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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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CS(COMM) 111/2021 & I.A. 3609/2021**BIRMALA PROJECTS PVT. LTD.**

PLOT NO. 162-A, 3RD FLOOR

SECTOR-7, DWARKA

NEW DELHI-110045,

THROUGH ITS AUTHORIZED DIRECTOR

....PLAINTIFF

(Through: Mr. Naresh K. Daksh, Advocate.)

Versus

1. ASHWANI AHLUWALIA

S/O LATE SHRI RATTAN CHAND

R/O D-25, ANAND NIKETAN

NEW DELHI - 110021.

2. NAKUL AHLUWALIA

S/O SHRI ASHWANI AHLUWALIA

R/O D-25, ANAND NIKETAN

NEW DELHI - 110021.

....DEFENDANTS

(Through: Mr. Nakul Gandhi and Mr. Mujeeb, Advs., Advocates.)

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Reserved on: 24.01.2025

Pronounced on: 18.02.2025



JUDGMENT

I.A. 12343/2021 (by defendant – for rejection of the plaint under Order VII Rule 11(d))

The instant application, I.A. 12343 of 2021, has been filed by the defendants under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, seeking rejection of the plaint.

2. The present suit has been filed by the plaintiff for the recovery of ₹2,14,41,950/-, along with *pendente lite* and future interest at the rate of 18% per annum from 02.03.2021, as well as for the grant of a permanent injunction. The controversy herein stems from a Collaboration Agreement executed on 09.12.2019 between the plaintiff and the defendants concerning the property bearing No. D-25, Anand Niketan, New Delhi, admeasuring 271.50 square yards [the suit property]. Pursuant to the terms of the agreement, the plaintiff paid a sum of ₹1,50,00,000/- to the defendants in cash, amongst payment by other modes, which came to be recorded in the terms of the Collaboration Agreement.

Case of the plaintiff in the main suit

3. The plaintiff entity is a company incorporated under the Companies Act, 1956, and is engaged in the business of constructing and redeveloping immovable properties, either on a contractual or collaborative basis, and subsequently selling such properties. The Defendant No. 1 is the absolute owner of the suit property.

4. In late November 2019, the plaintiff, through its Directors, learnt that the suit property was available for collaboration. Acting on this information, the plaintiff initiated negotiations with the defendants. The plaintiffs sought



to re-develop the property, consisting of a Basement, Stilt, and Ground to Third Floors. The defendants shared the title documents and proposed terms of consideration and sharing of the redeveloped property.

5. The parties entered into a Collaboration Agreement for re-development, agreeing that in exchange for constructing the property and paying ₹4.75 crore, the plaintiff would receive the Basement, Ground Floor, First Floor, 50% of the Stilt Area, and 55% undivided ownership rights. The defendants would retain the Second and Third Floors, Terrace/Roof, 50% of the Stilt Area, and 45% of the undivided ownership rights.

6. On 05.12.2019, the defendants requested ₹50,00,000/- in cash, purportedly citing the marriage of the daughter of defendant No.1 on 07.12.2019. The plaintiff arranged the payment, which was handed over in cash. Defendant No.1 signed a Memorandum of Understanding (MoU)-cum-Receipt, confirming the receipt and agreed to execute the Collaboration Agreement post-marriage. On 09.12.2019, the defendants executed the Collaboration Agreement, acknowledged balance payments, and handed over the possession of the Basement and Ground Floor to the plaintiff, on execution of a possession letter.

7. Within ten days of executing the Collaboration Agreement, the plaintiff discovered that the defendants had entered into similar agreements with other parties and accepted advance payments. As part of this alleged fraud, the defendants did not present the cheque of the plaintiff of ₹90,00,000/- for encashment.

8. Suspecting fraud, the plaintiff lodged a police complaint, leading to an FIR against the defendants. Subsequent proceedings followed, during which the defendants and their families sought time to settle and refund the



amount. Despite multiple attempts to resolve the dispute and recover the funds, no refund was made. Thus, in the instant suit, the plaintiff claims ₹1,50,00,000/- paid to the defendants, along with 15% annual interest from 09.12.2019, amounting to ₹29,41,950/- as of 01.03.2021. The plaintiff also seeks *pendente lite* and future interest at 18% per annum from 02.03.2021 until the realization of the entire amount.

Submissions on behalf of the defendants on maintainability

9. Challenging the maintainability of the suit in terms of the statutory bar under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, learned counsel for the defendants, Mr. Nakul Gandhi, submits that the plaint is liable to be rejected as it is barred by law. He contends that under Section 269ST(b) of the Income Tax Act, 1961 [“IT Act”], no person is permitted to receive an amount of ₹2 lakh or more in respect of a single transaction by way of cash. Furthermore, Section 271DA(1) of the IT Act provides that any person receiving such an amount in contravention of Section 269ST shall be liable to pay a penalty equivalent to the amount received.

10. Learned counsel argues that a conjoint reading of these provisions establishes a complete prohibition on the receipt of cash exceeding ₹2 lakh in a single transaction, with the imposition of a statutory penalty in case of any contravention. He emphasizes that the Collaboration Agreement, which forms the basis of the present suit, explicitly records that the plaintiff paid an amount of ₹1.5 crore in cash to defendant No. 1. He submits that this payment is in direct violation of Section 269ST(b) of the IT Act, which expressly forbids such transactions. In support of his argument, he relies on the decisions of the Supreme Court in the cases of *Mannalal Khetan v.*



*Kedar Nath Khetan*¹ and *Asha John Divianathan v. Vikram Malhotra*² to contend that any agreement whose terms are expressly forbidden by law is *void ab initio*. Accordingly, the Collaboration Agreement, being founded on an illegal consideration, is null and void due to the statutory bar under Section 269ST(b) read with Section 271DA(1) of the IT Act.

11. Learned counsel further submits that the purported illegality of the Collaboration Agreement is further reinforced by the provisions of the Indian Contract Act, 1872. Section 2(h) of the Contract Act defines a “*Contract*” as an agreement enforceable by law, and Section 10 prescribes the conditions for an agreement to be valid and enforceable. He emphasizes that Section 23 of the Contract Act specifically renders an agreement void if its object or consideration is unlawful or if it is expressly prohibited by law. In the instant case, a cash transaction of ₹1.5 crore is explicitly prohibited under Section 269ST(b) of the IT Act, rendering the agreement unlawful and unenforceable under Section 23 of the Contract Act. He contends that the reliance of the plaintiff on the Collaboration Agreement to claim recovery of ₹1.5 crore paid in cash is legally untenable. The transaction itself is barred under Section 269ST(b) and Section 271DA(1) of the IT Act, as well as Sections 10 and 23 of the Contract Act. According to learned counsel, since the suit is based entirely on an agreement that is illegal and void, it is argued that the plaint is barred by law and is liable to be rejected.

12. Learned counsel for the defendants submits that free consent and lawful consideration are essential elements for an agreement to be legally enforceable as a contract. In the present case, neither free consent was

¹ (1977) 2 SCC 424

² (2021) 19 SCC 629



obtained during the execution of the alleged Collaboration Agreement, nor does the consideration amount satisfy the test of lawfulness in light of the provisions of the Income Tax Act, as elaborated in the preceding submissions. Consequently, the alleged Collaboration Agreement cannot qualify as a legally enforceable document. Learned counsel contends that a suit cannot be instituted based on a void agreement. According to him, no party can initiate legal proceedings predicated upon a contract or agreement that is *void ab initio*. To substantiate his contention, learned counsel has placed reliance on the decision of the Madras High Court in the case of ***Raptakos Brett and Co. (P) Ltd. v. Modi Business Centre (P) Ltd***³.

13. Consequently, the alleged Collaboration Agreement, forming the foundation of the present suit, is unenforceable in law. Therefore, according to him, no relief can be granted to the plaintiff based on such a void agreement.

Reply of the plaintiff to the submissions of the defendants on maintainability

14. Learned counsel for the plaintiff, Mr. Nakul Kumar Daksh, vehemently refutes the contentions advanced by the defendants. He submits that the objections raised are a mere *façade* designed to obfuscate the real controversy involved in the instant suit. He contends that the defendants, after having received substantial sums from the plaintiff, have willfully evaded all communication, thus intending to unlawfully enrich themselves at the expense of the plaintiff.

15. Addressing the issue of payment in cash, learned counsel argues that even if such payment contravenes the statutory provisions, the resultant

³2006 SCC OnLine Mad 239



penalty would be borne by the defendants themselves and not the plaintiff. He submits that the onus of ensuring compliance with the provisions of Section 269ST of the IT Act, 1961 rests with the recipient of the funds. In the instant case, any contravention would render the defendants liable for penal consequences, not the plaintiff.

16. Learned counsel further contends that the plaintiff has adequately accounted for the source of the funds remitted to the defendants. He submits that there exists documentary evidence, corroborated by records from the Income Tax Department, substantiating the payments made in cash. He further submits that Section 269ST of the IT Act, 1961 was enacted with the objective of curbing transactions involving black money, however, in the present case, the funds utilized for the transaction have been duly accounted for and audited by the Income Tax Department. He further submits that the Income Tax Department, acting on a complaint lodged by the defendants herein, initiated an inquiry into the transaction. However, upon receiving a detailed response from the plaintiff substantiating the legitimacy of the transaction and providing an account of the source of funds, the Department was satisfied and consequently closed the investigation.

17. Moreover, learned counsel further contends that the mere payment of the amount in cash, even if alleged to be in violation of the Income Tax Act, does not render the Collaboration Agreement void. He submits that the provisions of the Income Tax Act, particularly Section 269ST, are only regulatory in nature and primarily impose a penalty on the recipient of the cash transaction rather than invalidating the underlying agreement. To substantiate his contention, learned counsel has placed reliance on various



decisions of this Court, in the cases of *Mukesh Gupta v. P.K. Bajaj*⁴, *Sheela Sharma v. Mahendra Pal*⁵, *Guddo Devi v. Bhupender Kumar*⁶, *Shyam Sunder v. Sohan Singh*⁷, which deal with a similar provision of Section 269 SS of the Income Tax Act that prohibits grant of loans exceeding ₹ 20,000/- in cash.

Analysis

18. Upon analyzing the pleadings in the plaint and the objections raised by the defendants regarding the maintainability of the suit, the Court considers it necessary to first scrutinize the nature of the relief sought by the plaintiff in the present case, which reads thus:-

“(a) to pass a Decree of recovery of sum of Rs. 2 , 14 ,41,950/- (Rupees Two Crores Fourteen Lacs Forty One Thousand Nine Hundred Fifty only) together with interest @ 18% per annum since 02.03.2021 till realization of entire amount in favour of the Plaintiff and against the Defendants , jointly and severally;

(b) to pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their family members, successor-in interest, associates, assignee or any other person acting on his behalf from entering into any Agreement, transferring , alienating and/or parting with possession or creating third party interest in whatsoever manner in respect of Property bearing No. D-25 , Anand Niketan, New Delhi - 110021 or any portion thereof;

(c) to award the costs of the present suit throughout in favour of the Plaintiff and against the Defendant;”

19. Upon examining the prayer in the suit, it is evident that the relief sought by the plaintiff pertains to the recovery of a sum paid, which has been mentioned in the Collaboration Agreement. The relief sought, *albeit*

⁴2006 SCC OnLine Del 1425

⁵2016 SCC OnLine Del 4696

⁶2020 SCC OnLine Del 2909

⁷2018 SCC OnLine Del 7455



for recovery, in substance, falls within the ambit of claims based on the principles of restitution and unjust enrichment.

20. While it is an admitted position between the parties that the plaintiff transferred the money in cash and that the same was received by the defendants, the pivotal issue requiring determination is whether this cash transaction, *prima facie* conducted in contravention of the statutory provisions of Section 269ST read with Section 271DA of the Income Tax Act, is rendered void by the operation of law and, consequently, whether this Court is precluded from entertaining the suit for recovery on account of the alleged illegality of the transaction.

21. Therefore, the two-pronged analysis necessitated in this matter is, whether the collaboration agreement is void on account of being violative of the statutory provisions delineated above, and if the answer is in the affirmative, would the suit for recovery be barred by law, thereby rendering it non-maintainable before the Court.

22. On the first prong, learned counsel has placed reliance on specific provisions of the Income Tax Act, 1961, including Section 269ST read with Section 271DA, which provide for the prohibition of certain cash transactions and the penalties to be imposed for violations. The relevant provisions are reproduced hereunder for reference:-

“[269ST. Mode of undertaking transactions.—No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—



(i) any receipt by—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this section,—

(a) “banking company” shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;

(b) “co-operative bank” shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS.]

[271DA. Penalty for failure to comply with provisions of section 269ST.—(1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.]”

23. Further, reliance was placed on various provisions of the Indian Contract Act, 1872 such as Sections 2(h), 10, and 23, which define agreements, enforceable contracts, lawful consideration, and object respectively. The relevant provisions have been reproduced hereunder for reference:-

“2. Interpretation-clause - (h). An agreement enforceable by law is a contract;

10. What agreements are contracts. — All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in 1[India] and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.



23. *What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—*

it is forbidden by law;

or is of such a nature that if permitted, it 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.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.



(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860)."

24. Upon examining the statutory provisions cited above, it becomes pertinent to turn to the Collaboration Agreement dated 09.12.2019 to assess its terms and the manner in which the transaction unfolded. Paragraph 7 of the agreement specifically details the mode and sequence of the transaction. For reference, the relevant contents of the said paragraph are reproduced hereunder:-

"That out of the total consideration of Rs. 4,75,00,000 /- , a sum of Rs. 2, 50,00,000 / - (Rupees Two Crore Fifty Lakh Only) has been paid by the DEVELOPER to the OWNER in the following manner;-

Rs.90,00,000/- (Rupees Ninety Lakh Only) vide Cheque No. 000150, dated 09.12.2019 drawn on HDFC BANK.

Rs.10,00,000/- (Rupees Ten Lakh Only) deducted towards TDS.

Rs. 1, 50,00, 000 /- (Rupees One Crore Fifty Lakh Only) in Cash .

The receipt of the above said consideration of Rs.2,50,00 ,000/ - (Rupees Two Crore Fifty Lakh Only) in the manner as stated herein above is hereby acknowledged by the OWNER . "

25. Upon perusing the specific provisions and the relevant contents of the agreement, the same are to be analyzed in light of the precedents relied upon by the parties. At the outset, the decision in **Raptakos Brett and Co**, relied upon by the defendant, rendered by the High Court of Madras is clearly



distinguishable both on facts and in law. In the said case, the relief sought for was the specific performance of an agreement that was, if enforced, would stand in direct contravention of the provisions of the *Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978*. The Court, therein, held that while the contract itself may not be illegal at its inception, its enforcement would result in illegality, thereby rendering it unenforceable. Thus, the ratio in *Raptakos Brett and Co.* is not applicable to the facts of the present case.

26. In *Mannalal Khetan*, the controversy with respect to the interpretation of Section 108 of the Companies Act, 1956, and whether its provisions were mandatory or merely directory, was settled. The case pertained to the validity of the transfer of shares that had been attached by the Income Tax Department due to outstanding tax liabilities. Despite such attachment, an agreement was entered into between the shareholders for the transfer of the said shares, and pursuant to this agreement, the company proceeded to register the transfer in 1958 and 1959. The dispute arose as to whether such a transfer was legally tenable in light of Section 108 of the 1956 Act, which mandated that a valid transfer must be accompanied by a duly executed instrument of transfer. The Supreme Court, while adjudicating upon the issue, emphasized that Section 108 employed negative and prohibitory language (“*shall not register*”), thereby rendering any transfer effected in contravention thereof void and unenforceable. The Court further observed that where a statute imposes a penalty for the commission of an act, even if the act is not expressly prohibited, such an act must be deemed unlawful, as it cannot be presumed that the legislature would impose a penalty for something that is otherwise lawful.



27. However, if the controversy therein is appreciated in the right perspective, the Court in *Mannalal Khetan* has observed that a transfer made in violation of the statutory provisions cannot be upheld. In the instant case, the plaintiff herein is not seeking any enforcement of the agreement, but rather seeking recovery of an amount that admittedly has been paid. Even assuming that the payment was made in contravention of Section 269ST, the agreement is not *per se* void under any law as the object of the agreement is to be appreciated, not the mode of transaction, and the plaintiff remains entitled to seek restitution or recovery of the amount.

28. It be noted that it is not the case of the defendants that the agreement itself was unlawful or that the collaboration agreement was inherently barred by law. Rather, the sole contention of the defendant is limited to the mode of payment being inconsistent with the provisions of the Income Tax Act. While *Mannalal Khetan* dealt with a statutory prohibition that rendered the transaction itself legally void, the provisions of the Income Tax Act invoked herein in the present case are to merely impose a fiscal penalty, solely on the mode of the transaction employed, without nullifying the underlying agreement and its objective. The purpose and intended outcome of the agreement were not prohibited by law, even if it is possible that the parties, primarily the defendant, may have subjected themselves to certain penal consequences under the Income Tax Act.

29. In *Asha John Divianathan*, the Supreme Court distinguished between void and voidable transactions. Referring to a catena of decisions on the jurisprudence of the Contract Act, the Court has held that void transactions are null from the outset, while voidable transactions remain valid until legally set aside. The Court re-affirmed the established common law



position that when a statute imposes a penalty for contravention, it implies a prohibition, making such transactions null and unenforceable.

30. However, the primary distinction between the ratio in the said decision and the controversy herein is that, Section 269ST of the IT Act merely regulates the mode of transaction and imposes a fiscal penalty without rendering the agreement itself void, whereas, *Asha John Divianathan* dealt with a statutory provision that expressly voided unauthorized transactions. Furthermore, it is seen that the provision is not absolute in its application, as it allows for the possibility of furnishing a reasonable justification for entering into a cash transaction, as discussed below. A cash transaction, by itself, does not render the entire agreement or interaction null and void in all respects, nor does it preclude the initiation of a money recovery proceeding.

31. Pertinently, the scope and effect of Section 269ST have been elaborated in *Departmental Circular No. 2/2018*, dated 15.02.2018. In the said circular, it was mentioned that the mission of the government is to move towards a less cash economy to reduce the generation and circulation of black money, and in view of the same, Section 269ST has been introduced. Moreover, the penalty which is proposed to be levied by the concerned authority under section 271DA, shall however, not be levied if the person proves that there were good and sufficient reasons for such contravention.

32. In the eyes of law, there is a sound distinction between the nature or object of an agreement and the mode of transaction carried out for the purpose of such agreement. This distinction between the mode of transaction *vis-à-vis* the objective of the agreement is elucidated in the case of *Sheela*



Sharma, a decision relied upon by the plaintiff. The Court in *Sheela Sharma* re-affirmed the settled position that a mere violation of fiscal statutes such as Section 269SS of the Income Tax Act does not, by itself, render the underlying transaction void or unenforceable in Civil Law. The Court placed reliance on *K.T.S. Sarma v. Subramanian*⁸, a decision of the High Court of Madras, wherein it was held that the primary objective of Section 269SS is to curb tax evasion, and not to invalidate every cash transaction exceeding the prescribed threshold. The Court noted that unless a statute explicitly declares a transaction void, a civil suit seeking recovery of money advanced in cash remains maintainable, subject to the general principles of contract law. The Court also considered *Mohammed Iqbal v. Mohammed Zahoor*⁹, wherein the Karnataka High Court ruled that a violation of Section 269SS merely invites a penalty under Section 271D, but does not extinguish the right of the lender to recover the loan.

33. In *Asstt. Director of Inspection v. Kum. A.B. Shanthi*¹⁰, the Supreme Court examined Section 269SS, a provision under chapter XX-B of the IT Act, akin to Section 269ST, and observed that the primary objective of the said chapter is to curb tax evasion and prevent the introduction of unaccounted money. The Court clarified that while violations attract penal consequences, they do not render the underlying transaction void. The Court further noted that under Section 273B, which provides an exception to penalties under Section 271D, allows the assessee to establish a reasonable cause for non-compliance. If a transaction is genuine and *bona fide*, and the

⁸2001 SCC OnLine Mad 520

⁹2007 SCC OnLine Kar 282

¹⁰(2002) 6 SCC 259



failure to adhere to the prescribed mode of payment is justified, the concerned authority has the discretion to waive the penalty.

34. A combined reading of the decision of the Supreme Court with the various decisions of this Court, makes it clear that mere non-compliance with the provisions of Section 269 ST does not *ipso facto* render a transaction void. The provisions are regulatory in nature, aimed at curbing tax evasion and are not intended to invalidate genuine transactions. Consequently, while a violation may invite penal consequences, it does not annihilate the enforceability of the underlying agreement or transaction.

35. In this backdrop, the reliance placed by the defendants on the statutory provisions of the IT Act to challenge the maintainability of the suit is misplaced. In *Sheela Sharma*, this Court unequivocally held that unless a statute expressly declares an agreement void, the imposition of a fiscal penalty does not, by itself, nullify private contractual obligations. Courts must exercise caution in distinguishing between lawful regulatory provisions and unwarranted judicial interference in contractual relations. The codification of contract law serves to delineate the boundaries of permissible regulation, ensuring that judicial intervention remains within the confines of statutory intent. As long as the intent of the parties is unambiguously reflected in the agreement and the same is not expressly prohibited by law, Courts should refrain from interfering, except to the extent contemplated by the statute.

36. The Court, in *Sheela Sharma*, further emphasized that the doctrine of unjust enrichment would apply if a party seeks to evade repayment by citing technical violations of Income Tax laws. Thus, presuming for the sake of argument, that the underlying transaction is void under Section 23 of the



Indian Contract Act, 1872, the defendant would still be bound by Section 65 of the Act, which mandates restitution in cases where an agreement is discovered to be void. The Supreme Court in *Loop Telecom & Trading Ltd. v. Union of India*¹¹, has categorically held that a party who has received an advantage under a contract, later found to be void, is bound to restore it or compensate for it, provided they are not *in pari delicto*.

37. In the present case, the defendant received ₹1.5 crore in cash, a fact that remains undisputed. The defendant now seeks dismissal of the suit for recovery *in limine* by relying on Section 269ST of the Income Tax Act, 1961, arguing that the transaction itself is illegal. However, the Court cannot lose sight of the crucial fact that Section 271DA of the Income Tax Act imposes a penalty only on the recipient of the cash amount, thereby making the defendant the culpable party in the eyes of law. The provision does not render the underlying transaction void but only prescribes a fiscal penalty for the contravention, which would also be chargeable against the hands of the recipient, who in the instant case is the defendant. Therefore, the defendant cannot take advantage of his own wrongdoing to escape liability.

38. The Supreme Court in *Loop Telecom* further clarified that the principle of *in pari delicto* applies only when both parties are equally responsible for the illegality. Here, it remains undisputed that the plaintiff made a payment under the Collaboration Agreement, while the defendant was the party who violated Section 269ST by receiving the amount in cash. As per *Loop Telecom*, the defendant cannot be allowed to unjustly enrich himself by retaining the money under the guise of statutory violation of Section 269 ST, which draws the penal liability solely against him.

¹¹(2022) 6 SCC 762



39. Applying the above principles, the defendant cannot be permitted to benefit from the alleged statutory illegality, especially when it is he who has committed the contravention under Section 269ST of the Income Tax Act. As the Supreme Court in *Loop Telecom* emphasized, Section 65 of the Contract Act mandates restitution where one party has derived an advantage under a void agreement, provided they are not in *pari delicto*. Since the plaintiff merely discharged a contractual obligation, and the defendant was the one in violation of the law, he cannot escape the liability for restitution.

40. Thus, even if the Collaboration Agreement is alleged to contravene the provisions of the Income Tax Act, the determination of such a violation falls exclusively within the domain of the Income Tax Authorities under Section 271D of the Act. The mere receipt of cash in violation of Section 269ST does not, by itself, render the underlying agreement void or unenforceable in a Civil Court. In the absence of any established intent on the part of the plaintiff to evade tax liability, which is also a matter to be adjudicated by the competent Income Tax authority, there exists no statutory bar preventing this Court from entertaining the suit for recovery. The statutory penalty prescribed for contravention of Section 269ST is imposed upon the recipient and not the payer, and the imposition of such a penalty does not automatically nullify the underlying transaction.

41. The plea advanced by the defendant, when examined in the right perspective, leads to three untenable consequences. Firstly, it seeks to invalidate the underlying Collaboration Agreement, based solely on a statutory provision of the IT Act that regulates the mode of payment rather than the purpose or substance of the agreement itself. Secondly, it would enable the defendant to unjustly enrich himself at the expense of the plaintiff



by invoking a technical statutory provision to evade contractual obligations. Thirdly, it effectively penalizes the plaintiff for adhering to the mutually agreed terms of the Collaboration Agreement, while the defendant, who willingly received the cash payment without protest, now seeks to repudiate the agreement. The law cannot be construed in a manner that allows a party to benefit from its own wrongdoing or to exploit regulatory provisions as a shield against legitimate contractual liabilities.

42. Even otherwise, the defendant has failed to demonstrate any legal bar to the maintainability of the present recovery suit within the confines of Order VII, nor can such a bar be implied by an overextended interpretation of a fiscal statute whose objective is merely to regulate cash transactions rather than to vitiate otherwise valid agreements.

43. Accordingly, the plea raised by the defendant, seeking rejection of the plaint under Order VII Rule 11(d) of the CPC on the ground of statutory violation, is misconceived, as the same fails to establish any express legal prohibition that would preclude the Court from adjudicating the instant claim for recovery.

44. In view of the aforesaid, the instant application stands dismissed.

CS(COMM) 111/2021

45. List on 01.04.2025 before the concerned joint registrar for completion of pleadings in accordance with extant rules.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

FEBRUARY 18, 2025/sp