

(1990) 08 DEL CK 0032
In the Delhi High Court
Case No : Suit No. 1301/85

Shaukat Ali Khan

APPELLANT

Vs

Babu Khan

RESPONDENT

Date of Decision : 16-08-1990

Acts Referred:

Citation : AIR 1991 Delhi 190 : (1991) 1 BC 223 : (1990) 42 DLT 648 : (1990) 20 DRJ 38 : (1991) 33 ECC 137 : (1990) RLR 391

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Mr. M.Qamruddin, for the Appellant; Mr. J. S. Bakshi, for the Respondent

Judgement

P. K. BAHRI, J.—This is a suit for recovery of Rs. 1,54,728/-. Facts of the case as mentioned in the plaint, in brief, are that the plaintiff was a resident of Saudi Arabia and he entered into a partnership with the defendant and as the plaintiff was residing in Saudi Arabia it was agreed that the defendant would look after and manage the business of the partnership and the partnership was to be carried on under the name and style of Eagle Paints and Chemicals as per partnership deed dated October 12, 1982. The plaintiff had, from time to time, sent a total amount of Rs. 1,08,000/- towards capital and the partnership business was commenced in the rented premises No. 1624/14, Gobindpur, Kalkaji, New Delhi and it continued for 1 1/2 years and in about April 1983, a plot No. RZ259/19, Tughlaqabad Extension, New Delhi, was purchased for installing the factory. But as the defendant stopped rendering any accounts although the partnership business was earning profits, the plaintiff then wanted to dissolve the partnership and withdraw his share from the partnership. It was then agreed that the defendant shall return to the plaintiff a sum of Rs. 1,08,000/- with profits and on December 9, 1983, a written agreement was entered into between the parties by virtue of which the defendant agreed to pay Rupees 1,08,000/- with profit of Rs. 18,000/- and 20% per annum up to December 9, 1983. The amount was to be paid either in installments or in

lumpsum within one year. The defendant failed to make any payment and the plaintiff pressed for the payment and another agreement dated December 24, 1984, was executed between the parties whereby the defendant agreed to pay Rs. 1,51,200/- inclusive of profits and interest and he was to pay the amount in installments i.e. Rs.30,000/- in January 1985 and thereafter Rs. 5,000/- every month up to December 1985 and the balance of Rs. 61,200/- within six months thereafter. It was also agreed that no further interest would be payable if the amount was paid in that manner and if the defendant failed to pay the amount in that manner he will have to pay interest and 10% per annum on the remaining balance amount. The defendant in pursuance to the aforesaid agreement handed over a cheque in the sum of Rs. 5,000/- in the month of January 1985 which was honoured and he gave cheques, for the months of February to May 1985 each in the sum of Rs. 5,000/- but they were also dishonoured.

2. This suit was brought under Order xxxvII of the Code of Civil Procedure. Vide order dated October 8, 1986, the defendant was granted leave to defend the suit unconditionally but thereafter despite a number of opportunities having been granted to the defendant, the defendant did not file any written statement. In ex-parte evidence the plaintiff appeared as P.W. 1 and proved the partnership deed Ex. P. W. 1/1 and the letters of the defendant Exs. P.W. 1/2 to P.W. 1/6. Ex. P.W. 1/ 7 was the agreement dated Dec. 9, 1983, by virtue of which the plaintiff was to be paid Rs. 1,08,000/- with profits of Rupees 28,000/- which amount was to be paid in installments or in lumpsum within one year, but the defendant failed to honour this agreement and thereafter agreement Ex. P.W. 1/8 dated December 24, 1984, was executed by virtue of which the defendant undertook to pay the plaintiff the amount in the manner as narrated earlier. The dishonored cheques Exs. P.W. 1/9 to P.W. 1/ 19 have been also produced. On merits of the claim of the plaintiff counsel for the defendant has nothing to say. Counsel for the defendant has, however, contended that the contract between the parties is void as being hit by the provisions of Foreign Exchange Regulation Act. It is true that the plaintiff being a non-resident Indian could not make any payments in India to anyone without taking permission of" the Reserve Bank of India but even if it is to be held that the contract between the parties was hit by the provisions of Foreign Exchange Regulation Act and was void even then the plaintiff is entitled to get the compensation in view of the provisions of S. 65 of the Contract Act which reads as follows:

"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."

3. It is not the case set up that the plaintiff knew about the illegality of the transaction at the time the contract was made and the payments were made in the partnership firm. So, it has to be held that the contract was discovered as void only when the contention has been raised in this Court for the first time by

the learned counsel for the defendant despite the fact that the defendant has not filed any written statement to contest this suit. So, even if the contract is held to be void even then the plaintiff is entitled to get back his money as compensation from the defendant. In *Budhulal v. Deccan Banking Company Limited* AIR 1955 Hyderabad 69, a similar question arose for decision. In that case a promote had been executed for which the consideration had passed but it was found that the promote was hit by the provisions of S. 31 of the Reserve Bank of India Act and Ss. 15 & 16 of the Hyderabad Paper Currency Act as the promissory note had been made payable to a bearer on demand. Still it was held by the Full Bench of the Hyderabad High Court that once the agreement is discovered to be void, the provisions of S. 65 of the Indian Contract Act became applicable. It was observed that S. 65 by using the words "when an agreement is discovered to be void" means nothing more nor less than when the plaintiff comes to know or finds out that the agreement is void. The word "discovery" would imply the pre-existence of something, which is subsequently found out. So, S. 65 makes the knowledge of the agreement being void as one of the pre-requisites for restitution and is used in the sense of an agreement being discovered to be void. It was observed that if knowledge is an essential requisite even an agreement an in to void can be discovered to be void subsequently and there may be cases where parties enter into an agreement honestly thinking that it is a perfectly legal agreement and where one of them sues the other or wants the other to act on it, it is then that he may discover it to be void. It was held that there is nothing specific in S. 65 of the Contract Act to make it inapplicable to such cases. It was further laid down that if facts and circumstances in the case prove that the parties discovered the illegality subsequently and not at the time of entering into the agreement, S. 65 of the Contract Act would become applicable. In the present case, there is nothing to show that the plaintiff or even the defendant were aware regarding the invalidity of the contract when it was made and thus, it has to be held that the contract has been discovered to be void only when this suit has been filed. If that is so, the plaintiff becomes entitled to be compensated for the amount given to the defendant by virtue of the contract, which has been discovered to be void later on. So, the plaintiff, in my opinion, is entitled to have a decree for recovery of the amount in suit from the defendant.

4. I, hence, decree the suit for recovery of Rs. 1,54,728/- with costs and interest and 10% per annum from the date of suit till realization against the defendant and in favor of the plaintiff.

5. Order accordingly.