

Que - PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for ` 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ` 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from PM Ltd.

Ans - Section 73 of the Indian Contract Act, 1872 provides for compensation for loss or damage caused by breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of ` 1.25 lakhs (i.e. ` 22.75 lakhs - ` 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

Que - 'N' an industrialist has been fighting a long drawn litigation with 'S' another industrialist. To support his legal campaign 'N' enlists the services of 'R' a legal expert stating that the amount of ` 5 lakhs would be paid, if 'R' does not take up the brief of 'S'. 'R' agrees, but at the end of the litigation 'N' refuses to pay. Decide whether 'R' can recover the amount promised by 'N' under the provisions of the Indian Contract Act, 1872.

Ans - The problem as asked in the question is based on one of the essential elements of a valid contract as stated under Section 10 of the Indian Contract Act, 1872. In terms of the said section, "all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared void". Thus, in order to be valid contract, such agreement must not be one which the law expressly declares to be either illegal or void.

A void agreement is one which does not have any legal effect. Certain agreements such as

agreements in restraint of trade, marriage, legal proceedings etc., are void agreements since they have been identified as “opposed to public policy”.

The given instance is based on the agreement in restraint of legal proceedings. This agreement restricts one’s right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872 as they are opposed to public policy.

Hence, “R” in the given case cannot recover the amount of ` 5 lakhs promised by “N” because it is a void agreement and cannot be enforced by law.

Que - 'X' agreed to become an assistant for 2 years to 'Y' who was practicing chartered accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a chartered accountant on his own account within 20 kms. of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms.

Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

Ans - Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case, agreement entered by X with Y is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, X can be restrained by an injunction from practicing on his own account in Jodhpur.