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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 66/2018 & CM APPL. 16734-16737/2018**

SUDHA

..... Appellant

Through Mr. Sudhir Kumar, Mr. Jai Bansal,
Advts. with appellant in person.

versus

PREM SHANKAR JHA & ANR

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **23.10.2018**

Vide the present second appeal, the appellant seeks to urge the following substantial question of law : -

“a) Whether without there being a challenge to the agreement in a simple suit for recovery based on cheque transaction, can the suit be barred under section 23 of the Contract Act?

b) Whether Section 65 of Contract Act shall come into picture only when the agreement is unlawful under section 23 of the Contract Act?”

Learned counsel for the appellant does not press the framing of substantial question of law as sought to be framed to the effect : -

c) Whether in absence of any pleading in the plaint to the effect that the agreement is unlawful, can the suit be barred as the same comes under the purview of section 23 of the contract act and the benefit cannot be given under section 65 of the Contract Act?

Without any observations on the merits or demerits of the present second appeal, taking into account the factum that vide the order dated 01.04.2014 of the learned Civil Judge-04, Central in Civil Suit no. 636/13 and also vide the judgment dated 31.07.2017 in RCA 60944/16 of the Court of learned ADJ-01, Central, the suit filed by the plaintiff has been rejected under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 on the grounds that the agreement entered into between the plaintiff i.e. the appellant herein and the defendants to the said suit i.e. the respondents herein was in relation to an unlawful object and thus in terms of the Section 23 of the Indian Contract Act, 1872, the contentions having been raised on behalf of the appellant herein whilst placing reliance on the averments made in paragraphs 3, 4 & 5, of the plaint, which read to the effect : -

“3. That 10/04/2008, the defendant no. 1 alongwith his wife Kamini Kapoor, his father 'and defendant no. 2 who is the brother-in-law of the defendant no. 1 met the plaintiff at 3/26, Double Story, Vijay Nagar, Delhi and induced the plaintiff that they are having good, contacts in the Government offices and also represented that he is working as a contractor for providing teaching staff to the Delhi Administration School on contract basis. The defendants further assured the plaintiff that he can arrange a teaching job for the plaintiff in school runs by Delhi Administration. The defendants further asked the plaintiff that for getting job, the plaintiff shall have to

deposit a sum of Rs. 2 Lakhs as security deposit, with him for one year and only after deposition of said amount he would make arrangement of job of a teacher in Delhi Administration School.

4 . That the plaintiff was reluctant to pay the amount at the initial stage. On the reluctant shown by plaintiff, the defendants further assured the plaintiff that they would refund the security amount after one year and for this purpose he had even assured post- dated cheques in favour of the plaintiff at the time of accepting the security amount from the plaintiff. The details of the cheques are as under:-

<i>841281</i>	<i>10/4/09</i>	<i>100000/-</i>	<i>PNB Kamla Ngr</i>
<i>841297</i>	<i>12/5/09</i>	<i>100000/-</i>	<i>PNB Kamla Ngr</i>

5. The plaintiff being allured with the rosy pictures regarding job and handsome monthly remuneration and' more particularly about the confirmation of job, she paid the said amount to the defendant no. 2 in the presence of Sh. Raj an Diwan and Sh. Ranjan Jha who are known to the plaintiff and in their presence the entire transaction has taken place. It is stated that said amount was paid by the plaintiff vide cheque no. 420222 & 420224. Copy of bank statement annexed herewith."

to contend qua the factum that in order to get a job, the plaintiff had paid a sum of Rs.2 lakhs as a security deposit to the defendant no. 2 i.e. the respondent no. 2 herein, which as per the averments made in paragraph 5 of the plaint is stated to have been paid vide cheque bearing no. 420222 and cheque bearing no. 420224, with further contentions to the effect that the averments made in para 3 to the effect that on 10/04/2008, the defendant no. 1 alongwith his wife Kamini Kapoor, his father and defendant no. 2 who is the brother-in-law of the defendant no. 1 met the plaintiff at 3/26, Double Story, Vijay Nagar, Delhi and induced the plaintiff that they had good contacts in the Government offices and also represented that he is working as a contractor for providing teaching staff to the Delhi Administration School on **contract** basis and the defendants further assured the plaintiff that he can arrange a teaching job for the plaintiff in school runs by Delhi Administration. The defendants further asked the plaintiff that for getting job, the plaintiff shall have to deposit a sum of **Rs. 2 Lakhs as security deposit**, with him for one year and only after deposition of said amount he would make arrangement of job of a teacher in Delhi Administration School coupled with the factum that the contentions raised on behalf of the appellant that the said amount of Rs.2 lakhs having been paid by two cheques, numbers of which have been mentioned hereinabove, were not towards payment of any unlawful consideration or any bribe, the substantial questions of law in terms of Section 100(4) of the CPC are framed to the effect : -

“a) Whether without there being a challenge to the agreement

in a simple suit for recovery based on cheque transaction, can the suit be barred under section 23 of the Indian Contract Act, 1872?

b) Whether Section 65 of Contract Act comes into picture only when the agreement is unlawful under section 23 of the Indian Contract Act, 1872?”

and notice of the present second appeal alongwith notice of CM APPL. 16736/2018 & CM APPL. 16737/2018 be issued to the respondents no. 1 & 2 on taking of steps by the petitioner through all permissible modes, returnable on 14th December, 2018.

Copy of this order of formulation of the substantial question of law be also served on the respondents in view of the verdict of the Hon’ble Supreme Court in ***Surat Singh Vs. Shri Bhagwan and Others*** in Civil Appeal No. 9118-9119 of 2010 dated 19.02.2018.

ANU MALHOTRA, J

OCTOBER 23, 2018/MK