoing (*non in pari delicto*) the more innocent party, or a member of a protected class, may be entitled to restitution to escape from the transaction. This latter topic overlaps with the question of defences. Where a contract or other transaction is unenforceable by reason of illegality, the obligations will be unenforceable, and further illegality will operate as a defence to any attempt to seek the recovery of benefits transferred. The exception for parties who are not *in pari delicto* can be seen as an exception to that general rule of illegality operating to preclude a restitutionary claim. Alternatively, it may be categorized as a special class of case for a particular instance of transactional inequality. The main discussion of illegality precluding restitutionary claims is postponed to Chapter 35. Lastly, it should be noted that the phrase "illegality" tends to be used without any degree of precision. It may be preferable to use the term "public policy" as either grounding or precluding a restitutionary claim. However, restitutionary texts identify public policy as a separate topic from illegality which may ground or preclude restitutionary claims. These will also need to be considered briefly. However, it can be difficult to draw a line with any precision between the traditional cases of illegality and the more modern analysis in terms of public policy.

22. The learned Counsel seeks to place reliance upon a decision of the Apex Court in *Immani Appa Rao and Others Vs. Gollapalli Ramalingamurthi and Others*, . In Para 13 Apex Court held thus :

(13) Out of the two confederates in fraud respondent 1 wants a decree to be passed in his favour and that means he wants the active assistance of the Court in reaching the properties possession of which has been withheld from him be respondent 2 and the appellants. Now, if the defence raised by the appellants is

shut out respondent 1 would be entitled to a decree because there is an ostensible deed of conveyance which purports to convey title to him in respect of the properties in question; but, in the circumstances, passing a decree in favour of respondent 1 would be actively assisting respondent 1 to give effect to the fraud to which he was a party and in that sense the Court would be allowed to be used as an instrument of fraud, and that is clearly and patently inconsistent with public interest.

23. That was a case where the first respondent Ramalinga Murthi filed the suit for declaration of his title in respect of the suit schedule mentioned properties. According to the plaintiff the appellants and the 2nd respondent were members of an undivided Hindu family. He purchased property from them on 1-4-1936 under a sale deed by the Official Receiver in the insolvency of respondent No. 2. He obtained possession in pursuance of the said sale deed. However, in the month of October 1938, the appellants and respondent No. 2 trespassed on the said properties. The appellants and second respondent on the other hand claimed that to save the said property from the creditors of the second respondent at the advise of the father of the first respondent, they initially executed a collusive and nominal mortgage deed in favour of the first respondent followed up by a nominal transfer deed and thus the transactions were nominal and collusive and were not supported by any consideration.

24. The learned Counsel placed reliance upon a Bench judgment of this Court in Peddi Virayya Vs. Doppalapudi Subba Rao and Another, . In Para 13 this Court held thus :

(13) On this premises the contract entered into between the 1st defendant and the plaintiff for making purchases of tobacco is illegal, being prohibited by the relevant sections of the Act, the true legal position has to be appreciated. It is now well settled that a party to an illegal contract cannot invoke the aid of a Court to have such a contract carried into effect as law will not tolerate any party to violate any moral or illegal duties. As a corollary from this principle, if money is advanced for a purpose which is either opposed to morals or law or in furtherance of an illegal transaction such advance is not recoverable having regard to the maxim *ex turpi causa non oritur actio*. But this is subject to an exception. The law allows *locus poenitentiae*. So before fraud or an illegal purpose is carried out, the money may be recovered from the person to whom it was advanced. But the Court will not render any assistance in the recovery of the money if there is even a part performance of the illegal contract.

25. That was a case where the plaintiff/appellant filed the suit for accounts against the first defendant and for recovery of Rs.6,209-11-8 from the second defendant. His case was that in the year 1947 the plaintiff employed the first defendant to purchase tobacco as his agent from cultivators and accordingly the first defendant had been purchasing tobacco from various cultivators, but he failed to render account of the amounts received by him in spite of repeated demands. The first defendant contested the suit on the ground that the contract

between him and the plaintiff was illegal as being opposed to the provisions of central excise and salt act. The Trial Court dismissed the suit upholding the objections of the first defendant. In the appeal, this Court while setting aside the suit, remanded the matter to the trial Court for fresh disposal.

26. Reliance is also placed on the judgment of the Apex Court in *Kuju Collieries Ltd. Vs. Jharkhand Mines Ltd. and Others*, . In Para 2 of the judgment the Apex Court held thus :

12. The further question is whether it could be said that this contract was either discovered to be void or became void. The facts enumerated above would show that the contract was void at its inception and this is not a case where it became void subsequently. Nor could it be said that the agreement was discovered to be void after it was entered into. As pointed out by the trial Court the plaintiff was already in the business of mining and had the advantage of consulting its lawyers and solicitors. So there was no occasion for the plaintiff to have been under any kind of ignorance of law under the Act and the Rules. Clearly, therefore, this is not a case to which Section 65 of the Contract Act applies. Nor is it a case to which Section 70 or Section 72 of the Contract Act applies. The payment of the money was not made lawfully nor was it done under a mistake or under coercion.

27. Reliance is also placed on the judgment of this Court in *M. Seetharama Sastry v. N. Kaulwar and Sons* 1968 An.WR 267 2. That was a case where the plaintiff applied for telephone connection to his house and was granted. The defendant was residing in the portion of the said building and at the instance of the defendant the plaintiff got the phone installed in that portion of the house where the defendant was residing. The defendant availed the facility, but since telephone connection was in the name of the plaintiff he had to pay the bills. The plaintiff therefore filed the suit for recovery of the amounts paid by him under various bills by way of reimbursement. The defendant took the plea that the agreement set up by the plaintiff was opposed to Section 20-A of the Indian Telephone Act and also to Section 23 of the Contract Act and therefore, the plaintiff cannot claim the suit amount. The trial Court accepting the other plea dismissed the suit. In the revision filed before this Court the suit claim was sustained.

28. Finally, the learned Counsel seeks to place reliance upon the judgment in *Mohammed v. Alaga* 1999 (3) All ER 699. That was a case where the defendants are a firm of solicitors. The plaintiff, who was a leading member of the Somali Community, entered into an oral agreement with the defendant firm, pursuant to which he agreed to introduce Somali refugees to the defendant, who would in turn apply for legal aid and thereafter represent them on their application for asylum. In consideration thereof, the defendant firm agreed to pay commission of one half of the fees received by it from the legal aid Board. Pursuant to that agreement, the plaintiff began his work and introduced as many as 241 Somali nationals. The plaintiff was paid 18,887 pounds pursuant to that agreement by the defendant firm. The defendant in breach of the agreement failed to pay 50%

of the fees received within four weeks of the introduction of clients and also failed to disclose copies of all payments received from the legal aid fund. The suit was filed for accounts of all sums received by the defendant. Among various other pleas, the plea of the defendant firm was that the alleged agreement is contrary to Regulation 7 of Solicitors Practice Rule 1991 and 31(c) of Solicitors Act, 1974. The issue arose for consideration was as to whether the agreement between the plaintiff and the defendant is legal, enforceable and if it is not legally enforceable, whether the plaintiff has a claim against the solicitor in restitution for the value of the introductions and services rendered. On factual aspects, the trial Court assumes in favour of the plaintiff. Firstly, that there had been an agreement in between the plaintiff and the defendant; and secondly, the plaintiff was unaware of any prohibition of such an agreement for sharing the fees and eventually, rejected the claim of the plaintiff. The appeal before the Court of appeal was allowed in part by striking out the claim based on the contract and the entitlement of 50% of the fees of legal aid received by the solicitors. However, the claim of quantum meruit was held could be pursued and leave to plead on tortious claim granted.

29. On the side of the defendants reliance was sought to be placed on the judgment of Devlin J., in *St. John Shipping Corporation v. Joseph Rank Ltd.* (1957) 1 QB 267 wherein it was held thus :

The second principle is that the Court will not enforce a contract which is expressly or impliedly prohibited by statute. If the contract is of this class it does not matter what the intent of the parties is; if the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not. A significant distinction between the two classes is this. In the former class you have only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is deliberately made to do a prohibited act, that contract will be unenforceable. In the latter class, you have to consider not what acts the statute prohibits, but what contract it prohibits; but you are not concerned at all with the intent of the parties; if the parties enter into a prohibited contract, that contract is unenforceable.

Eventually, the Court granted restitution on the principle of quantum meruit.

30. The law in India as can be seen from Section 65 of the Contract Act seems to be somewhat different. The plaintiff will be non-suited only when he is in *pari delicto*. Otherwise, he is entitled to the relief claimed u/s 65 of the Contract Act.

31. As discussed hereinabove, there has been no infringement of any copyright since it has not been substantiated. There is no evidence on record to show that the plaintiff is in *pari delicto*. Above all, there has been no factual foundation either in the pleadings or in the evidence of the defendant that it is a case of seeking to enforce an agreement forbidden by law. On the other hand, it is discernable from the material on record that the defendants reserved all rights and it is the defendants who entrusted the work to the plaintiff. Therefore, it is

not a case of infringement of any copyright.

32. For the above reasons, the agreement in between the plaintiff and the first defendant cannot be said to be illegal and void ab initio.

33. In the result, the appeal fails and is dismissed. But, under the circumstances, there shall be no order as to costs.