

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil First Appeal No. 76/2019

1. Chanda Devi W/o Kalu Das Vaishnav, aged about 53 years, R/o Ghosunda, District Chittorgarh.
2. LRs Of Nand Das, S/o Sua Das
 - 2/1. Ratan Das S/o Late Kaul Das, aged about 31 years, Grand Son Nand Das, R/o Ghosunda, District Chittorgarh.
 - 2/2. Sosar Bai D/o Nand Das, aged about 60 years, W/o Late Gokal Das, R/o Badodiya, Tehsil and Distt. Chittorgarh.
 - 2/3. Shyama Bai D/o Nand Das, aged about 62 years, W/o Late Mangi Das, R/o Mavaliya, Tehsil Nimbaheda, Distt. Chittorgarh.

----Appellants

Versus

1. LRs of Rameshwar Lal, S/o Devi Lal Vyas,
 - 1/1. Kamla Devi W/o Late Rameshwar Lal,
 - 1/2. Ashok S/o Late Rameshwar Lal,
 - 1/3. Dinesh S/o Late Rameshwar Lal, Are R/o Ghousunda, District Chittorgarh.
 - 1/4. Seema D/o Late Rameshwar Lal, W/o Ramesh Chandra Sharma, R/o Namana, Distt. Rajsamand.
 - 1/5 Miss Chanchal D/o Late Rameshwar Lal,
 - 1/6. Shakuntala D/o Late Rameshwar Lal, Divorcee,
 - 1/7. Leela Devi W/o Late Rameshwar Lal, Are R/o Singhpur, Tehsil Kapasan, District Chittorgarh.

----Respondents

For Appellant(s)	:	Mr. R.S. Mankad
For Respondent(s)	:	-

JUSTICE DINESH MEHTA

Order

15/05/2019

Admit. Issue notice.

Send for the record.

Stay Petition No.354/2019 :

Heard on the stay petition.

Learned counsel for the appellants submits that the agreement dated 05.06.2008, in question, is void and unenforceable in law, in the light of illustration (h) of Section 23 of the Contract Act, 1872.

The facts relevant for the present purposes are that the appellant No.1 had allegedly committed theft at plaintiff's place and on being caught, executed the contentious agreement dated 05.06.2008 to the effect that she would return a sum of Rs.2,87,500/- being value of 23 Tolas of gold she had stolen. It was also agreed that if she does not pay the said amount, the plaintiff would be free to lodge a case against her for the theft. To complete the narration of fact, it may be noted that another agreement of even date came to be executed by defendant No.2 – Nand Das, giving guarantee in relation to the aforesaid agreement executed by the appellant No.1-defendant No.1.

Learned counsel for the appellants contends that not only the contentious agreement in question is unlawful the appellant Chanda Devi has been acquitted by the competent criminal Court, which proves that she had committed no theft. According to learned counsel the appellant cannot be forced to make payment of the amount mentioned in the subject agreement.

Having heard learned counsel for the appellants, this Court is, prima facie, of the opinion that the subject agreement is not covered by illustration (h) of Section 23 of the Act of 1872 inasmuch as the agreement in question is to the effect of making

payment of Rs.2,87,500/- and not an agreement not to prosecute the defendant.

It is true that a contract requiring somebody to do unlawful act is void and barred by law, whereas in the present case, the agreement in question executed by the defendant is to the effect of making payment of the sum of Rs.2,87,500/-, which in no manner can be said to be unlawful.

That being the position, I do not find any case worth staying the execution of the judgment and decree dated 12.11.2018, which has been passed pursuant to a suit for specific performance of the agreement dated 05.06.2008, neither the execution thereof is denied nor the same was alleged to have been executed under duress or coercion.

The stay petition is therefore dismissed.

(DINESH MEHTA),J

7-Ramesh/-

