

# Lawful objects and considerations under Section 23 of Indian Contract Act 1872 – An analysis

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Section 23 of Indian Contract Act 1872 deals with lawful objects and consideration and the said Section is reproduced below for ready reference.

## Statutory provision:

### Section 23 of ICA 1872:

“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 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.

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(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).

In this Section 23, the words expressions used are 'Void', 'object', and 'consideration'.

There may not be 'void object' as such, but one can consider it as void contract having unlawful object which can be declared void object. Similarly, there may not be 'void consideration' as such, but one can consider it as void contract having unlawful/illegal consideration which can be declared void consideration.

### **Void Contract**

A void contract, also known as a void agreement, is not actually a contract. A void contract cannot be enforced by law. Void contracts are different from voidable contracts, which are contracts that may be (but not necessarily will be) nullified.

An agreement to carry out an illegal act is an example of a void contract or void agreement. For example, a contract between drug dealers and buyers is a void contract simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract. A void contract is void ab initio, i e from the beginning while a voidable contract can be voidable by one or all of the parties

A contract can also be void due to the impossibility of its performance. E g: If a contract is formed between two parties A & B but during the performance of the contract the object of the contract becomes impossible to achieve (due to action by someone or something other than the contracting parties), then the contract cannot be enforced in the court of law and is thus void. A void contract can be one in which any of the prerequisites of a valid contract is/are absent for example if there is no contractual capacity, the contract can be deemed as void. In fact, void means that a contract does not exist at all. The law cannot enforce any legal obligation to either party especially the disappointed party because they are not entitled to any protective laws as far as contracts are concerned.

**Features of Void agreements:**

- An agreement made by incompetent parties (Incapacitated Person) is void.
- Any agreement with a bilateral mistake is void.
- Agreements which have unlawful consideration are void.
- Agreement with an unlawful object is void.
- Agreements made without consideration is void.
- Agreement in restraint of marriage of any major person is void (absolute restriction).
- Agreement in restraint of trade is void.(reasonable reason)
- Agreement in restraint of legal proceedings is void.
- An agreement the terms of which are uncertain is void.
- An agreement by way of wager (betting/gambling) is void.
- An agreement contingent upon the happening of an impossible event is void.
- Agreement to do impossible acts is void.

**Object and consideration must be legal**

Section 23 is confined to the object of the transaction and not to the reasons or motives which prompted it. In determining the validity of the contract, the object of the agreement and not action actually taken under the agreement should be considered. When a contract is invalid, every part of it, including the clause as to arbitration contained therein, must also be invalid. The Section invalidates agreement whose objects or consideration is unlawful. It of three matters, viz. (i) consideration for the agreement, (ii) object of the agreement and (iii) the agreement.

**Expression ‘If permitted by law’**

The expression “if permitted, it would defeat the provisions of law” occurring in the third paragraph of the Section should be understood as referring to performance of an agreement which necessarily entails the transgression of the provisions of any law. A bare possibility of such transgression, if there be also a possibility of performance without such transgression, does not invalidate the agreement. The general rule of law is that parties to contracts are to be allowed to regulate their rights and liabilities themselves, and the Court will only give effect to the intention of the parties as it is expressed by the contract. Three principles arise from the Section - they are: (i) an agreement or contract is void, if its purpose is the commission of an illegal act;(ii) an agreement or contract is void, if it is expressly or impliedly prohibited by any law, and (iii) an agreement or contract is void, if its performance is not possible without disobedience of any law. The general rule of law is that facts showing illegality must be pleaded, and if one of the contracting parties challenges an agreement as being unenforceable, e.g., as being opposed to public policy, it is for him to set out and prove those special circumstances which will invalidate the contract.

**Difference between Void and agreements that are illegal**

The difference between agreements that are void and agreements that are illegal lies in the effect which their peculiar character imparts to collateral transactions. If an agreement is merely void and not illegal, the plaintiff can recover from the third party who has received the money on his behalf under the void agreement, the contract under which the money was received for the principal not being affected by the collateral agreement under which the money was payable. If the agreement is illegal, that is prohibited by law under a penalty, the plaintiff cannot recover, as his claim is founded on an illegal act and the receipt of the money is itself an illegal act.

This Section speaks of void agreements. There is a distinction between illegal and void contract although it may be very thin or small.

An illegal contract will never indeed be enforced if it be executory, but if it be executed in despite of a statute or rule of public policy prohibiting it, relief will often be granted not only by setting aside the agreement but by ordering a repayment of money paid under it. Thus, a suit for advances made on an unlawful agreement was held sustainable on the principle that as long as an unlawful agreement remained unperformed, it might be treated as void, but any money paid under it might be recovered back as received to the use of the person who so paid it. On the same principle, an agreement to sell goods in black market in exchange for black money can be enforced in a court of law.

Contracts are sometimes said to be illegal either because the consideration of the promise is illegal or because the promise itself is illegal. Section 23, speaks of three matters; it speaks of consideration for the agreement, the object the agreement and the agreement.

Anything which is not lawful within the meaning of Section 23 is unlawful for the purpose of an agreement or compromise, and is sufficient when incorporated in a decree to render it a nullity.

### **Expression ‘Forbidden by Law’**

The expression “forbidden by law” is not synonymous with the word ‘void’ and hence it is not necessary that whatever is void is also “forbidden by law”. Forbidden by law means an act forbidden by Indian Penal Code or by special legislative enactments, regulations or orders. But there are certain things which the law does not forbid in the sense of attaching penalties to them, but which are violations of established rules of decency, morals or good manners and of whose mischievous nature in this respect the law takes so far notice that it will not recognize them as a ground of any legal right.

An agreement, which contravenes the policy of the law as contained in an Act of the legislature or which has for its object, the carrying on of a business in contravention thereto is illegal. As a general rule, the law does not forbid things in express terms, but imposes penalties for doing them, and the imposition of such penalties implies prohibition, and an agreement to do a thing so prohibited is unlawful under this Section. A contract involving the contravention of the Provisions of the Motor Vehicles Act or the Rules made thereunder is illegal.

The words - if permitted it would defeat the provisions of any law - refer to the performance of an agreement which necessarily entails the transgression of the provisions of any law. A bare possibility of the transgression of the provisions of any law does not invalidate the agreement. The provision of benefit of retrenchment compensation as provided by the Industrial Disputes Act, and bonus claimed on the basis of an award of Industrial Tribunals are not subject to any contract.

Various Courts held ‘illegality under enactments such as: Tenancy Act, Transfer of Property Act, and Insurance Act.

Section 23 says that the consideration or object of the agreement is unlawful if it “is fraudulent”.

If the plaintiff cannot make out his case except through an immoral transaction to which he was a party, he must fail. An agreement to pay a certain sum of money to a prostitute for cohabitation is void.

### **Expression 'Public Policy'**

The expression "public policy" means and includes a wide range of topics such as trading with the enemies in times of war, stifling prosecutions, champerty and maintenance and various other topics which include certain recognized matters. The term 'Public policy' does not admit of any definition. The existing heads of policy are: (1) By tending to the prejudice of the state. It may be further divided into following two sub-heads: (a) Trading with enemy (b) Sale of public offices and appointments. (2) By tending to the perversion of or interference with the administration of justice. It may also be divided into the following heads: (a) Perversion or interference in justice - (i) Maintenance; (ii) Champerty; (b) Agreement to stifle prosecution. (3) Violation of public decency. It is equivalent to the policy of the law. It is variable quantity and must vary with the habits, capacities and opportunities. An agreement by the wife not to claim any maintenance in consideration of lump sum payment is not opposed to public policy. Public policy imposes certain limitations on the freedom of contract by forbidding the making of certain contracts. It is a settled principle that one who knowingly enters into a contract with improper object cannot enforce his rights thereunder. Having regard to the context and circumstances in which an award is made, it is manifest that the preemption clause must be construed as binding upon the assignees or successor in interest of the original contracting parties. The Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of the things, the expression "public policy" or "opposed to public policy" or "contrary to public policy" are incapable of precise definition. Public policy however, is not the policy of a particular Government. It connotes some matter which concerns the public good and the public interest. As new concepts take place, old transactions which were once considered against public policy are now being upheld by the courts. There are two schools of thought "narrow view" school and "broad view" school.

While interpreting the meaning of 'public policy' in this case, it was held that the term should be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is good for the public or in public interest or what would be harmful or injurious to the public good or interest varies from time to time. However, an award, which is on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such an award is likely to adversely affect the administration of justice. Hence, the award should be set aside if it is contrary to (i) fundamental policy of Indian Law; (ii) the interest of India; (iii) justice or morality; (iv) in addition, if it is patently illegal. The illegality must go to the root of the matter and if the illegality is of a trivial nature, it cannot be held that the award is against the public policy. An award can also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. **[ONGC Ltd. v. Saw Pipes Ltd. 2003 (2) RAJ 1 (SC)]**

The Supreme Court of India has dealt with certain cases under section 23 holding that some actions of entering into contract are void. They are given below for ready reference.

### **Appointment of Receiver.**

1. Whether, Delhi High Court was justified in appointing receiver and directing him to take possession of property. Held, it was not dispute that Respondent No. 1 had filed suit for specific performance on 1st February, 1993 and Single Judge of Delhi High Court passed order of injunction on 18th February, 1993. Arbitral award for specific performance of agreement for sale of same property entered into between Appellants and was obtained on 7th January, 1999. Execution proceedings were instituted in Calcutta High Court in 2000 and order for appointment of receiver was passed on 12th August, 2000. Thus it was clear that when Appellant approached Calcutta High Court, Delhi High Court was already seized with suit involving subject matter of award. Single Judge of Calcutta High Court had shown due respect to orders passed by Delhi High Court and directed that same should operate till they were modified or vacated at instance of Appellants. Therefore, course of action adopted by Calcutta High Court was in consonance

with notion of judicial propriety. So Single Judge and Division Bench of Delhi High Court had assigned detailed and cogent reasons for appointing receiver to take care of suit property. Hence it did not find any valid ground to interfere with order passed by Single Judge of Delhi High Court. In suit for specific performance, Court will pass order of impleadment of purchaser who files Application for being joined as party within reasonable time of his acquiring knowledge. Appeal dismissed. **[Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt. Ltd. and Ors. AIR 2012 SC 2925 = 2012 (6) ALT 10 (SC) = JT 2012 (7) SC 531 = 2012 (7) SCALE 448 = 2012 (8) SCC 384 (SC)]**

## **Arbitration**

2. Where conditions of provisions of this section are satisfied court must grant stay. Provisions of this section are mandatory. Conditions necessary for stay of legal proceedings. Expression “in respect of any matter agreed to be referred to arbitration” covers not only matters on merit but also questions relating to existence, validity and effect of arbitration agreement. Arbitrator empowered to decide questions of existence, validity or effect of arbitration agreement under the terms thereof, but determination by him not final and subject to decision by court. Scheme of this act and arbitration act discussed. With reference to sections 3, 4, 6 and 7 of the 1961 act and sections 33, 34 of 1940 Act. Differences between such provisions as contained in both the acts considered and evolved. **[Renusagar Power Co. Ltd.. v. General Electric Co. AIR 1994 SC 860 = 1994 (2) ALR 405 (SC) = 1993 (4) SCALE 44 = 1994 Suppl (1) SCC 644 = 1993 Suppl (3) SCR 22(SC)]**

3. Appellant and respondent entered into contract for sale of certain items. Dispute arose between parties. Appellant invoked arbitration clause. Arbitrator made NIL award. Appellant thereupon invoked second part arbitration agreement. During pendency of proceedings before arbitrator respondent filed application challenging initiation of second arbitration proceedings. Injunction granted by High Court. Appeal. First award of Arbitral Tribunal on expiry of period specified for challenging award became decree despite invocation of second part. When a part of award became decree of Court some would be binding upon Arbitral Tribunal. Order of High Court set aside. **[Centrotrade Minerals and Metal Inc. v. Hindustan Copper Limited 2006 (4) ALT 18 (SC) = 2006 (3) ALR 201 (SC) = JT 2006 (5) SC 507 = 2006 (5) SCALE 535 = 2006 (11) SCC 245 = 2006 Suppl (2) SCR 146(SC)]**

4. Sub-clause (7) of Clause 25A of agreement requiring claimant to deposit 7% of total claim made. 7% coming to Rs. 1,81,14,845. Accepting objection in that regard, Tribunal held that on account of non-compliance, Arbitrators cannot assume jurisdiction to proceed with arbitration--Challenge before High Court failed. Any interference not called for. Concept of unequal bargaining power has no application to commercial contracts. Provisions of Sections 31 (8) and 38 cannot be pressed into service to get over sub-clause (7) of Clause 25A. Plea that there should be cap in quantum payable in terms of sub-clause (7) of Clause 25A without substances. Appeal dismissed. **[S. K. Jain v. State of Haryana and Anr. JT 2009 (7) SC 128 = 2009 (3) SCALE 236 = 2009 (4) SCC 357, 2009 (2) SCR 1080(SC)]**

5. Contract between appellant and respondent No. 2 for supply of fresh fruits to troops of appellant--Respondent No. 2 stopped supply In middle of contracted period of one year. On ground that prices of fruits had increased and it was not possible on its part to perform contract--Dispute referred to Arbitrator. Arbitrator framed issue No. 4. Whether contract legally enforceable. Arbitrator held that contract was void ab initio. Reason assigned therefor that letter of Government of India was notification and law under Article 13(3)(a) and as consideration or object of agreement between appellant and respondent No. 2 defeated provision of law and agreement void under Section 23 of Contract Act, but Article 13(3)(a) has no relevance In deciding. Whether agreement void and not enforceable In law. Contract in question not void under Section 23 of Contract Act. Award of Arbitrator and judgments of courts below set aside. Matter remitted to Arbitrator. Section 23 of the Indian Contract Act, 1872, inter alia states that the consideration or object of an agreement is lawful, unless the consideration or object of an. agreement is of such a nature that, if permitted, it would defeat the provision of law and in such a case the consideration or object is unlawful and the agreement is void. Therefore, unless the effect of an agreement results in performance of an unlawful act an agreement which is otherwise legal cannot be

held to be void and if the effect of an agreement did not result in performance of an unlawful act, as a matter of public policy, the Court should refuse to declare the contract void with a view to save the bargain entered into by the parties and the solemn promises made thereunder. Appeal allowed. **[Union of India (UOI) v. Col. L. S. N. Murthy and Anr. JT 2011 (13) SC 258 = 2011 (13) SCALE 67 = 2012 (1) SCC 718(SC)]**

6. Designate Judge held that Rajasthan High Court did not have any territorial jurisdiction to entertain Application under Section 11 of Arbitration Act and dismissed same. Hence, present Appeal. Whether in view of clause 18 of consignment agency agreement (agreement) dated 13th October, 2002, Calcutta High Court had exclusive jurisdiction in respect of Application made by Appellant under Section 11 of Arbitration Act. Held, absence of words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' in jurisdiction clause was not decisive. For construction of jurisdiction clause, like clause 18 in agreement, maxim expression *uni uses texclusio alterius* came into play as there was nothing to indicate to contrary. That legal maxim meant that expression of one was exclusion of another. By making a provision that agreement was subject to jurisdiction of Courts at Kolkata, parties had impliedly excluded jurisdiction of other Courts. Where contract specified jurisdiction of Courts at a particular place and such courts had jurisdiction to deal with matter, an inference might be drawn that parties intended to exclude all other Courts. Therefore, in view of clause 18 of consignment agency agreement (agreement) dated 13th October, 2002, Calcutta High Court alone had exclusive jurisdiction in respect of Application made by Appellant under Section 11 of Arbitration Act. Impugned order did not suffer from any infirmity. Appeal was dismissed. **[Swastik Gases P. Ltd. v. Indian Oil Corporation Ltd. 2013 (3) ALR 161 (SC) = JT 2013 (10) SC 35 = 2013 (8) SCALE 433 = 2013 (9) SCC 32(SC)]**

7. The facts very briefly are that on 30.11.2007 the Board of Control for Cricket in India (for short 'BCCI') invited tenders for IPL (Indian Premier League) Media Rights for a period of ten years from 2008 to 2017 on a worldwide basis. .... This arbitration agreement in Clause 9 is wide enough to bring this dispute within the scope of arbitration. To quote Redfern And Hunter On International Arbitration (Fifth Edition page 134 para 2.141) Where allegations of fraud in the procurement or performance of a contract are alleged, there appears to be no reason for the arbitral tribunal to decline jurisdiction. Hence, it has been rightly held by the learned Single Judge of the Bombay High Court that it is for the arbitrator to decide this dispute in accordance with the arbitration agreement. **[World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd. MANU/SC/0054/2014(SC)]**

8. Whether right to manage private temple and/or shebaitship can be subject-matter of testamentary disposition? Will denotes testamentary document. It means legal declaration of testator with respect to his property desired by him to be carried into effect after his death. Will is not transfer but mode of devolution. Will being not transfer, bar contained in Section 6 (d) has no application. High Court right in holding that Will was valid in law. Trial Judge to pass appropriate order on handing over possession. Testamentary succession. Right to manage a temple can be a subject matter of testamentary succession. Appeal dismissed. **[S. Rathinam @ Kuppamuthu and Ors. v. L. S. Mariappan and Ors. AIR 2007 SC 2134 = 2008 (3) ALT 11 (SC) = JT 2007 (8) SC 555 = 2007 (8) SCALE 253 = 2007 (6) SCC 724 = 2007 (7) SCR 568(SC)]**

9. Terms of consent decree cannot be varied by executing court. Rate of interest stipulated in such decree cannot be varied either by executing court or High Court. Rate of interest at 18% stipulated in consent decree cannot be said to be unreasonable. Impugned judgment of High Court set aside. The executing Court shall pass an order in accordance with law and shall not act beyond scope of decree. Appeal allowed. **[Deepa Bhargava and Anr. v. Mahesh Bhargava and Ors. 2009 (2) ALD 61 (SC) = JT 2009 (1) SC 151 = 2008 (16) SCALE 305 = 2009 (2) SCC 294(SC)]**

10. Appeal filed against order of High Court whereby second appeal and review petition filed by Appellants was dismissed. Whether statement of counsel conveying that parties had settled and modified decree without a written document or consent from Appellants was acceptable. Held, During course of hearing namely suit or appeal when parties enter into a compromise, same should be reduced in writing

in form of an instrument and signed by parties. During course of hearing of second appeal, both counsel agreed that without addressing questions of law so formulated, matter could be settled by modifying decree impugned in appeal. Counsel had power to make a statement on instructions from party to withdraw appeal. Based on request of counsel, Special Leave Petition was dismissed as withdrawn. Dismissal of SLP was not a bar for filing review before same Court. Even after dismissal of a Special Leave Petition with or without reasons, aggrieved party was entitled to file a review. Review petition filed by Appellants was maintainable but in view of conduct of Appellants in not raising any objection as to act of their counsel except filing review petition Therefore, claim of Appellants was rejected - Impugned judgment upheld. During course of hearing namely suit or appeal when parties enter into a compromise, same should be reduced in writing in form of an instrument and signed by parties. Appeal dismissed. **[Bakshi Dev Raj and Anr. v. Sudhir Kumar AIR 2011 SC 3137 = 2011 (6) ALD 1 = JT 2011 (8) SC 520 = 2011 (8) SCALE 259 = 2011 (8) SCC 679 = 2011 (9) SCR 815 (SC)]**

11. Single Judge of High Court had quashed orders of trial Court wherein trial Court allowed pursis in Special Civil Suit No. 292/1993 and accorded permission to compound suit and pursuant to settlement and compromise, similar pursis (Ext 172) was also filed in Special Civil Suit No. 681 of 1992, which was also disposed of accepting same. Hence, these Appeals. Whether impugned orders of allowing pursis would bind on heirs of deceased Plaintiff No. 4 and Plaintiff Nos. 5/1, 5/2 and 5/4. Held, heirs of deceased Plaintiff No. 4 and Plaintiff Nos. 5/1, 5/2 and 5/4 challenged judgment and order of allowing pursis only, more than one year and six months later, by filing Application. Heirs of deceased Plaintiff No. 4 and Plaintiff Nos. 5/1, 5/2 and 5/4 had received large amounts from Mahalaxmi Society and heirs of deceased Plaintiff No. 4 did not take any steps to get them recorded in Civil Suit after death of Plaintiff No. 4, so far as this case was concerned, suit had abated - Heirs of Plaintiff No. 4 and Plaintiff Nos. 5/1, 5/2 and 5/4 also challenged judgment and order wherein similar pursis (Ext 172) was also filed in Special Civil Suit No. 681 of 1992, only by filing Application. Plaintiff No. 4 was duly represented by Plaintiff No. 1 while executing various registered documents and issuing Acknowledgement-cum-Settlement Receipts by which large amounts were received by Plaintiff No. 1, representing Plaintiff No. 4. Plaintiff No. 4 himself had executed various registered deed of confirmation acknowledging receipt of Rs 29,32,365/- and also Rs 30,05,527/-. Hence legal heirs of Plaintiff No. 4 now could not come forward and question various documents executed by Plaintiff No. 4, especially when they had not taken any steps to get them impleaded in both civil suits - Thus impugned orders of allowing pursis would bind them. Plaintiff Nos. 5/1 to 5/4 had also not objected to execution of various deeds and documents ratified all actions taken by Plaintiff No. 1, as power of attorney holder, since they had not objected to pursis and hence acquiesced to order of allowing pursis - Appeals allowed. **[Mahalaxmi Co - operative Housing Society Ltd. and etc. v. Ashabhai Atmaram Patel ( D ) Th. L. Rs. and Ors. AIR 2013 SC 961 = JT 2013 (3) SC 530 = 2013 (3) SCALE 136 = 2013 (4) SCC 404(SC)]**

## **Commercial**

12. Preamble of Act of 1865 indicates that Act was passed with view to limit liability of carriers and to declare liability of carriers. Any contract or bargain which seeks to defeat liability of carriers as enacted by law defeat provisions of Act. Section 23 provides that consideration or object of agreement lawful unless provision was of such nature that if permitted would defeat provisions of any law. Parties had not by express contract limited their liability as contemplated under Section 6. Condition in question of way bill designed to avoid liability contemplated under Section 10 of Act of 1865. Held, condition void. **[M. G. Brothers Lorry Service v. Prasad Textiles, AIR 1984 SC 15 = 1983 (1) SCALE 481 = 1983 (3) SCC 61 = 1983 (2) SCR 1027(SC)]**

13. After registration formalities were completed. Value of vehicles covered by permits was not ascertained. Much less paid. Possession forcibly taken by defendant. Property in vehicles did not pass to defendant as required under Section 19 of Sale of Goods Act. Defendant illegally taken possession. Plaintiff would be entitled to profits earned by defendants from plying of vehicles. **[Vasantha Viswanathan and ors. v. V. K. Elayalwar and ors. AIR 2001 SC 3367 = 2001 (3) ALR 110 (SC) = JT 2001 (6) SC 622 = 2001 (5) SCALE 483 = 2001 (8) SCC 133 (SC)]**



## Consolidation

14. Whether impugned order would fall under of Order XXIII Rule 1 or Rule 3 of CPC. Held, Court had not passed an order of consolidating all suits. There was no specific provision in CPC for consolidation of suits. Purpose of consolidation of suits was to save costs, time and effort and to make conduct of several actions more convenient by treating them as one action. Consolidation of suits was ordered for meeting ends of justice as it saves parties from multiplicity of proceedings, delay and expenses and parties were relieved of need of adducing same or similar documentary and oral evidence twice over in two suits at two different trials. Transfer of suits from one Court to another to be tried together would not take away right of parties to invoke Order XXIII Rule 3 of CPC and there was also no prohibition under Order XXIII Rule 3 or Section 24 of CPC to record compromise in one suit. Suits always retain their independent identity and even after an order of consolidation, Court was not powerless to dispose of any suit independently once ingredients of Order XXIII of Rule 3 of CPC had been satisfied. Hence there was no illegality in orders passed by trial Court disposing of suit under Order XXIII Rule 3 of CPC accepting pursis. Therefore, High Court was not right in upsetting orders of allowing pursis in Special Civil Suit Nos. 292/1993 and 681/1992. Suits always retain their independent identity and even after an order of consolidation, Court shall not powerless to dispose of any suit independently. Appeals allowed. **[Mahalaxmi Co - operative Housing Society Ltd. and etc. v. Ashabhai Atmaram Patel ( D ) Th. L. Rs. and Ors. AIR 2013 SC 961 = JT 2013 (3) SC 530 = 2013 (3) SCALE 136 = 2013 (4) SCC 404(SC)]**

## Constitution

15. State Government issuing advertisements to newspapers and directing to deduct 5% of amount from advertisement bill of newspapers having circulation of over 25,000 towards pension fund of working journalists? State Government has no power to issue such directions. Benefit sought to be given to working journalists indisputably covered by entry 92, List I of 7th Schedule. No legislation in terms of Entry 24 of List II enacted. No fee on advertisements published in newspapers can be imposed by State Legislature. Advertisements play important role in matter of revenue of newspapers. In view of equality doctrine in Article 14, State cannot resort to theory of take it or leave it. Unjust conduct to contribute 5% or not take advertisement. To attract wrath of Article 14 as also Section 23 of Contract Act. Hence, impugned orders are unconstitutional and void. The State cannot make any compulsory exaction from any citizen unless there exists a specific provision of law operating in the field. In relation to a compulsory payment, it is well-settled, there is no room for any intendment. The newspapers serve as a medium of exercise of freedom of speech. The right of its shareholders to have a free press is a fundamental right. It is not in dispute that advertisements play important role in the matter of revenue of the newspapers. It is neither in doubt nor in dispute that for the purpose of meeting the costs of the newsprint as also for meeting other financial liabilities which would include the liability to pay wages, allowances and gratuity, etc. to the working journalists as also liability to pay a reasonable profit to the shareholders vis-a-vis making the newspapers available to the readers at a price at which they can afford to purchase it, the petitioners have no other option but to collect more funds by publishing commercial and other advertisements in the newspaper. The respondents being State, cannot in view of the equality doctrine contained in Article 14 of the Constitution of India, resort to the theory of take it or leave it. The bargaining power of the State and the newspapers in matters of release of advertisements is unequal. Any unjust condition thrust upon the petitioners by the State in such matters, in our considered opinion, would attract the wrath of Article 14 of the Constitution of India as also Section 23 of the Indian Contract Act, 1872. Writ petition allowed. **[Hindustan Times and Ors. v. State of U. P. and Anr. AIR 2003 SC 250 = 2003 (1) ALT 18 (SC) = JT 2002 (9) SC 317 = 2003 (1) SCC 591(SC)]**

## Contract

16. Suit instituted in Court of Subordinate Judge for recovery of money. Appellant objected agreement between parties to enter into wagering contracts unlawful under Section 23 of Contract Act. Unregistered partnership. Suit barred by Section 69 (1) of Partnership Act and that in any event suit barred under Order 2 Rule 2 of Code of Civil Procedure. Agreement between parties to enter into wagering contracts

depends on rise and fall of market. **Agreement void.** Partnership was between two joint families of appellant and first respondent. Partnership not valid. Suit dismissed. High Court opined partnership was not between two joint families but only between two managers of families and was valid. Object not unlawful within the meaning of Section 23. Appeal filed in Supreme Court. Held, partnership not unlawful within meaning of Section 23 and decision of High Court affirmed. [**Gherulal Parakh v. Mahadeodas Maiya and Ors.** AIR 1959 SC 781 = 1959 (2) AnWR 81 = 1959 Suppl (2) SCR 406(SC)]

17. Promise made, in writing or oral, on behalf of government, by its officials, about concessions to a new industrial unit, neither unauthorised nor beyond the scope of their authority. Industrial unit altering its position on such assurance given by authorities. Promisor cannot be allowed to go back on its promise which is enforceable in a court of law unless it is statutorily prohibited, contrary to law or against public policy. Scheme of refund of Sales Tax to a new industrial unit set up in a focal point. Burden of Sales Tax is ultimately passed on to consumers. Unless the levy or realisation of Sales Tax is contrary to law, its refund to the new unit instead of to the payer of sales tax, would be breach of trust of the people. Promissory estoppel, being an extension of principle of equity, in such a case is not capable of being enforced in a court of law. Appeal dismissed. [**Amrit Banaspati Co. Ltd. and another v. State of Punjab and another** AIR 1992 SC 1075 = JT 1992 (2) SC 217 = 1992 (1) SCALE 540 = 1992 (2) SCC 411 = 1992 (2) SCR 13(SC)]

18. Parties entered into contract for sale of certain land and certain amount was paid to petitioner as earnest money. Suit for specific performance filed when petitioner did not execute sale deed and decreed by Trial Court. In appeal Additional District Judge observed that both parties suffered from mistake of fact as to area of land and sale-consideration. Decree for specific performance not passed but decree for refund of earnest money passed which was confirmed by High Court. Appeal by special leave. Petitioner contended according to forfeiture clause in contract respondent not entitled to refund of earnest money. Observed that contract was void from its inception as observed by Additional District Judge. Forfeiture clause in contract is also void. Petitioner could not legally forfeit amount and seek enforcement of forfeiture clause. Decree for refund of earnest money confirmed. [**Sri Tarsem Singh v. Sri Sukhminder Singh** AIR 1998 SC 1400 = 1998 (2) ALR 1 (SC) = JT 1998 (2) SC 149 = 1998 (2) SCALE 58 = 1998 (3) SCC 471 = 1998 (1) SCR 456(SC)]

19. Rejecting objection relating to jurisdiction, Principal Senior Civil Judge, Vijayawada, by his judgment and decree, decreed Respondent's Suit (Original Suit No. 519 of 1991) with costs for a sum of `3,86,453.05, together with interest at rate of 12% per annum, from date of Suit till realization of principal amount of `2,98,267.50. Single Judge of High Court dismissed Appeal filed by Petitioner. Hence, present Special Leave Petition. Held, in **A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies** this Court observed that, where there might be two or more competent Courts which could entertain a suit consequent upon a part of cause of action having arisen there within, if parties to contract agreed to vest jurisdiction in one such Court to try dispute which might arise as between themselves, agreement would be valid. If such a contract was clear, unambiguous and explicit and not vague, it was not hit by Sections 23 and 28 of Contract Act and could not also be understood as parties contracting against statute. Cause of action for Original Suit No. 519 of 1991, filed by Respondent before Principal Senior Civil Judge, Vijayawada, arose partly within jurisdiction of Calcutta Courts and Courts at Vijayawada - Though, Courts at Vijayawada would also have jurisdiction, along with Courts at Calcutta, to entertain and try a suit relating to and arising out of Agreement dated 23rd December, 1988, and Mutual Understanding dated 15th May, 1989, such jurisdiction of Courts at Vijayawada would stand ousted by virtue of exclusion clause in Agreement. Decree passed by Principal Senior Civil Judge, and impugned judgment of High Court were set aside. Trial Court at Vijayawada was directed to return plaint of Original Suit No. 519 of 1991 to Plaintiff to present same before appropriate Court in Calcutta having jurisdiction to try suit. Petition allowed. [**A. V. M. Sales Corporation v. Anuradha Chemicals Pvt. Ltd.** JT 2012 (1) SC 175 = 2012 (1) SCALE 349 = 2012 (2) SCC 315(SC)]

## **Direct Taxation**

20. Matter pertaining to registration of sub partnership as firm under Act of 1961 - sub partnership constituted to conduct abkari business in violation of Section 14. Matter referred to Bench of three Judges for authoritative pronouncement. INCOME TAX Firm Registration. Refusal. Sub-partnership entered without following statutory provisions of governing Act. In view of the conflicting decisions of the apex court on the point as to whether a sub-partnership entered into by one of the partners of the firm carrying on the business of vending liquor or abkari business could be registered under the provisions of the Income Tax Act, 1961 when such sub-partnership was entered into without following the statutory provisions of the Abkari Act, the matter is referred to a larger Bench. **[Commissioner of Income Tax, Andhra Pradesh v. M / s. B. Posetty & Co. AIR 1996 SC 1091 = JT 1996 (1) SC 153 = JT 1996 (10) SC 100 =1996 (1) SCALE 147 = 1996 (1) SCC 767 = 1996 Suppl (8) SCR 452(SC)]**

21. Whether a sub-partnership entered into by one of the partners of firm carrying on business of vending liquor or abkari business, governed by provisions of Section 14 of Act, during relevant assessment year 1966-67 could be registered under provisions of IT Act, 1961 when such sub-partnership was entered into without following statutory provisions of Section 14 of Act? Held, this is a matter which should properly be considered by a Bench of three learned Judges so that an authoritative pronouncement is made on question arising herein. Papers may be placed by Registry before Hon'ble the Chief Justice for placing this matter before a Bench of three learned Judges. **[COMMISSIONER OF INCOME TAX v. B. POSETTY & CO. (1996) 134 CTR (SC) 596(SC)]**

22. Partnership specifically prohibited by excise laws. Since under central excise laws, no valid partnership can exist without permission of licensing authorities, partnership agreement entered into without permission of licensing authorities cannot be genuine, therefore, registration cannot be granted. It was necessary for the licence-holder to take prior permission of the licensing officer before entering into any partnership agreement. This was made a condition of the excise licence in order to ensure collection of the dues of the excise department. The licence holder cannot claim the benefit of registration of a firm formed in violation of an express condition of the licence. It will clearly be against public policy to grant benefit of registration to a firm which was set up in violation of an express condition of the excise licence, especially when the condition was inserted to ensure full payment of excise duty. **[Moti Lal Chunnilal (Tak ) v. Commissioner of Income Tax 1998 (9) SCC 401 (SC)]**

## **Evidence**

23. Joint application on behalf of plaintiff and defendant. High Court refused the prayer on ground that the said document was not put to the plaintiff. When he was deposing as witness in suit and copy of sought document was not certified. No infirmity by High Court in refusing prayer for additional evidence on aforesaid ground. **[Vasantha Viswanathan and ors. v. V. K. Elayalwar and ors. AIR 2001 SC 3367 = 2001 (3) ALR 110 (SC) = JT 2001 (6) SC 622 = 2001 (5) SCALE 483 = 2001 (8) SCC 133 (SC)]**

## **Insurance**

24. After six months of expiry period of contract appellant could not claim to fidelity insurance guarantee which neither against contrary of Section 28 nor against public policy under Section 23. Insurance company has no liability after expiry date of termination of contract. Notice sent by appellant for mere demand after expiry cannot be enforceable. Apex Court found that non filing of suits within six months not mean that suit barred by limitation. Law of limitation allows person to recover amount up to three years. Agreement time for recovery cannot be circumscribed against provisions of Act of 1963. Appeals allowed. **[The Food Corporation of India v. The New India Assurance Co. Ltd. and others AIR 1994 SC 1889 = JT 1994 (1) SC 703 = 1994 (1) SCALE 591 = 1994 (3) SCC 324 = 1994 (1) SCR 939 (SC)]**

## **Interest**

25. Motor vehicle transfer. Nothing to show in documents that in case of failure by defendant to pay price. Plaintiff would be entitled to interest. High Court was not justified in awarding interest. Appeal dismissed.

**[Vasantha Viswanathan and ors. v. V. K. Elayalwar and ors. AIR 2001 SC 3367 = 2001 (3) ALR 110 (SC) = JT 2001 (6) SC 622 = 2001 (5) SCALE 483 = 2001 (8) SCC 133 (SC)]**

### **Jurisdiction**

26. In jurisdiction clause of an agreement, absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" was neither decisive nor did it make any material difference in deciding jurisdiction of a Court. Very existence of a jurisdiction clause in an agreement made intention of parties to an agreement clear and it was not advisable to read such a clause in agreement like a statute. In present case, only Courts in Kolkata had jurisdiction to entertain disputes between parties. Appeal was dismissed. **[Swastik Gases P. Ltd. v. Indian Oil Corporation Ltd. 2013 (3) ALR 161 (SC) = JT 2013 (10) SC 35 = 2013 (8) SCALE 433 = 2013 (9) SCC 32(SC)]**

### **Labour and Industrial**

27. Appellant appointed in the Management Staff in Grade II-A post. Letter of appointment did not mentioned the exact nature of duties and functions to be performed. Services of the Appellant terminated after almost five years. Termination challenged by the Appellant claiming to be workmen under Section 2(s). Reference Court allowed the claim and directed reinstatement with continuity in service and benefits. Award Challenged. High Court held that the Appellant could not be said to be workman within the meaning of Section 2(s). Appellant contended that by virtue of the amendment of expression 'workmen', falls within the ambit of Section 2(s). Hence, present Appeal. Whether a particular employee comes within the definition of workman has to be decided factually. If an employment is merely for the supervision of work of others work, holding technical knowledge for the purposes of supervision, would not convert the supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work. Definition of workman as amended must, therefore, presumed to be prospective. Impugned Order upheld. Appeal dismissed. Mere possession of technical knowledge for the purposes of supervision, would not convert the nature of work from supervisory into technical. Appeal dismissed. **[Mr. C. Gupta v. Glaxo Smith Klin Pharmaceutical Limited JT 2007 (8) SC 480 = 2007 (8) SCALE 467 = 2007 (7) SCC 171 = 2007 (2) SCC (LS) 605 = 2007 (7) SCR 800**

### **Limitation**

28. A refund claim is not hit by limitation if filed within the prescribed time limits after the law is declared by a court or the mistake of law becomes known. There is no prohibition against refund except the prohibition of two years under the proviso of section 29. In this case that two years prohibition is not applicable because the law was declared by this Court in Budh Prakash Jai Prakash's case on 3rd May, 1954.....Article 96 of the First Schedule of the Limitation Act, 1908 prescribes a period of limitation of three years from the date when the mistake becomes known for filing a suit. If that principle is also kept in mind, then when the judgment came to be known in May, 1954, then in our opinion, when the assessee had made an application in 1955, it was not beyond the time. Refund of tax which is mistakenly assessed shall be allowed if it is made within limitation. Revenue appeal dismissed with costs. **[Commissioner of Sales Tax, U. P. v. Auriaya Chamber of Commerce, Allahabad AIR 1986 SC 1556 = 1986 (1) SCALE 1068 = 1986 (3) SCC 50 = 1986 (2) SCR 430 (SC)]**

### **Property**

29. Respondent No. 2 invited tender for sale of land Respondents No. 1 bid accepted. Respondent 1 failed to furnish bank guarantee. Respondent No. 2 issued order for cancellation of tender. Cancellation order challenged. During pendency of petition, respondent 2 ratified cancellation and directed forfeiture of earnest money deposited by respondent No. 1 and also resolved to grant tender to appellants, subject to decision of petition. Petition filed by respondent No. 1 allowed whereby held that exemption Notification issued later on preceded the tender and respondent 1 not expected to comply with tender conditions without exemption Notification. Appeals filed for challenging the same dismissed. Hence, present appeal.

Appellants submitted that High Court erroneously considered terms of tender. Tender terms are contractual in nature. Courts had no jurisdiction to decide as to how tender terms to be framed. High Court by directing the extension of time for submission of bank guarantee modified the vital term of contract not permissible. Impugned Order liable to be set aside. Appellant allowed proceeding further. Exemption Condition precedent Tender terms contractual and privilege of Government inviting tenders and Courts have no jurisdiction to judge as to how tender terms to be framed. Appeal allowed. **[Puravankara Projects Ltd.. v. Hotel Venus International and Ors. 2007 (6) ALT 1 (SC) = 2007 (2) SCALE 471 = 2007 (10) SCC 33, 2007 (2) SCR 215(SC)]**

30. Special Leave Petitions against judgment of High Court holding that even if Plaintiff failed to prove oral gift in his favour, he could not be non-suited, since he alone was having rights over assets in view of various Deeds of Relinquishment executed by other sons and daughters of Meeralava Rawther - (i) Whether in view of the doctrine of *spes successionis*, a Deed of Relinquishment executed by an expectant heir could operate as estoppel to a claim that may be set up by Executor of such Deed after inheritance opened on death of owner of property. Held, Even if provisions of doctrine of *spes successionis* was to apply, by their very conduct Petitioners were estopped from claiming benefit of said doctrine. Principle of an equitable estoppel far from being opposed to any principle of Mohammedan Law, was really in complete harmony with it - Bequests in excess of one-third could not take effect unless heirs consented thereto after death of testator. Principle that a Mohammedan cannot by Will dispose of more than a third of his estate after payment of funeral expenses and debts was capable of being avoided by consent of all heirs. Having accepted consideration for having relinquished a future claim or share in estate of deceased, it would be against public policy if such a claimant be allowed benefit of doctrine of *spes successionis*. Family arrangement would necessarily mean a decision arrived at jointly by members of a family and not between two individuals belonging to family. Five deeds of relinquishment executed by five sons and daughters of Meeralava Rawther constitute individual agreements entered into between Respondent No.1 and expectant heirs. Being opposed to public policy, heir expectant would be estopped under general law from claiming a share in property of deceased. Impugned judgment upheld. Having accepted consideration for having relinquished a future claim or share in estate of deceased, it would be against public policy if such a claimant be allowed benefit of doctrine of *spes successionis*. Petition dismissed. **[Shehammal v. Hasan Khani Rawther and Ors. AIR 2011 SC 3609 = JT 2011 (8) SC 533 = 2011 (8) SCALE 186 = 2011 (9) SCR 718(SC)]**

31. Delhi High Court appointed receiver with direction to take possession of suit property and dismissed Appellant's Application for impleadment him as parties to suit on ground of delay. Hence, this Appeal. Whether, Appellants were entitled to be impleaded as parties in Suit on ground that during pendency of suit they had purchased property from Respondent No. 2 and whether, High Court committed error by dismissing Appellants Application for impleadment as parties to Suit. Held, provision of Order 1 Rule 10(2) of C.P.C. empowered Court to delete or add parties to suit at any stage of proceedings. In suit for specific performance, Court would passed order of impleadment of purchaser who filed Application for being joined as party within reasonable time of his acquiring knowledge about pending litigation. However it was found that Respondent No. 1 had filed suit for specific performance of agreement dated 13th September, 1988 executed by Respondent No. 1. Appellants were total strangers to that agreement and they came into picture only when Respondent No. 2 entered into clandestine transaction with Appellants for sale of suit property and executed agreements for sale. These transactions were in clear violation of order of injunction passed by Delhi High Court which had restrained Respondent No. 2 from alienating suit property or creating third party interest. Thus these transactions did not confer any right upon Appellants. Further in Application for impleadment filed by them, Appellants did not offer any tangible explanation as to why Application for impleadment was filed after 7 years of passing of injunction order and this constituted valid ground for declining their prayer for impleadment as parties to Suit. Therefore, it was in complete agreement with Delhi High Court that Application for impleadment filed by Appellants was highly belated. Appellants' presence was not at all necessary for adjudication. Hence it was in complete agreement with Delhi High Court that Application for impleadment filed by Appellants was highly belated - Appeal dismissed. **[Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt.**

**Ltd. and Ors. AIR 2012 SC 2925 = 2012 (6) ALT 10 (SC) = JT 2012 (7) SC 531 = 2012 (7) SCALE 448 = 2012 (8) SCC 384 (SC)]**

32. Single Judge dismissed Second Appeal and upheld decree passed by 1st Additional District Judge on ground that none of questions raised in Second Appeal could be termed as a substantial question of law. Hence, this Appeal. Whether, any question of law raised in second Appeal was a substantial question of law within meaning of Section 100(1) CPC. Held, one of questions of law raised in Second Appeal filed by Appellants was a substantial question of law within meaning of Section 100(1) of CPC. Hence, Single Judge committed serious error by summarily dismissing second Appeal. Further, Section 23 of Indian Contract Act, which lays down that 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 provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or Court regards it as immoral, or opposed to public policy. Therefore, every agreement executed with such an object or consideration which was unlawful was void. Since, sale deed was executed in favour of Respondent No. 1 in teeth of order of injunction passed by Trial Court, same appeared to be unlawful. Hence, impugned order was set aside and Second Appeal was remitted to High Court for fresh disposal and to frame appropriate substantial question of law. Questions of law raised in Second Appeal, shall be a substantial question of law within meaning of Section 100(1) Code of Civil Procedure, 1908. Appeal allowed. **[Jehal Tanti and Ors. v. Nageshwar Singh ( dead ) through L. Rs. AIR 2013 SC 2235 = 2013 (4) ALD 117 = JT 2013 (6) SC 513 = 2013 (6) SCALE 272 (SC)]**

### **Refund**

33. Refund of revenue collected without the authority of law must be allowed without any other consideration like limitation. Article 265 of the Constitution enjoins that no tax shall be levied or collected except by authority of law. Tax in this case indubitably has been collected and levied without the authority of law. It is therefore refundable to the assessee.....If mistake either of law or of fact is established, the assessee is entitled to recover the money and the party receiving them is bound to return it irrespective of any other consideration.....It is apparent that the assessment order and the realisation of the money was based on the ultra vires provisions of the Act, This should have been and ought to have been ignored. **[Commissioner of Sales Tax, U. P. v. Auriaya Chamber of Commerce, Allahabad AIR 1986 SC 1556 = 1986 (1) SCALE 1068 = 1986 (3) SCC 50 = 1986 (2) SCR 430 (SC)]**

### **Sales Tax**

34. The respondents in this case paid sales tax on 'forward contracts' (not being completed sales) during the assessment period 1949 under the belief that the tax was due and payable. In May 1954 the Supreme Court in another case declared that such taxation was ultra vires as the scope of words 'Taxes on the sale of goods' did not extend to 'agreements to sell'. The assesses, therefore, filed a revision petition in 1955 which was rejected as time barred. Again on 24.5.1959 the assessee filed an application for refund of the tax deposited by mistake. This claim was also held by the authorities to be hit by limitation. Finally, the relief was ordered to the assessee's by the Addl. Judge (Revisions) who held that when the assessment was made and taxes were paid there was no limitation (Sec. 29 having come into operation w.e.f. 1.4.1959). Questions as regards the maintainability of these orders came to the Supreme Court as reference. Mistake of law is also a mistake--this recognised principle of the Contract Act applies to law on taxation also. ".....mistake of law is also a mistake covered by the provisions of Section 72 of the Indian Contract Act. If the law declared by this court in Budh Prakash Jai Prakash's case (supra) is correct, as it must be, then the payment of tax by the dealer, the respondent herein, was under a mistake of law and realisation by the revenue authorities was also under a mistake. Therefore such sum should be refunded. This is recognised in the provisions of the Act as we have noted before. The principle of section 72 of the Indian Contract Act has been recognised. **[Commissioner of Sales Tax, U. P. v. Auriaya Chamber of Commerce, Allahabad AIR 1986 SC 1556 = 1986 (1) SCALE 1068 = 1986 (3) SCC 50 = 1986 (2) SCR 430 (SC)]**

## Service

35. Division Bench quashed orders of termination Passed by Single Judge against Respondent and held that Corporation was State and Rule 9(i) was ultra vires of Article 14 of Constitution. Hence, this Petition. Whether, order of termination of Respondent under Rule 9(i) was valid. Held, Corporation had power to terminate service of permanent employee by giving him three months' notice in writing under Rule 9(i) or to pay him equivalent of three months basic pay and clearness allowance. There were no guidelines in what circumstances power given by Rule 9(i) could be exercised by Corporation. Thus, after holding regular disciplinary inquiry, Corporation could proceed under Rule 36 and rightly dismissed Petitioner on ground of misconduct. Rule 9(i) conferred an absolute, arbitrary and unguided power upon Corporation and it violated one of two great rules of natural justice. Further, Clause of Rule 9(i) in contract of employment affected large sections of public and it was harmful and injurious to public interest. Hence, Rule 9(i) was both arbitrary and unreasonable and it also wholly ignores and sets aside natural justice and violates Article 14 of Constitution. Validity of provision shall not be challenged unless it was arbitrary and unreasonable under provision of law. Petition disposed of. **[Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr. AIR 1986 SC 1571 = 1986 Lab IC 1312 = 1986 (1) SCALE 799 = 1986 (3) SCC 156 = 1986 (2) SCR 278 (SC)]**

36. Power of termination of permanent employees must be expressly provided. Manner in which such power is exercised should inspire confidence and ensure fairness avoid arbitrariness. Reasons must control exercise of such power. Notice of hearing may or may not be given. Occasion for use of such power must be clearly circumscribed. Such power must be exercised by high ranking official who can trusted in honest exercise of power. **Delhi Transport Corporation v. D. T. C. Mazdoor Congress and others AIR 1991 SC 101 = JT 1990 (3) SC 725 = 1991 Lab IC 91 = 1991 Suppl (1) SCC 600 = 1990 Suppl (1) SCR 142 = 1991 (1) SLJ 56 (SC)]**

37. Transfer to private concern. Appellants employed as non-executives following requisite procedure by N.T.P.C., and posted against posts sanctioned in B.C.P.P. under management of N.T.P.C. On disinvestment of shares of B.A.L.C.O. by Government of India, B.A.L.C.O. was converted from public sector enterprise to private sector organisation and existing management decided to manage B.C.P.P. itself Appellants could not be transferred from N.T.P.C. to private organisation of B.A.L.C.O. Appellants executed service agreement in favour of N.T.P.C. Posting orders also issued by N.T.P.C. No reference in said agreement that it was for and on behalf of B.A.L.C.O. Thus, their services could be continued only at N.T.P.C. or any other public sector undertaking of G.O.I. No iota of evidence that they will be transferred to private concern with less benefit. Both offending clauses in agreement cannot be sustained. All employees are to be retained by N.T.P.C. Impugned judgment set aside. In order to bind the appellants, there must be a tripartite agreement. Appeal allowed. **[BCPP Mazdoor Sangh and Anr. v. N. T. P. C. and Ors. AIR 2008 SC 336 = JT 2007 (12) SC 156 = 2007 (12) SCALE 204 = 2007 (14) SCC 234 = 2007 (10) SCR 1084 = 2008 (1) SLJ 319 (SC)]**

## Tenancy

38. Appellant tenant for 20 years notified to evict and shift to new premises. Appellant had 4 sub-tenants. Respondent applied for eviction from new premises for nonpayment of rent and sub-letting. Assistant Judge ordered eviction under Section 13 (1) (e) of Act stating sub-letting unlawful. Appellant filed for revision before High Court which affirmed eviction. Special leave appeal before Supreme Court. Held, **sub-letting found unlawful** as per Section 13 (1) (e) which prohibits sub-letting notwithstanding any other law - decision of High Court affirmed. **[Waman Shrinivas Kini v. Ratilal Bhagwandas & Co. AIR 1959 SC 689 1959 Suppl (2) SCR 217 (SC)]**

39. Appellant filed application for eviction of respondent tenant in possession of property purchased by appellant. Additional District Magistrate (ADM) allowed application on ground of illegal occupation and permitted appellants to take possession. State Government reversed Order in favour of respondent. ADM granted licence to respondent earlier to run cinema on same land on being satisfied of lawful possession

of respondent. ADM could not contradict himself and respondent entitled to retain possession under Section 7F. High Court affirmed decision of State Government. Appeal. Remedy available to respondent under Section 7F based on public policy and no illegality can be complained of against possession of respondent. Appeal dismissed. **[Murlidhar Aggarwal and Anr. v. State of Uttar Pradesh and Ors. AIR1974SC1924 = (1974) 2 SCC 472 = 1975 (1) SCR 575 (SC)]**

### **Conclusion**

For the cases coming under Section 23, one has to examine or see whether the section invalidates agreement on the ground of the objects or consideration is being unlawful. The three matters, as referred to above, viz. (i) consideration for the agreement, (ii) object of the agreement and (iii) the agreement are also required to be kept in mind, and the three principles, arising from the Section – which are: (i) an agreement or contract is void, if its purpose is the commission of an illegal act; (ii) if it is expressly or impliedly prohibited by any law, and (iii) if its performance is not possible without disobedience of any law.