Rattan Chand Hira Chand

Vs

Askar Nawaz Jung (Dead) By Lrs And Others

Civil Appeal No. 740 of 1978

(P. B. Sawant, Smt. M. S. Fathima Beevi JJ)

12.02.1991

JUDGMENT

SAWANT, J. –

1. Although the leave granted by this Court is limited to the question whether the plaintiff is entitled to an amount of Rs. 75,000 which according to him he had actually advanced and the respondents had received for the purpose of prosecuting their litigation, and, therefore, the issue to be answered lies within a narrow compass, it is necessary to state the relevant facts briefly to understand correctly the significance of the question to be answered.

2. Nawab Salar Jung III, a celebrity of the erstwhile State of Hyderabad expired on March 2, 1949 leaving behind him no issue but a vast estate. As was expected, several persons came forward claiming to be his heirs, and among them were Sajjid Yar Jung and Turab Yar Jung who claimed to be his first cousins. The Nizam by a notification of May 9, 1949, appointed a Committee to administer the estate of the late Nawab Salar Jung. On the merger of the Hyderabad State, the Central Government by the Nawab Salar Jung Bahadur (Administration of Assets) Act, 1950, continued the Committee and also provided that no suit or other legal proceeding for the enforcement of any right or remedy in respect of any asset, shall be instituted in any court by any person other than the Committee except with the previous consent of the Central Government.

3. In the meanwhile, on May 31, 1949, the Nizam had already appointed a Commission to enquire into the question of succession to the estate, and one of the questions referred to the Commission was whether the Jagir of the late Nawab Salar Jung escheated to the government and another was the ascertainment of his heirs. The Commission was unable to proceed with the inquiry as some of the claimants filed a writ petition in the High Court of Andhra Pradesh challenging the jurisdiction of the Commission to enquire into the question of succession. The High Court, by its decision of September 23, 1952 held that the Commission was not the proper forum for determining the question of succession and directed that the management of the estate should remain with the Committee until the question was settled by a civil court. The question was ultimately settled by compromise between the various claimants including the government. The compromise was incorporated in a decree dated March 5, 1959 passed in a suit being Suit No. O.S. 13 of 1958 which was filed by some of the claimants. The present proceedings are an offshoot of the said suit.

4. Sajjid Yar Jung who claimed to be one of the first cousins of the late Nawab Salar Jung did not have the wherewhithal to establish his claim to a share in the estate. He approached the plaintiff who was a businessman of Bombay for financial help to enable him to establish his claim. According to the plaintiff, he agreed to do so and Sajjid Yar Jung agreed to return all amounts to be advanced to

him from time to time and also to give the plaintiff one anna share in the amount that would be received by him from the estate. The agreement was executed in writing on June 27, 1952 which is the subject matter or the present proceedings. Pursuant to this agreement Sajjid Yar Jung and his agents drew large amounts from the plaintiff fog time to time, totalling to about Rs. 75,000. Sajjid Yar Jung expired before the plaintiff received his share of the amount as per the agreement but after Sajjid Yar Jung successfully established his claim to the share in the estate. According to the plaintiff, the amount due to Sajjid Yar Jung from the estate was about Rs. 60 lakhs and hence he claimed Rs. 3 lakhs as his share (calculated at one anna in a rupee) in addition to the return of the sums advanced by him which as stated above was Rs. 75,000. The plaintiff, therefore, filed the present suit against the heirs of Sajjid Yar Jung for accounts and for administration of his estate and for distribution of the amount among the plaintiff and the defendants. He also jointed the receiver of the estate of Nawab Salar Jung Bahadur as one of the defendants to the suit.

5. The heirs of the late Nawab Sajjid Yar Jung (hereinafter refereed to as "Nawab") contested the suit and denied that the plaintiff had advanced any amounts to the Nawab. They also raised other contentions including the contentions that the suit was barred by limitation and that the agreement of June 27, 1952 was unenforceable in law as it was in the nature of a champerty deal which was opposed to public policy and forbidden by law.

6. The city civil court where the suit was filed found that the agreement was genuine, that it was admissible in evidence, that the amounts were advanced by the plaintiff to the Nawab and that the suit was not barred by limitation. However, the court found that the agreement was opposed to public policy as the object of the agreement was that the plaintiff should wield his influence with Central and State Ministers to have the Nawab recognised as the heir to the estate in return for his being given one anna share in the amount to be received by the Nawab. The court, therefore, held that the agreement in question was not enforceable. The court also held that even the amounts actually advanced by the plaintiff and received by the Nawab could not be recovered by the plaintiff. Accordingly, the court dismissed the suit with costs. The plaintiff preferred an appeal to the High Court.

7. The Division Bench of the High Court held that the appeal had abated against all the respondents on account of the failure of the plaintiff-appellant to bring on record the heirs of one of the respondents, viz., Askar Nawab Jung who had died pending the appeal. On merits, the bench also held that the agreement was against the public policy. The court further held that the agreement was one whole agreement and hence the plaintiff was not entitled to recover even the amount of Rs. 75,000 which was actually advanced by him to the Nawab for prosecuting the litigation. It is this decision which is challenged before us.

8. As stated earlier, leave has been granted only in respect of the said amount of Rs. 75,000 and, therefore, we are concerned in the present appeal only with the question as to whether the conclusion arrived at by the High Court, i.e., that the agreement is opposed to public policy and the actual advance Rs. 75,000 was a part of the whole agreement and was, therefore, also tainted by the vice of being contrary to public policy is correct.

9. That the amount of Rs. 75,000 was advanced by the plaintiff to the Nawab for prosecuting his claim as a sharer in the estate, is not disputed. In fact, the Nawab had to approach the plaintiff and had to enter into the agreement in question for the express purpose of successfully prosecuting his claim. The plaintiff cannot also contend that he had agreed to and did advance the said amount of Rs. 75,000 only because he wanted and expected the Nawab to be successful in the prosecution of

his claim. The advance was not a friendly loan or without consideration. The agreement itself stipulated that on the successful establishment of the claim, the Nawab would not only return the said advance but would also pay to the plaintiff consideration for the said advance. That consideration was agreed to be at the rate of one anna in a rupee. It is, therefore, apparent on the face of the record that the advance and the share in the estate, were a part of the same contract - one as a consideration for the other. The two stand together and none can stand without the other. Hence, I am not impressed by the contention advanced by Shri Shah for the appellant that the amount of Rs. 75,000 which was advanced by the appellant can be separated from the other agreement or could be treated differently. I am in agreement with the High Court that the agreement has to be treated as a whole and the two parts, viz., the advance and the consideration for the same cannot be separated from each other.

10. The next question is whether the advance in question was opposed to public policy. On this question, Shri Shah took us through the law on the subject, and contended that both the city civil court as well as the High Court have created a new head of public policy to declare the agreement as void, although according to the relevant statutory provisions as well as the decisions of the court, the agreement is not void. In the first instance, he referred us to the provisions of Sections 23, 65, 69, 70 and Part (ii) of Section 73 of the Indian Contract Act. Section 23 states that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, 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 as immoral, or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. He then pointed out to us that the specific rule of English law against maintenance and champerty have not been adopted in India and a champertous agreement is not per se void in this country. He contended that before a champertous agreement is held to be void, it must be shown that it is against public policy or against justice, equity and good conscience. He contended in this connection that the Nawab admittedly did not have sufficient finance to prosecute his claim though he had a valid claim as shown by the result of the litigation in that behalf. The plaintiff, therefore, did not do anything wrong in advancing the amount in question to him to enable him to establish his claim successfully since the Nawab could not have repaid the amount unless he got a share in the estate. It was a legitimate exercise to reduce the agreement to writing and to stipulate therein that the amount should be repaid along with a share in the estate when the Nawab's claim was established. The share in the estate being only one anna in a rupee could not also be said to be on the high side and conscionable. The High Court has given a finding in that behalf in favour of the appellant. The High Court has, however, held against the appellant only on the ground that the agreement was against public policy. He strenuously urged that if the champertous nature of the agreement is ignored which it is legitimate to do so in this country, there is no other ground of public policy on which the agreement can be struck down.

11. In this connection, he referred us to the decision of this Court In the matter of Mr. 'G', a Senior Advocate of the Supreme Court ((1955) 1 SCR 490 : AIR 1954 SC 557) where it is reiterated that a champertous contract would be legally unobjectionable if no lawyer was involved and that the rigid English rules of champerty and maintenance do not apply in India. In that case, he pointed out to us that the agreement was held unenforceable because it was agreement between lawyer and his client and it amounted to professional misconduct. However, this Court has also observed there that if such an agreement had been between a third party : (SCR p. 496)

> "[I]t would have been legally enforceable and good. It may even be that it is good in law and enforceable as it stands though we do not so decide because the question

> does not arise; but that was argued and for the sake of argument even that can be conceded. It follows that there is nothing morally wrong, nothing to shock the conscience, nothing against public policy and public morals in such a transaction per se, that is to say, when a legal practitioner is not concerned. But that is not the question we have to consider. However much these agreements may be open to other men what we have to decide is whether they are permissible under the rigid rules of conduct enjoyed by the members of a very close professional preserve so that their integrity, dignity and honour may be placed above the breath of scandal".

12. His second leg of the argument rested on the other provisions of the Indian Contract Act to which I have made reference above. He contended that even assuming that it was an agreement to receive consideration a share in the claim that was to be established by the Nawab, it was not against public policy. He contended that the amount in question was admittedly advanced and an advantage of it was taken by the Nawab to establish his claim. He had, therefore, to return the same to the appellant. In this connection, he referred us to the other provisions of the Indian Contract Act to which I have made a reference earlier. Section 65 states that 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. Section 69 states that a person who is interested in the payment of moneys which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. Section 70 declares that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. Part (ii) of Section 73 states that when an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it, is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

13. Shri Shah also referred us to the provisions of Section 84 of the Indian Trusts Act, 1882 which reads as follows :

> "84. Transfer for illegal purpose. - Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor".

14. Relying on these statutory provisions as well as the judicial decision, he contended firstly that assuming that the agreement was a champertous one, it was neither immoral nor against public policy, and secondly even de hors the agreement, the appellant is entitled to the said advance of Rs. 75,000 under Section 70 of the Indian Contract Act.

15. The High Court referred to the evidence on record in appeal which had an intimate bearing on the nature and the purpose of the agreement in question and came to the following conclusions. The court held that the plaintiff-appellant was approached by the Nawab because being a businessman of eminence, he was highly influential. He had an access to the ministers and other worthies in the government. He was in a position to secure to the Nawab his claim by wielding his influence. The Nawab knew about it and the plaintiff was also confident about it. It was immaterial that those whom he had approached were men of high repute and great integrity of character. The fact that

because of his accessibility he could get things done through them or could make use of his other standing with them to deliver goods to the Nawab, was enough to taint the entire agreement with the vice of introducing corruption in public life. The High Court also found that the advance which was made was in the nature of an investment to share the booty. There was no reason for the plaintiff who was a total stranger to the Nawab to undertake the financing in question which was in those days on a considerably high scale. No person who was not confident of delivering the goods would have embarked on financing on such a liberal scale. The plaintiff admittedly was a businessman who knew the value of each pie he was spending. He was doing it as a fruitful investment with sure returns. That is evident from the terms of the contract themselves since both the advance and the consideration for which the advances were made form part of one integral contract. On these facts which are on record, the High Court came to the conclusion that the parties had entered into the agreement in question with the avowed purpose that the plaintiff would use his then prevailing influence with the worthies in the government to secure the gains for the Nawab. The court on this evident came to the conclusion that the agreement was nothing but one obviously made to lend services as a "go-between" or a "carrier" for commission. This being so, it was against public interest and detrimental to the health of body politic.

16. The High Court further repelled the contention that either the city civil court or it was evolving a new head of public policy by referring to a decision of this Court in Ghurelal Parakh v. Mahadeodas Maiya (AIR 1959 SC 781 : 1959 Supp 2 SCR 406) and the decisions of the English court and to opinions of the jurists/experts in treatises and essays on the subject of public policy. The court also pointed out that this was by no means a new head of public policy and it can come under the head "agreements tending to injure the public" as mentioned at page 325 of Anson's Law of Contract (23rd edn.).

17. I am in respectful agreement with the conclusion arrived at by the High Court. It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immutable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep place with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.

18. It is true that as observed by Burrough, J. in Richardson v. Mellish ((1824) 2 Bing 229, 252 : 130 ER 294) public policy is "an unruly horse and dangerous to ride" and as observed by Cave, J. in Re Mirams ((1891) 1 QB 594, 595 : 7 TLR 309), it is "a branch of the law, however, which certainly should not be extended, as judges are more to be trusted as interpreters of the law then as expounders of what is called public policy". But as observed by Prof. Winfield in his article "Public Policy in the English Common Law" ((1928) 42 Harv L Rev 76, 91) :

> "Some judges appear to have thought it [the unruly horse of public policy] more like a tiger, and refused to mount it at all, perhaps because they feared the fate of the young lady of Riga. Others have regarded it like Balaam's ass which would carry its rider nowhere. But none, at any rate at the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community".

All courts have at one time or the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances shirk from their duty and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing values, and do what is expected of them. The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the societal goals and endanger the public good.

19. The contract such as the present one which is found by the city civil court as well as the High Court to have been entered into with the obvious purpose of influencing the authorities to procure a verdict in favour of the late Nawab was obviously a "carrier" contract. To enforce such a contract although its tendencies to injure public weal is manifest is not only to abdicate one's public duty but to assist in the promotion of a pernicious practice of procuring decisions by influencing authorities when they should abide by the law. To strike down such contracts is not to invent a new head of public policy but to give effect to its true implications. A democratic society is founded on the rule of law and any practice which seeks to subvert or circumvent the law strikes an its very root. When the court discountenances such practice, it only safeguards the foundation of the society. Even assuming, therefore, that the court finds a new head of public policy to strike down such practice, its activism is not only warranted but desired.

20. The appeal is, therefore, dismissed. In the circumstances of the case, there will be no order as to costs.

FATHIMA BEEVI, J.

(concurring) - I have had the advantage of perusing the judgment prepared by may learned brother, Sawant, J. I agree with him that the appeal must fail. I wish to say a few words. The only point that arises for decision in the appeal is whether an amount of Rs. 75,000 which the plaintiff claims to have advanced, is recoverable from the respondents. The relevant facts have been stated by my learned brother and it is not necessary to repeat the same. The city civil court found that the agreement on the basis of which the plaintiff claimed relief was opposed to public policy. The object of the agreement according to the trial court was that the plaintiff should wield his influence with Central and State Ministers to have Sajjid Yar Jung recognized as the heir of late Nawab Salar Jung in return for his being given one anna share in the assets to be received by Sajjid Yar Jung from the estate of late Nawab Salar Jung.

22. The High Court has confirmed that under the agreement the plaintiff was to promote the cause of Sajjid Yar Jung in his being recognised as heir of the Nawab Salar Jung and for the help thus rendered to receive a share of one anna in a rupee out of the assets obtained. The plaintiff appears to have advanced an amount of Rs. 75,000 in promoting the cause of Sajjid Yar Jung as agreed upon. The help in promoting the cause was much more than mere financing. On the evidence the High Court found that the help Sajjid Yar Jung wanted from the plaintiff was to bring to bear his influence with the Central and State Ministers and the request for financial help was secondly to the

request to represent the cause with the use of influence. The High Court affirmed that the object of agreement was to influence the Central and State Ministers and to advance and expend all amounts necessary in that connection.

23. In the face of the concurrent findings with which we agree, I have no doubt in my mind that the contract relating to the payment of the amount is not severable from the agreement to promote the cause of Sajjid Yar Jung by wielding the influence the plaintiff had. Every agreement of which the object or consideration is unlawful is void. The consideration or object of an agreement is unlawful when the court regards it an opposed to public policy. If anything is done against the public law or public policy that would be illegal inasmuch as the interest of the public would suffer in case a contract against public policy is permitted to stand. Public policy is a principle of judicial interpretation founded on the current needs of the community. The law relating to public policy cannot remain immutable. It must change with passage of time. A bargain whereby one party is to assist another in recovering property and is to share in the proceeds of the action and such assistance is by using the influence with the administration, irrespective of the fact that the persons intended to be influenced are not amenable to such influence is against protection and promotion of public welfare. It is opposed to public policy. In this view, we would hold that the plaintiff cannot enforce the agreement to recover the amount from the respondents.

ORDER

24. The appeal is, therefore, dismissed with no order as to costs.

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