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Chagla C. J.

up for decision by the Court is the time when the reference comes up before the Court, and that this notice of motion should be heard along with the reference. But the learned Judges did not consider at all what was the period of limitation within which the assessee should take out such a notice of motion or should ask the Court to direct the Tribunal to raise additional questions of law. There is no discussion whatever with regard to the question of limitation, and very likely it is for very good reason, because even in 1946 the practice was well settled that such a notice of motion taken out by the assessee must be brought within six months from the date of the service of the order upon him. Therefore, again with respect to the Allahabad High Court, we do not understand how the judgment in *Khandwalla's* case can be looked upon as an authority for the proposition that there is no period of limitation laid down for making an application for directing the Tribunal to raise additional questions of law. In our opinion, therefore, the present notice of motion is an application which falls under s. 66 (*2*) and the period of limitation is six months from the service of the order and the notice of motion is therefore barred by limitation.

The result is that the notice of motion must be dismissed on the ground that it was barred by limitation. It is therefore dismissed with costs.

Attorneys for Applicant: *S. P. Mehta.*

Attorneys for Respondent: *N. K. Petigara.*

Answer accordingly.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

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SHIVRAM GOVIND DARSHANE AND OTHERS, APPLICANTS (ORIGINAL PLAINTIFFS) *v.* VISHWANATH GOVIND DARSHANE OPPONENT (ORIGINAL DEFENDANT).*

Indian Contract Act (IX of 1872), ss. 23, 218—Illegal agreement to withdraw Criminal prosecution for burning house on payment of compensation by accused—Compensation received from the accused by a member of the family whose house was burnt—Whether other members entitled to a share in the compensation.

An agent receiving moneys for and on behalf of his principal under an illegal agreement is accountable to his principal under s. 218 of the Indian Contract Act.

*Civil Revision Application No. 267 of 1954.

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Sykes v. *Beadon*,[1] *Bhola Nath* v. *Mul Chand*,[2] *Palaniyappa Chettiar* v. *Chockalingam Chettiar*,[3] *Nagendrabala Desai* v. *Guru Doyal Mukerji*,[4] agreed with.

Sayamma v. *Punam Chand*,[5] referred to.

Civil Revision Application against the decision of R. G. Paranjpe, Esquire Civil Judge, Junior Division, at Vita, District South Satara.

The facts are fully set out in the Judgment.

V. V. Albal, for the Petitioner.

V. S. Desai, for the Opponent.

Gajendragadkar J.—This revisional application raises a short and interesting question of law under s. 23 read with s. 218 of the Indian Contract Act. The unfortunate incidents that followed the assassination of Gandhiji are ultimately the basis of the present suit. In 1949 the family house of the parties was burnt down. As a result, criminal prosecution was started against 108 accused persons. The leaders of the village thought that, in order to restore peace and harmony amongst the communities and destroy the feeling of distrust and enmity which had spread in the village, it would be desirable to see if the prosecution against the said 108 persons could be withdrawn on the said persons agreeing to compensate the victims for the loss of property. The efforts made by the village elders succeeded and it appears that Rs. 10,800 were contributed by the 108 accused persons and the amount was distributed amongst the victims according to the terms agreed upon between the parties and sanctioned by the elders. Under this arrangement, the opponent received Rs. 600 and the plaintiffs' case in the Court below was that, since this amount had been paid to the opponent by way of compensation for the loss suffered by the opponent and the plaintiffs together by the destruction of their joint family property, they were entitled to receive a proportionate share in the said amount of Rs. 600. The house was destroyed in 1948 when the family was joint, but the amount was received by the defendant after the family separated in 1949. The defendant denied that he had received any amount, but the learned Judge has disbelieved his statement and has found that Rs. 600 were received by the defendant in pursuance of the agreement to which I have already referred. The defendant also pleaded that the contract which brought him Rs. 600 was an illegal contract and he, therefore, pleaded that the plaintiffs were not entitled to receive any share under this illegal contract. This plea was upheld by the learned Judge. In the result, the plaintiffs' suit has been dismissed.

Mr. Albal for the petitioners contends that the learned Judge was in error in holding that the provisions contained in s. 23 of

1. (1879) 11 Ch. D 170.
2. (1903) 25 All. 639.
3. (1920) 44 Mad. 334.
4. (1903) 30 Cal. 1011.
5. (1933) 57 Bom. 678.

the Contract Act constituted a bar against the plaintiffs' claim. It is true that contracts whose consideration is unlawful or illegal cannot be enforced at law; it is also common ground that the consideration for the payment of Rs. 10,800 was the promise that efforts would be made by the victims to withdraw the criminal prosecutions; and since the promise to withdraw the criminal prosecutions was the consideration for the payment of Rs. 10,800, the consideration was clearly unlawful, *vide Sayamma* v. *Punamchand Raichand.*[6] If the consideration was unlawful, the contract cannot be enforced in a Court of law. This position is not disputed by Mr. Albal. He, however, contends that in the present suit the plaintiffs do not seek to enforce the said unlawful contract, but they claim to recover their share of the amount which has already been received by the defendant as their agent, and in such a case the bar under s. 23 cannot be pleaded but on the other hand the obligation of the agent under s. 218 of the Contract Act should be enforced. Now, s. 218 of the Contract Act provides that it is the agent's duty to pay to the principal all sums received on his account. At the time when the amount of Rs. 600 was received by the defendant, it was received by him in lieu of compensation for the destruction of the family house. In other words, the amount was determined *pro rata* by reference to the value of the properties destroyed and it was compensation paid to the owners of the property for the loss suffered by them by the destruction of their property. If that be the true position of the circumstances under which Rs. 600 were paid to the defendant, there can be little doubt that the defendant received this amount in lieu of compensation for the destruction of the *wada.* That means that the amount was paid to the defendant, not only for himself, but for the plaintiffs who were entitled to the *wada,* and in that sense, in receiving the amount which fell to the share of the plaintiffs for the *wada,* the defendant was acting as their agent. Surely, if the defendant has received Rs. 600, may be under an illegal contract, he cannot be permitted to retain that amount and resist a claim from the plaintiffs. The claim against the defendant is not based on the illegal contract. The illegal contract has already been acted upon and Rs. 600 have been paid to the defendant. The retention by the defendant of this amount of Rs. 600 cannot be justified by taking recourse to the provisions of s. 23 of the Contract Act. The dispute between the parties must, in my judgment, be decided in the light of the agent's obligation to render account to his principal and to deliver to the principal the amount received by him for and on behalf of the principal. The true legal position in this matter appears to be that the plaintiffs are not seeking to enforce the original contract which

6. (1933) 57 Bom. 678.

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is illegal under s. 23 of the Indian Contract Act, but they are calling upon the defendant to render an account for the amount received by him for and on behalf of the plaintiffs under s. 218 of the Indian Contract Act. The suit is not for enforcement of an illegal contract, nor for damages for breach of it but it is to divide the benefit which has already been received by the defendant for and on behalf of the plaintiffs under a contract which was illegal. It is indeed fortunate that a dishonest plea made by a person like the defendant, who has received benefit under an illegal contract on behalf of others, can be successfully repelled under the provisions of s. 218 of the Indian Contract Act. Therefore, in my opinion, the learned trial Judge was in error in holding that the claim made by the plaintiffs was contrary to the provisions of s. 23 and that it sought to enforce an illegal contract.

The point raised before me in the present revisional application does not appear to have been considered in reported judgments of this Court. It has, however, been considered by the Allahabad, Madras and Calcutta High Courts and their decisions are all in favour of the contention raised by Mr. Albal (*vide Bhola Nath* v. *Mul Chand*[7] *Palaniyappa Chettiar* v. *Chockalingam Chettiar*,[8] *Nagendrabala Dassi* v. *Guru Doyal Mukerji*.[9]) The observations made by the Master of the Rolls in *Sykes* v. *Beadon*,[10] may, in this connection, be cited.

"In cases where the contract is actually at an end, or is put an end to,"

Observed the Master of the Rolls :

"the Court will interfere to prevent those who have, under the illegal contract, obtained money belonging to other persons on the representation that the contract was legal, from keeping that money."

Thus the concensus of judicial opinion in reported judgments appears to be in favour of the view which I have taken in this case.

In the result, the revisional application must be allowed, the order passed by the learned trial Judge must be set aside and the plaintiffs' claim to the extent of Rs. 450 must be decreed with costs throughout.

Rule absolute.

G. N. V.

7. (1903) 25 All. 639.
8. (1920) 44 Mad. 334.
9. (1903) 30 Cal. 1011.
10. (1879) 11 Ch. D 170.