CASE NO.:
Appeal (civil) 4262 of 2001

PETITIONER:
India Financial Assn., Seventh Day Adventists

RESPONDENT:
M.A. Unneerikutty & Anr.

DATE OF JUDGMENT: 20/07/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Kerala High Court allowing the appeal by the respondent who was the plaintiff. It is to be noted that the suit was dismissed by the trial court.

Background facts in a nutshell are as follows :

The plaint schedule property belonged to the appellant No.1 i.e. Indian Financial Association of Seventh Day Adventists, a Company incorporated under the Companies Act, 1956. The Company was impleaded as defendant No.1 in the suit and the defendant No.2 was its Power of Attorney. A school was being run in the property and there were also two other buildings in the property used by the Company. On 15.4.1985, the defendant No.1 Company passed a resolution deciding to sell the property. A Power of Attorney was executed in favour of defendant No.2 conferring on him the right to negotiate, enter into an agreement to sell, and sell and dispose of the property for a price acceptable to the Power of Attorney. It may be noted that this Power of Attorney, defendant No.2, was the Chairman of the North Kerala Section of the defendant No.1 Company and he had control and management over 70 churches. Thus, defendant No.2, who was constituted the Power of Attorney, was a prominent person in the defendant No.1 company and in the Association for whose welfare the company had been incorporated. Defendant No.2 negotiated with the plaintiff for the sale of the property. Negotiations were done with the help of Mr. P.V. George, who was attached to the school run by defendant No.1 and who was a member of the Association. Defendant No.2, for and on behalf of defendant No.1, agreed to sell the property to the plaintiff for a price of rupees eight lakhs. On 17.5.1985 a sum of Rs.10,000/- was paid as a token of the coming into existence of the agreement and receipt was issued. The receipt was admittedly signed by defendant No.2 and the witnesses to it are one Sarathchandra and P.V. George referred to earlier. The receipt reads as follows:-

"Received a sum of Rupees ten thousand (Rs.10,000/-)as earnest money from Mr. M.A. Uneerikutty, Calicut towards the advance of the sale of land bearing R.S. No. 27/1 having 30 cents of extent which costs 8 lakhs of rupees."

This was followed by another agreement dated 21.5.1985, executed by defendant No.2, in his capacity as the Power of Attorney Holder of the defendant No.1, and the plaintiff. In that agreement, after reciting the title of the defendant No.1-Company represented by its Power of Attorney, it was stated that it had been decided to sell the property to the plaintiff for a consideration of Rupees Eight Lakhs and the plaintiff had agreed to purchase the same. The document also recites that on that day, the defendant No.1 acting through its Power of Attorney, had received a sum of Rupees Three Lakhs as advance towards the sale price. The document was to be registered on or before 30.9.1985. The Company was to hand over all the title deeds relating to the property, including the encumbrance certificate, within one month before registration of the sale deed. All expenses for registration had to be met by the plaintiff and if the Company failed to complete the registration of the sale deed within the agreed period, the plaintiff had the power to take the necessary legal steps for getting the sale deed registered and in that event, the Company would be liable for the expenses and loss incurred in that behalf. The sum of Rupees Three Lakhs paid as advance was liable to be recovered as charge on the property. If the plaintiff fails to pay the balance consideration of Rupees Five Lakhs to the Company within the agreed period, the plaintiff was liable to the Company for all the losses incurred and the company had the full power to recover all the losses from the plaintiff. As noticed supra, the Power of Attorney signed this agreement on behalf of the defendant No.1 company and the witnesses to this agreement were also the same two witnesses who had signed as witnesses in the receipt. On the same day, another agreement was also executed by the parties. This agreement indicated that the company would sell and the plaintiff would purchase the property for a price of Rupees Five Lakhs or the price to be adjusted as per the approved survey of the property. The sale was subject to clear title and free from all encumbrances. The agreement recites that the purchaser, the plaintiff, had paid a sum of Rs.10,000/- by cash and a sum of Rs.40,000/- by way of cheque dated 31.5.1985 as advance, the receipt of which the Company and the Power of Attorney acknowledged. The balance sale price was to be paid on or before 30.9.1985. The agreement stated that time was of the essence of the contract. Clause 5 of this agreement stated that the Company and its Power of Attorney were to demolish the existing buildings in the schedule property, salvage the same and deliver possession of the land only to the plaintiff at the time of registration of the sale deed. The company was to obtain the Clearance Certificate in terms of Section 230A of the Income Tax Act, 1961. The cost of registration was to be borne by the plaintiff and in the event of default on the part of the company to sell the schedule property after complying with the conditions, the company was liable to return the advance of Rs.50,000/- as liquidated damages to the plaintiff. In the event of default on the part of the plaintiff to buy the schedule property as per the conditions set out, the plaintiff was to forfeit the advance of Rs.50,000/- to the company. Thereafter, the company was free to deal with the property as it pleased. It was also provided that either party was entitled to enforce specific performance of the contract. It is seen that on the same day, there is a letter said to have been signed by defendant No.2. In that letter, it was stated, after referring to Clause 5 of the other agreement that the Power of Attorney, defendant No. 2 agrees to demolish only the church building and the school building and retain building No.6/64A. There is no dispute that pursuant to the agreement for sale entered into with the plaintiff, the prior

documents of title of the Company were handed over to the plaintiff.

Complaining that the defendants were attempting to sell the property to another, the plaintiff filed a suit, O.S. 102 of 1985, in the Court of Subordinate Judge, Calicut for perpetual injunction restraining the defendant No.1 Company from alienating the said property to any other person. It may be noted that the last day for performance of the agreement was 30.9.1985. It was after the filing of the earlier suit for injunction, that the plaintiff filed the present suit O.S. 188 of 1985 on 16.11.1985 in the Court of Subordinate Judge, Kozhikode for specifically enforcing the agreement for sale. The prayer in the plaint was to direct the defendants to specifically perform the contract sued on by executing and duly registering a sale deed in respect the plaint schedule property in favour of the plaintiff after receiving the balance sale consideration due to them and for possession pursuant to such conveyance. Conveyance was sought of the kanom, improvement and possessory rights of the defendants. There is no specific reference to any building in the plaint schedule.

In the plaint, after setting out details of the agreement between the parties, payment and receipt of Rs.10,000/- as advance, it was stated that on 21.5.1985 a formal agreement for sale was entered into showing the consideration as Rupees Eight Lakhs including the sum of Rs.3,10,000/- already paid towards the sale price. The plaint further stated that the total price of Rupees Eight Lakhs was for 30 cents of property and all the improvements thereon, including a Church building, a school building and another building. It was stated that the church and the school were being shifted by the defendant No.1 from those buildings to some other premises. The plaint further proceeded to state that for reasons best known to them, the defendants wanted modification of the deed by re-fixing the sale consideration to Rupees Five Lakhs and giving liberty to the defendants to pull down and remove the buildings existing in the property, so that the material could be used to build, at another site proposed to be purchased by the defendant No.1 Company. This agreement was also entered into on the same day and this was the latter agreement and the second agreement. It was asserted that the total consideration paid by the plaintiff to the first defendant as advance came to Rs.3,50,000/-. If the defendants were to be permitted to remove the buildings and take away the materials, the balance amount payable by the plaintiff to the first defendant company would be Rs.1,50,000/-. If on the other hand, the defendants did not want to remove the school building and the church building and would have them retained in the property, the plaintiff was ready and willing to pay a further sum of Rs.4,50,000/- to make the total consideration of Rupees Eight Lakhs for sale of the entire property including all the improvements. It was pleaded that while drafting the second agreement, it was mistakenly stated in Clause 5 that the vendor shall demolish the existing buildings in the schedule property, salvage the same and deliver possession of the land to the vendee. According to the plaint, if this is understood to imply that the land only had been agreed to be sold by the defendants to the plaintiff, that was not correct and to clarify the position arising out of the unclear clause, defendant No.2 wrote a letter to the plaintiff on the same day. According to the plaint, that letter was intended to make it clear that building No. 6/64A was included in the sale and that the church building and the school building were to be demolished and removed by the defendants.

According to the plaintiff since he found that defendant No.2 and the other representatives of defendant No.1, namely Sarathchandra and P.V. George who were witnesses to the agreement, were highly educated respectable persons, he did not think it necessary to have a formal agreement drawn up. The plaintiff had no reason to believe that the defendants would go back on their promise. The plaintiff came to know that the defendants have the intention to retract from the agreement. It was in this context that he filed the suit O.S. 102 of 1985 seeking to restrain the defendants from alienating the property. The plaintiff was ready and willing to pay the balance amount due for execution of the sale deed. The plaintiff was always ready and willing to perform his part of the contract. In case the defendants do not agree to demolish and remove the church building and the school building, the plaintiff was ready and willing to pay the further sum of Rupees three lakhs to make the total consideration of Rupees Eight Lakhs for the entire property including all the improvements. Thus, the plaintiff was entitled to a specific performance of the agreement for sale. He valued the suit at Rupees Five Lakhs under Section 42 of the Kerala Court Fees and Suits Valuation Act (in short the 'Valuation Act') being the consideration for the sale.

In its written statement the defendant No.1 admitted the receipt and the two agreements for sale. It also admitted that defendant no.2 had been constituted as the Power of Attorney of the company. It was, however, pleaded that Power of Attorney was void as contrary and opposed to the Memorandum and Articles of Association of the Company. The conditions of Article 19A(i) of the Articles and Memorandum of Association had not been complied with. All actions pursuant to the resolution of the Company dated 15.4.1985 deciding to sell the property were invalid in law and were otherwise ineffective and void. The agreements referred to in the plaint were thus void ab initio and were not enforceable under law. It transpires that the sale agreements referred to in the plaint were drawn up at the same time and place as parts of the same transaction with the plaintiff conspiring with Mr. P.V. George, who was at that time attached to the school of the defendant No.1. There was a conspiracy to commit fraud and to cheat the defendant No.1 and deprive the State Government of the legitimate stamp duty payable. The sale agreements were set up and devised by the plaintiff with objects which were opposed to public policy and were prohibited by statutes like Kerala Stamp Act and Income Tax Act, 1961 and were void under Section 24 of the Indian Contract Act, 1872 (in short the 'Contract Act'). The three buildings in the property were solid constructions. The demolition of the buildings was inconceivable and defendant No.2 was never authorized to demolish or consent to demolition of the buildings. The alleged agreements to take the property after demolition of the buildings was a transaction devised by the plaintiff for infringing law and hence could not be enforced. The two agreements referred to in the plaint were brought into existence on account of the undue influence, coercion and fraud played by the plaintiff and George. The truth as gathered from defendant No.2 was that at the time of the two agreements. Rupees Three lakhs was made over in cash by the plaintiff to George, who managed to obtain three demand drafts, each for a sum of Rupees one Lakh, from the Malabar Gramin Bank, Kozhikode, where the school run by the first defendant company had its accounts. The paying of Rupees Three Lakhs in cash violated the provisions of the Income Tax Act, 1961. The clause about

demolition of the building was fraudulently introduced into the agreement where the consideration for sale was fixed at Rupees Five Lakhs. The agreements were vitiated by fraud and were void and unenforceable. The case of the plaintiff that the earlier agreement was modified by the subsequent agreement was not supported by the recitals in the subsequent agreement. Defendant No.1 did not intend to sell the property and did not take any steps to sell the property and the filing of O.S. 102 of 1985 was wholly ill-conceived. The plaintiff has come to court with unclean hands. Defendant No.1 had no intention to retain the monies received. Defendant No.1 was willing to refund all the monies received in conformity with any condition that may be imposed by the Court. The suit was speculative. The frame of the suit was not proper.

Defendant No.2, in addition to adopting the written statement filed on behalf of defendant No.1 stated that he bonafide believed that the conditions prescribed in the Articles and Memorandum of Association of the defendant No.1 Company for sale of the property had been duly complied with. He was completely misled by P.V. George to enter into two agreements on the same day as part of the same transaction. He had already requested defendant No.1 to refund to the plaintiff all the amounts received from the plaintiff. The suit was liable to be dismissed.

The High Court held that the view of the trial court that Exhibit A-5 was executed to defraud payment of Stamp duty and the Income Tax and it was opposed to public policy in the background of Section 23 of the Contract Act, is not tenable. It was noted that the suit was one for specific performance of contract and there was full disclosure of both Exhibits A-4 and A-5 in the plaint. It was noted that there was no case of inadequacy of price, on the facts, Section 20 of the Specific Relief Act, 1963 (in short 'Specific Relief Act') was not applicable. The agreement was for sale of the property for a price of Rs.8 lakh and the substantial portion of the amount has been paid as advance. The evidence clearly established that the plaintiff was already ready and willing to pay the balance. The suit for specific performance of contract was decreed. Direction was also given for payment of the balance court fee on the plaint as well as in the appeal on the basis that the consideration for sale is Rs.8 lakh and not Rs.5 lakhs.

Learned counsel for the appellant questioned correctness of the judgment rendered by the Division Bench on the ground that the agreements were pre-planned and executed simultaneously as one integrated inseverable transaction. Stamp papers were purchased on the same day. The defendant No. 2 though an employee of the appellant No.1\026 Institution was a party to the illegal transaction. Obvious intention was to declare only the reduced amount of Rs.5 lakhs as the apparent sale price and to pay Rs.3 lakhs as uncounted money. In the meantime to have hold on each other another agreement was prepared declaring the actual price of Rs.8 lakhs. It was further urged that Section 23 read with Section 24 of the Contract Act rendered the agreements void. The High Court should have noted that the agreements were immoral or opposed to public policy. This is the essence of Section 23 of the Contract Act. Similarly, Section 24 postulates that the agreement would be void if the considerations and the object are unlawful in part. Closing down a well-running school managed by dedicated missionaries and closing a functional church would cause comparatively more hardships as against the specific

performance of a tainted transaction. Same cannot be enforced in a suit for specific performance of contract.

In reply learned counsel submitted that the trial court proceeded for three reasons to dismiss the suit; first was that the plaintiff was not ready and willing and, therefore, requirements of Section 16 of the Specific Relief Act were not complied with. This was a case where greater hardship would be caused to the defendants if the suit is decreed and in any event the agreement was opposed to public policy. On the other hand the High Court had noted that there was full and frank disclosure and the payment of Rs.3 lakhs was accounted for in books of account and the payments were made by demand drafts. There was no question of agreement being opposed to public policy in view of the aforesaid fact. There was really no evidence regarding the shifting of the building and, therefore, two agreements were entered into. The draft deed was not required to be prepared by the plaintiff as was wrongly noted by the trial court. There was a resolution for sale of the land and the defendant No.2 purchased the stamp papers of the proposed agreements. As is evident from the materials on record, there was no dispute that the plaintiff had the capacity to pay and in the written statement filed in the suit the stand taken was not disputed. Therefore the trial court should not have concluded any undue hardship on the same being executed. It was clearly stated in the plaint about the statement in the earlier written statement. If there was any dispute amongst the members of the Association, the plaintiff is not a party to the same and that cannot be a ground to deny the decree for specific performance of the contract. Trial Court disbelieved the evidence of DW1 who was the defendant No. 2 and if that evidence is kept out of consideration, nothing further was brought on record by the defendants.

Principles relating to enforcement of a tainted transaction have been dealt with by this Court in various cases. In A.C. Arulappan v. Ahalya Naik (Smt.) [2001(6) SCC 600] it was noted as follows :
"In Parakunnan Veetill Joseph’s Son Mathew v. Nedumbara Kuruvila’s Son & Ors. [1987 Supp. SCC 340] this Court cautioned and observed as under:
"Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter in the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff".

In Gobind Ram vs. Gian Chand [(2000)7 SCC 548], it was observed in paragraph 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has consider whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience.
Granting of specific performance is an equitable relief, though the same is now governed by the

statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The appellate court should not have reversed that decision disregarding these facts and, in our view, the appellate court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract."

Earlier in K. Narendra v. Riviera Apartments (P) Ltd. [(1999) 5 SCC 77] it was noted as follows :

"In our opinion, there has been a default on the part of the respondents in performing their obligations under the contract. The period lost between 25.7.1972 (the date of the agreement) and the years 1979 and 1980 when the litigation commenced, cannot be termed a reasonable period for which the appellant could have waited awaiting performance by the respondents though there was not a defined time limit for performance laid down by the agreement. The agreement contemplated several sanctions and clearances which were certainly not within the power of the parties and both the parties knew it well that they were the respondents who were being depended on for securing such sanctions/clearances. Part of the land forming subject matter of the agreement was an excess land within the meaning of ULCRA and hence could not have been sold. Part of the land has been acquired by the State and to that extent the agreement has been rendered incapable of performance. The feasibility of a multi-storeyed complex as is proposed and planned by the respondents appears to be an impracticality. If the respondents would not be able to construct and deliver to the appellant some of the flats as contemplated by the novated agreement how and in what manner the remaining part of consideration shall be offered/paid by the respondents to the appellant is a question that defies answer on the material available on record. Added to all this is the factum of astronomical rise in the value of the land which none of the parties would have fore contemplated at the time of entering into the agreement. We are not in the least holding that the consideration agreed upon between the parties was inadequate on the date of the agreement. We are only noticing the subsequent event. Possession over a meagre part of the property was delivered by the appellant to the respondents, not simultaneously with the agreement but subsequently at some point of time. To that extent, the recital in the agreement and the averments made in the plaint filed by the respondents are false. On a major part of the property, the appellant has continued to remain in possession. As opposed to this, the respondents have neither pleaded nor brought material on record to hold that they have acted in such a way as to render inequitable the

denial of specific performance and to hold that theirs would be a case of greater hardship over the hardship of the appellant. Upon an evaluation of the totality of the circumstances, we are of the opinion that the performance of the contract would involve such hardship on the appellant as he did not foresee while the non performance would not involve such hardship on the respondents. The contract though valid at the time when it was entered, is engrossed into such circumstances that the performance thereof cannot be secured with precision. The present one is a case where the discretionary jurisdiction to decree the specific performance ought not to be exercised in favour of the respondents. During the course of hearing the learned senior counsel for the respondents time and again emphasized and appealed to the court that respondents were builders of repute and in the event of the specific performance being denied, they run a grave risk of losing their reputation as their proposed building plan "Girnar" would not materialise and they will not be able to show their face to their prospective flat buyers. This is hardly a consideration which can weigh against the several circumstances which we have set out herein above. If a multi-storeyed complex cannot come up on the suit property, the respondents' plans are going to fail in any case.

In Mannalal Khetan and Others v. Kedar Nath Khetan and Others. [(1977) 2 SCC 424] it was noted as follows: "In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [(1965) 1 SCR 1970] this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its

rom reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered. Prohibition and negative words can rarely be directory. It has been aptly stated that there it is one way to obey the command and that it is completely to refrain from doing the forbidden act. Therefore, native, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory (See Maxwell on Interpretation of Statutes, 11th Ed., p. 362 seq.; Crawford Statutory Construction, Interpretation of Laws, p. 523 and Seth Bikhraj Jaipuria v. Union of India [AIR 1962 SC 113]
The High Court said that the provisions contained in Section 108 of the Act are directory because non-compliance with Section 108 of the Act is not declared an offence. The reason given by the High Court is that when the law does not prescribe the consequences or does not lay down penalty for non-compliance with the provision contained in Section 108 of the Act the provision is to be considered as directory. The High Court failed to consider the provision contained in Section 629(A) of the Act. Section 629(A) of the Act prescribes the penalty where no specific penalty is provided elsewhere in

the Act. It is a question of construction in each case whether the legislature intended to prohibit the doing of the act altogether, or merely to make the person who did it liable to pay the penalty.
Where a contract, express or implied, is expressly or by implication forbidden by statute, no court will lend its assistance to give it effect. (See Mellis v. Shirley L. B. ([1885] 16 QBD 446 : 55 LJQB 143 : 2 TLR 360)). A contract is void if prohibited by a statute, under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition. The penalty may be imposed with intent merely to deter persons from entering into the contract or for the purposes of revenue or so that the contract shall not be entered into so as to be valid at law. A distinction is sometimes made between contracts entered into with the object of committing an illegal act and contracts expressly or impliedly prohibited by statute. The distinction is that in the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is made to do a prohibited act, that contract will be unenforceable. In the latter class, one has to consider not what act the statute prohibits, but what contracts it prohibits. One is not concerned at all with the intent of the parties, if the parties enter into a prohibited contract, that contract is unenforceable. (See St. John Shipping Corporation v. Joseph Rank. ([1957] 1 QB 267)) (See also Halsbury's Laws of England, Third Edition, Vol. 8, p. 141.)
It is well established that a contract which involves in its fulfillment the doing of an act prohibited by statute is void. The legal maxim A pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action."

In a recent case in Aniglase Yohannan v. Ramlatha and Others. [(2005)7SCC 534] it was noted as follows:

"In order to appreciate the rival submissions Section 16(c) needs to be quoted along with the Explanations. The same reads as follows:

"16. Personal bars to relief:
(a) .....
(b) .....
(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation- For the purpose of clause (c)-
(i) where a contract involves the

payment of money, it is not essential
for the plaintiff to actually tender to
the defendant or to deposit in Court
any money except when so directed
by the Court;

(ii) the plaintiff must aver performance
of, or readiness and willingness to
perform, the contract accordingly to
its true construction."

The basic principle behind Section 16(c) read
with Explanation (ii) is that any person seeking
benefit of the specific performance of contract must
manifest that his conduct has been blemishless
throughout entitling him to the specific relief. The
provision imposes a personal bar. The Court is to
grant relief on the basis of the conduct of the person
seeking relief. If the pleadings manifest that the
conduct of the plaintiff entitles him to get the relief
on perusal of the plaint he should not be denied the
relief."

Section 23 of the Contract Act lays down that the object
of an agreement becomes unlawful if it was of such a nature
that, if permitted, it would defeat the provisions of any law.

The term 'public policy has an entirely different and more
extensive meaning from the policy of the law. Winfield defined
it as a principle of judicial legislation or interpretation founded
on the current needs of the community. It does not remain
static in any given community and varies from generation to
generation. Judges, as trusted interpreters of the law, have to
interpret it. While doing so precedents will also guide them to
a substantial extent.

The following passage from Maxwell "Interpretation of
Statutes", may also be quoted to advantage here:-

"Everyone has a right to waive and to agree
to waive the advantage of a law or rule made
solely for the benefit and protection of the
individual in his private capacity which may
be dispensed with without infringing any
public right or pubic policy. Where there is
no express prohibition against contracting
out of it, it is necessary to consider whether
the Act is one which is intended to deal with
private rights only or whether it is an Act
which is intended as a matter of public
policy\005.."

The doctrine of public policy may be summarized thus:
Public policy or the policy of the law is an illusive concept: it
has been described as "untrustworthy guide". "variable
quality", "uncertain one", "unruly house", etc., the primary
duty of a Court of a law is to enforce a promise which the
parties have made and to uphold the sanctity of contract
which form the basis of society, but in certain cases, the Court
may relieve them of their duty on a rule founded on what is
called the public policy, but the doctrine is extended not only
to harmful cases but also to harmful tendencies. This doctrine
of public policy is only a branch of common law, and just like
any other branch of common law it is governed by precedents.

The principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public.

Section 24 provides that if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

In view of the findings recorded by the High Court more particularly mention of all the relevant details relating to Exhibits A-4 and A-5 and the evidence clearly establishing that plaintiff had capacity to pay and was ready and willing to pay the balance amount and the absence of any material to show that the defendant No.2 was not acting in unauthorized manner in view of the clear resolution of the appellant No.1, the judgment of the High Court cannot be faulted. The appeal is, therefore, dismissed without any order as to costs.