(2009) 06 CAL CK 0004

In the Calcutta High Court

Case No : C.S. No. 69 of 2005

Asit Kumar Palit APPELLANT

Vs

WPIL Limited and Others RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:
Trusts Act, 1882 — Section 11, 6

Citation : 114 CWN 231

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Jayanta Kumar Mitra, Mr. Arijit Banerjee, Mr. Ranjan Lal Mitra and Mr. Debanjan Mukherjee, for the Appellant; Moloy Kumar Ghosh, Sabyasachi Chaudhary, Debarshi Dutta and Mr. Vivek Jhunjhunwala, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—This suit was instituted on March 30, 2005 when the plaint was presented and admitted. The plaintiff is seeking final reliefs in terms of prayers (a) - (e), which are as follows:

"a) Declaration that the plaintiff has a right to receive during his life time pension from the defendants under the latter''s Superannuation Scheme that was prevalent as on 24th June 2002 at the rate of Rs.29,700/- per month with effect from July 2002;

b) Decree for Rs.10,77,640/- as pleaded in paragraph 36 of the plaint;

c) Decree of mandatory injunction directing the defendants to pay to the plaintiff pension at the rate of Rs.29,700/- per month from March 2005 and to continue to pay such sum per month during the entire life time of the plaintiff;

d) Decree of mandatory injunction directing the defendants to purchase annuity from the Life Insurance Corporation of India of such value as would yield sufficient returns for the payment of the plaintiff''s past dues as well as future entitlement on account of pension;

e) Further interest and interest on judgment at the rate of 18% per annum;"

2. The case stated in the plaint is this. By an instrument dated April 29, 2000 WPIL, the first defendant, created a Superannuation Fund for its employees. At that date, the plaintiff, working from April 16, 1980, was WPIL''s Managing Director. According to terms of employment he was entitled to the benefits of the Fund. Then by an instrument dated July 12, 2001 certain clauses of the instrument dated April 29, 2000 were amended. Under an agreement dated February 26, 2002 the plaintiff''s tenure as WPIL''s Managing Director was extended for two years from June 25, 2000. He retired from WPIL''s service on June 24, 2002, and on such retirement he became entitled to pension according to the rules and regulations of the Fund. Though he became entitled to monthly pension of Rs.29,700 from July, 2002, the defendants did not pay him pension. He wrote several letters. By a letter dated March 17, 2003 WPIL acknowledged its liability and requested him to bear with it on the ground that it was incurring losses and having negative cash flows. In a meeting held on June 11, 2003 WPIL''s Managing Director proposed for the first time to apply to his case a revised Superannuation Scheme. It was proposed that according to the revised scheme an annuity would be purchased by investing Rs.15 lakh for ensuring his pension and he would be paid a sum of Rs.5 lakh on an ad hoc basis. The proposal was not acceptable, because he was entitled to pension according to the scheme that was in force at the time of his retirement. Under the circumstances, he filed an application for WPIL''s winding up. By an order dated June 28, 2004 the application was disposed of asking him to accept pension offered by WPIL without prejudice and relegating him to appropriate proceedings for realisation of his balance claims. For the period from July, 2002 to June, 2004 the defendants did not pay him any pension at all. For this period he is entitled to a monthly pension of Rs.29,700 with interest at the rate of 18% per annum. For the period from July, 2004 to February 28, 2005 the defendants paid him a monthly pension of Rs.14,155, though he was entitled to a pension of Rs.29,700. Hence, he is entitled to the unpaid amount with interest at the rate of 18% per annum. Thus on March 1, 2005 he became entitled to Rs.10,77,640.

3. The case stated in the written statement dated December 19, 2006 filed by all the defendants is as follows. The plaintiff has no cause of action. The claim is barred by limitation. The suit is bad for misjoinder and non joinder of parties. The plaintiff has no right to sue WPIL. The trust is not a party to the suit. The instruments relied on by the plaintiff were amended with effect from April 1, 2002 by an instrument dated October 30, 2003. The plaintiff is entitled to pension in accordance only with clause 8(b) of the instrument dated October 30, 2003, and in terms of provisions of the clause the trustees for the trust have purchased an annuity from LICI, and out of such annuity the plaintiff is getting his pension from LICI. WPIL has paid in excess of what the plaintiff is entitled to under the agreement. Since subsequent to March 17, 2003 pension was given to

the plaintiff by the trustees for the trust, contents of the letter dated March 17, 2003 are no longer relevant. The plaintiff himself was instrumental in execution of the instrument dated July 12, 2001, and hence he has no right to rely on the instrument. It was executed in breach of fiduciary duty owed by the plaintiff to WPIL. The instrument is not binding on WPIL. The plaintiff is not entitled to the amounts claimed or any part thereof or any interest on any amount.

4. By an order dated September 20, 2007 the following seven issues were framed and recorded:

"1) Is the suit maintainable in its present form?

2) Has the plaintiff any cause of action to file the suit?

3) Is the plaintiff entitled to receive pension from the defendants in terms of the indenture dated 20.4.2000 relating to the WPIL Ltd. Employees'' Superannuation Fund as modified by the Deed of Variation dated 12.7.2001 with effect from July, 2002?

4) Is the plaintiff entitled to a decree for Rs.10,77,640/- as pleaded in paragraph 36 of the plaint.

5) Is the calculation made by the plaintiff in the plaint as per Clause 11-A of the indenture dated 20.4.2000?

6) Is the plaintiff entitled to decree of mandatory injunction as per prayers (c) and (d) of the plaint.

7) To what other relief/reliefs, if any, is the plaintiff entitled."

5. The plaintiff has examined himself as the sole witness in support of his case. Documents produced and proved by him have been marked as Exs A-R. The defendants have not examined any witness, nor have they produced and proved any document in support of their case stated in the written statement. The instruments dated April 29, 2000, July 12, 2001 and October 30, 2003 have been marked as Exs G,H and R respectively; and the agreement dated February 26, 2002 and the letter dated March 17, 2003 have been marked as Exs D and K respectively.

6. Mr Mitra, counsel for the plaintiff, has submitted as follows. The plaintiff has given evidence in proof of his case that according to the provisions of Ex G as amended by Ex H he became entitled to a monthly pension of Rs.29,700 from July, 2002. The defendants have not given any evidence in proof of their case stated in the written statement that the plaintiff was entitled to a monthly pension in terms only of the provisions of Ex G as amended by Ex R, and not according to the provisions of Ex G as amended by Ex H. From the case put and suggested to the plaintiff in cross-examination it is evident that after abandoning their case stated in the written statement, the defendants sought to make out a new case that if the investable yield of WPIL''s contributions available with the trustees for the trust were insufficient to purchase such an annuity as could

ensure the plaintiff a full monthly pension at the rate mentioned in rule 11(a) of Ex G as amended by Ex H, then WPIL would have been only under a moral obligation, and not a legal obligation, to make up the shortfall. Such a case not stated in the written statement could not be put or suggested to the plaintiff in cross-examination. Besides, the defendants have not given any evidence in proof of a case that the yield of WPIL''s contributions or the fund available with the trustees was insufficient to purchase such an annuity for the plaintiff as could ensure him a full monthly pension at the rate mentioned in rule 11 (a) of Ex G as amended by Ex H. In any case, in the entire scheme of things stated in Ex G as amended by Ex H, there is no concept of a pension at a rate less than the one in rule 11(a), and on the contrary, they rather indicate the ways and means for making up a shortfall, if it occurs. Hence there can be no doubt that the defendants were under a legal obligation to ensure the plaintiff a full monthly pension at the rate mentioned in rule 11(a) of Ex G as amended by Ex H.

7. In support of his contentions Mr Mitra has relied on Central Bank of India Ltd. Vs. Hartford Fire Insurance Co. Ltd., (para.5; if the words used in a document are clear, there is very little that the Court has to do; the Court must give effect to the plain meaning of the words, however it may dislike the result. Delhi Development Authority Vs. Durga Chand Kaushish, (para.21: if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim ''ut res magis valeat quam pereat.; Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, (para.l0: it is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected ''ex antecedentibus et consequentibus''; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible.); Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., (para 40 if upon a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term; if the words are clear, there is very little the Court can do about it.); and Roop Kumar Vs. Mohan Thedani, (para.l7: wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them; this is a matter both of principle and policy.).

8. Mr Ghosh, counsel for the defendants, has submitted as follows. He is not pressing the case of the defendants stated in their written statement that the plaintiff is entitled to pension in accordance only with the provisions of Ex G as amended by Ex R, and not in accordance with the provisions of Ex G as amended by Ex H. As a matter of fact, on retirement from WPIL''s service, the plaintiff became entitled to a monthly pension from July, 2002 according to the provisions of Ex G as amended by Ex H. Accordingly, with the yield of contributions made by

WPIL from time to time for his benefit, the trustees for the trust purchased from LICI the maximum annuity that they could purchase, and on purchase of such annuity the plaintiff started getting monthly pension at the rate of Rs.14,155. If it is said that he was entitled to a full monthly pension at the rate mentioned in rule 11 (a) of Ex G as amended by Ex H, then it is correct that from July, 2002 he would have been entitled to a monthly pension of Rs.29,700. Since the investable yield of contributions available with the trustees was not sufficient to purchase an annuity for ensuring him a monthly pension of more than Rs.14,155, the defendants were not under any legal obligation to purchase an annuity for ensuring him a full monthly pension of Rs.29,700. It is not the plaintiff''s case that WPIL did not deposit contributions according to the provisions of sub-rule(a),(b) and (c) of rule 8 of Ex G as amended by Ex H. Under them, WPIL was liable only to deposit the contributions, and not to make up any shortfall in the ultimate yield, if it was not sufficient to purchase such an annuity as could ensure the plaintiff a full monthly pension at the rate mentioned in rule l l (a) of Ex G as amended by Ex H. In his testimony, the plaintiff has admitted that WPIL''s obligation to make up the shortfall in such a case is nothing but a moral obligation. The provisions of clause 1.5 of Ex G as amended by Ex H say that in exercise of its absolute discretion WPIL may deposit any contribution, other than the ordinary annual or monthly contributions, for the benefit of any member. But they do not create WPIL''s any legal obligation to make up the shortfall in investable yield for ensuring any beneficiary a full monthly pension. WPIL''s moral obligation is not legally enforceable. In any case, nothing in clause 5 of Ex G as amended by Ex H created WPIL''s any obligation. For lack of reasonable certainty as to the amount of contribution payable thereunder, in view of the provisions of section 6 of the Indian Trusts Act, 1882, nothing therein created any trust. In view of the provisions of section 11 of the Indian Trusts Act, 1882, the trustees were not required to obey the directions given by the provisions of rule11(a) of Ex G as amended by Ex H, since, in the absence of sufficient fund in hand, to do so would have been impracticable, illegal and manifestly injurious to the other beneficiaries. The provisions of Ex G as amended by Ex H, preceding rule 11 (a) thereof, must prevail over the ones in rule 11(a).

9. While saying that he is not disputing the propositions on which Mr Mitra has relied, Mr Ghosh has cited to me: Bhudeb Mookerjee and Others Vs. Kalachand Mallik and Another, (p.130: obligation may be taken to be a tie or bond which constrains a person to do or suffer something; it implies a right in another person to which it is correlated, and it restricts the freedom of the obligee with reference to definite acts and forbearances; but in order that it may be enforced by a Court, it must be a legal obligation, and not merely moral, social, or religious.); W.O. Holdsworth and Others Vs. The State of Uttar Pradesh, (para.23: a trustee for a trust is the legal owner of the trust property that vests in him as such.); Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, (para.l3: if, in fact, there is a conflict between the earlier clause and the later

clauses, and it is not possible to give effect to all of them, then the rule of construction is well-established that it is the earlier clause that must override the later clauses, and not ''vice versa''.); and Krishena Kumar and Others Vs. Union of India and others, , (para.31: "Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumstances.").

10. The first and second issues are: "1) Is the suit maintainable in its present form? 2) Has the plaintiff any cause of action to file the suit?" As to these two issues, Mr Ghosh has not argued anything specifically. I find nothing wrong with the form of the suit. It is of no significance that the trust has not been named as a defendant. The trustees for the trust who are to execute the trust are the second to fifth defendants. The plaintiff has claimed that after retirement from WPIL''s service he became entitled to a monthly pension of Rs.29,700 from July, 2002; and that in spite of his entitlement according to the rules and regulations of the Fund in force at the time of his retirement, the defendants did not give him pension. Thus his cause of action is in the defendants'' refusal to give him pension according to his claim. I am; therefore, of the view that he had a cause of action to file the suit. The question of limitation stated in the written statement has not been pressed. The plaintiff has claimed that WPIL acknowledged its liability by writing Ex K, a letter dated March 17, 2003. He has, however, claimed pension from July, 2002. Accepting his entitlement to pension the defendants arranged it for him from July, 2004, though not at the rate claimed by him. Hence, on the facts, I find no reason to say that his claims or any part thereof is barred by limitation.

11. I, therefore, hold that the suit is maintainable in its present form; and that the plaintiff had a cause of action to file the suit. The first and second issues are, accordingly, answered in the affirmative.

12. The third issue is: "3) Is the plaintiff entitled to receive pension from the defendants in terms of the indenture dated 20.4.2000 relating to the WPIL Ltd. Employees'' Superannuation Fund as modified by the Deed of Variation dated 12.7.2001 with effect from July, 2002?" The date of the instrument whereby WPIL created the Fund is dated April 29, 2000, not April 20, 2000, as wrongly recorded in the issue. The instrument dated April 29, 2000 is Ex G. and rules and regulations appended thereto were amended by the instrument dated July 21, 2001, which is Ex H.

13. There is no dispute that after serving from April 16, 1980 the plaintiff retired from WPIL''s service on June 24, 2002. In the written statement the defendants did not dispute that on such retirement he became entitled to a monthly pension from 2002. They, however, disputed his claim that he was entitled to a monthly pension according to the provisions of Ex G as amended by Ex H. They stated a

case that he was entitled to a monthly pension in accordance only with the provisions of the instrument dated October 30, 2003, Ex R, whereby the provisions of Ex G were again amended with retrospective effect from April 1, 2002. But, while the plaintiff has given evidence in proof of his case that he was entitled to a monthly pension according to the provisions of Ex G as amended by Ex H, the defendants have not given any evidence in proof of their case that the plaintiff was entitled to a pension in accordance only with the provisions of Ex R, and not in accordance with the provisions of Ex G as amended by Ex H. Not only this, as I have already mentioned, at the time of arguments Mr Ghosh has clearly stated that he is not pressing the case of the defendants stated in the written statement that the plaintiff was entitled to a pension in accordance only with the provisions of Ex R. As a matter of fact, he has conceded that the plaintiff was entitled to a monthly pension from the defendants according to the provisions of Ex G as amended by Ex H.

14. I, therefore, hold that the plaintiff was and still is entitled to a monthly pension from the defendants from July, 2002 according to the provisions of Ex G as amended by Ex H. The third issue is, accordingly, answered in the affirmative.

15. The fourth and fifth issues are: "4) Is the plaintiff entitled to a decree for Rs.10,77,640/- as pleaded in paragraph 36 of the plaint. 5) Is the calculation made by the plaintiff in the plaint as per Clause 11-A of the indenture dated 20.4.2000?" In para.36 the plaintiff has stated that on March 1, 2005 he was entitled to Rs.10,77,640. The claim he has broken down as follows: a) Rs.7,12,800 pension arrears from July, 2002 to June, 2004 at the rate of Rs.29,700 per month; b) Rs.1,38,812 interest at the rate of 18% per annum on each month''s pension arrears from July, 2002 to June, 2004; c) Rs.1,24,360 balance pension from July, 2004 to February 28, 2005 at the rate of Rs.15,545 per month; d) Rs.1,01,668 interest at the rate of 18% per annum on each month''s balance pension from July, 2004 to February 28, 2005.

16. The answer to the fourth issue is entirely dependent on the question whether the plaintiff is entitled to a full pension at the rate mentioned in rule 11(a) of Ex G as amended by Ex H. Once again, in the fifth issue the date of Ex G was wrongly recorded as April 20, 2000. There is no dispute that the instrument whereby WPIL created the Fund is dated April 29, 2000, and that it is Ex G. It was also wrongly recorded in the issue that the calculation was made by the plaintiff according to clause 11-A of the instrument. As a matter of fact there is no clause 11-A in Ex G as amended by Ex H. Actually, the calculation was made by the plaintiff according to rule 11 (a) of Ex G as amended by Ex H. It may be mentioned that by Ex H, clause (a) of rule 11 of Ex G was not amended, though the other clauses of the rule were amended. Rule 11(a) of Ex G as amended by Ex H is set out below:

A pension shall be payable to a member on retirement on or after attaining the age of fifty five years. The pension shall be calculated at the rate of 3% of his pensionable salary for each year of service subject to a maximum of 75% of the last salary drawn. In computing the year of service, a period of 6 months or more will be treated as one year and a period of less than 6 months will be ignored. "Pensionable Salary" shall mean the last month''s basic salary drawn by the member.

17. There is no dispute that the plaintiff has claimed a monthly pension of Rs.29,700 on the basis of the rate mentioned in rule 11 (a) of Ex G as amended by Ex H. In their written statement the defendants have categorically stated that the plaintiff was entitled to a pension in accordance only with the provisions of clause 8(b) of Ex R; and that in terms of those provisions the trustees for the trust purchased an annuity from LICI. Therefore, the admitted position is that the defendants did not give the petitioner pension according to the rate mentioned in rule 11 (a) of Ex G as amended by Ex H. But, as I have already mentioned, at the time of arguments Mr. Ghosh has clearly stated that he is not pressing the case of the defendants stated in the written statement that the plaintiff was entitled to a pension according only to the provisions of Ex R whereby rule 11 (a) of Ex G as amended by Ex H was deleted. On the contrary, he has conceded that the plaintiff was entitled to a monthly pension according to the provisions of Ex G as amended by Ex H. He has contended that, since there is nothing to show that by investing the yield of the contributions duly and regularly made by WPIL for the plaintiff''s benefit according to the provisions of Ex G as amended by Ex H the trustees for the trust could purchase an annuity for ensuring him a monthly pension higher than the one they purchased, there is no scope for saying that the defendants were under an obligation to purchase such an annuity as could ensure him a full monthly pension according to the rate mentioned in rule 11(a) of Ex G as amended by Ex H. His argument is that none of the defendants was under any legal obligation to make up the shortfall in the investable yield of the contributions available with the trustees for purchasing an annuity. He has repeatedly said that the plaintiff himself has admitted that the obligation to make up the shortfall was nothing but WPIL''s moral obligation. He has contended that WPIL''s moral obligation to make up the shortfall is not enforceable in law. He has, however, very clearly said that the amount of full pension according to the rate mentioned in Rule11(a) would have been Rs.29,700 per month, as rightly calculated by the plaintiff. His entire argument is on the basis that the investable yield of the contributions available with the trustees for purchasing the annuity was not sufficient to purchase such an annuity as could ensure the plaintiff a full pension, and in the absence of any legal obligation, WPIL did not commit any wrong by not funding the trustees for making up the shortfall.

18. In my opinion, Mr Mitra has rightly questioned the very basis of Mr Ghosh''s argument. I agree with Mr Mitra that there is absolutely no basis for Mr Ghosh to say that the investable yield of the contributions available with the trustees was not sufficient to purchase such an annuity as could ensure the plaintiff a pension of Rs.29,700 per month. No such case was stated in the written statement, and no evidence in proof of such a case has been given by anyone. I am unable to

accept Ghosh''s argument that it was for the plaintiff to show that the entire investable yield of the contributions was not used by the defendants to purchase an annuity for ensuring his monthly pension. When it was not the case of the defendants that the investable yield was not sufficient to purchase an annuity that could ensure the plaintiff a full monthly pension, I fail to see how it can be contended that it was for the plaintiff to show that though sufficient fund was available, the requisite annuity was not purchased for him. His case is a consistent one from the beginning. He has claimed that he is entitled to a pension of Rs.29,700 per month. His such claim was not disputed by WPIL writing the letter dated March 17, 2003, Ex K, asking him to bear with it on the ground that it was passing through a serious financial crisis. It is curious to note that in the face of the letter dated March 17, 2003, Ex K. in which WPIL cited losses suffered by it as the reason for failure to purchase the annuity for ensuing the plaintiff''s pension from July, 2002, Mr Ghosh has strenuously argued that in the matter of purchase of annuity for ensuring the plaintiffs pension WPIL had absolutely no role to play. It is evident from the written statement case that has subsequently been abandoned that the defendants purchased an annuity calculating the payable monthly pension according to the provisions of Ex G as amended by Ex R. There is absolutely nothing wherefrom it can be said that since there was a shortfall in the yield of the contributions, the defendants could not purchase such an annuity as would have ensured the plaintiff a full monthly pension according to rule 11(a) of Ex G as amended by Ex H. As a matter of fact no attempt was ever made to comply with rule 11(a). Under the circumstances, I am unable to accept the cases of insufficiency of fund, absence of an obligation to make up a shortfall, a shortfall in the yield of the contributions, etc. made out by Mr Ghosh only at the Bar.

19. Assuming that I am wrong in my view that in the absence of any case stated in the written statement that there was a shortfall in the investable yield of the contributions for purchasing such an annuity as could ensure the plaintiff a full pension and WPIL was not under any legal obligation to make up such shortfall, the defendants cannot be permitted to take the plea of a shortfall; and further assuming that there was actually a shortfall in the yield, I propose to examine whether the trustees for the trust were under any legal obligation to ensure the plaintiff a full monthly pension at the rate mentioned in rule 11(a) of Ex G as amended by Ex H, and whether WPIL was under a legal obligation to make up the shortfall.

20. It seems to me that Mr Ghosh has made his entire argument de hors the provisions of Ex G as amended by Ex H, and a quick look at them will make it evident. Ex G as amended by Ex H has two parts: (i) the instrument containing ten clauses; and (ii) the twenty rules of the rules and regulations appended to the instrument.

21. The provisions of the clauses, briefly, are these: clause 1 - the sums contributed by WPIL in accordance with the appended rules and regulations

together with the income accruing from the use or investment thereof shall be paid to and held by the trustees and shall constitute the funds of the Fund; clause 2. - the sole object of the Fund is to provide each beneficiary with a pension or annuity on behalf of the company payable from the time of his retirement; clause 3. - no money belonging to the Fund shall be recoverable by WPIL; clause 4. - the Fund shall remain vested in the trustees; clause 5. - the Fund shall be deemed to have been established and the rules and regulations shall be deemed to have taken effect from April 1, 2000; and with a view to establishing the Fund, WPIL may in its absolute discretion and from time to time pay the trustees contributions other than ordinary annual or monthly contributions; clause 6. - subject to the rules and regulations a beneficiary shall be entitled to the payment of a pension or annuity from the trustees only; clause 7. - the trustees will possess power to alter or modify the provisions of the instrument provided the alternation or modification is not inconsistent with the main object of the trust or it does not in any way prejudice the rights or interest of any beneficiary. Clauses 8, 9 and 10 contain provisions empowering WPIL to terminate the employment of a beneficiary and the mode of payment of pension in case of WPIL''s winding up.

22. The provisions of the rules and regulations appended to the instrument provide as follows: rule 1 - defines various expressions for the purpose of the rules; rule 2. - mentions the name of the Fund; rule 3. - says who will be the trustees, how they will retire, etc.; rule 3(d). - provides that the trustees shall comply with and carry out all such directions as may be given by WPIL from time to time in exercise of its power under the instrument; rule 4. - says that the trustees shall have the entire control of the Fund; rule 5(a). - says how the trustees shall exercise their powers; rule 6. - provides that the trustees shall not at any time be made liable for any more money than shall actually have come into their own hands; and that they shall be indemnified by WPIL against all proceedings, costs and expenses occasioned by any claim in connection with the Fund; rule 7(a). - says which employees of WPIL will be eligible as beneficiaries; rule 8(a). - provides that WPIL shall pay initial contribution for each beneficiary; rule 8(b). - provides that WPIL shall make contributions annual or monthly at the rate of 15% of monthly basic salary of the member; rule 8(c) - provides that WPIL''s contribution under clause 5 would be credited to the accounts of the member concerned; rule 8(d) - provides that expenses of management shall be paid by WPIL in addition to its contribution; rule 9. - provides how the funds of the Fund shall be invested; rule 10-empowers the trustees to make good the depreciation, if there is a depreciation in value of the securities, out of any balance standing at the credit of the surplus account; rule l l (a). - says which member of the Fund shall be paid what pension; rule 11A. - says how spouse or dependants or legal heirs of a deceased member shall be given benefits; rule 11 B. - confers right on a beneficiary to accept an optional life pension; rule 11C. - deals with the case of a member dying while in service; rule 12. - empowers the company to direct the trustees to withhold or discontinue pension to a member

on the grounds mentioned therein and to advise LICI to transfer back the balance amount of annuity to the Fund, and provides that the trustees will credit such amount to the surplus account; rule 13. - says what further amount shall be transferred to surplus accounts; rule 14. - empowers the trustees to apply any balance standing to the credit of the surplus account for all or any of the purposes mentioned therein; and provides that it can be applied for payment of additional annuity or additional pension to a beneficiary who, in the opinion of the trustees, deserves such consideration; rule 15. - provides that the trustees shall provide for the payment of pension to a beneficiary whose right has accrued by the purchase for such beneficiary an annuity from the LICI; and that the trustees shall always "be entitled to pay in full any pension" as and when it will become payable, "without regard to the sufficiency of the Fund to meet any other pension or benefits presently prospectively or contingently payable there out and shall not by so doing incur any liability in the event of the insufficiency of the Fund to meet any such other pension or benefits." Rules 16, 17, 18, 19 and 20 deal with certain miscellaneous matters which are not relevant to the issues involved in this case.

23. The sole object of the Fund is to provide each beneficiary with a pension or annuity on behalf of the company payable from the time of his retirement. The defendants never disputed that from July, 2002 the plaintiff became entitled to a monthly pension under the Fund. But they did not provide him with a pension or an annuity. About one year after his retirement WPIL verbally proposed to provide him with a pension under a revised scheme. The revised scheme is the one in Ex G as amended by Ex R, the instrument dated October 30, 2003. It is thus evident that as to the plaintiff''s entitlement, the defendants deliberately defeated the sole object of the Fund declared under clause 2 of Ex G, the instrument creating the Fund, as amended by Ex H. The rules and regulations were appended to the instrument dated April 29, 2000 for executing the sole object of the Fund declared under clause 2 of the instrument. Entitlement of a beneficiary to a pension under the Fund has been created and declared by rule 11 (a) of the rules and regulations. Rules preceding rule 11 (a) have created and declared various powers, duties and obligations of WPIL and the trustees for the Fund. The provisions of the rules and regulations preceding rule l l (a) all are in aid of rule 11(a). They all aim to fulfill the obligation WPIL created for itself to provide a beneficiary with a pension at least at the rate mentioned in rule 11(a). Rule 11(a) does not contemplate a pension less than the one payable at the rate mentioned therein. It rather puts a cap on the maximum amount payable. This clearly shows that while the rule ruled out a possible case of payment of a lower pension due to any shortfall in the investable yield of contributions, it visualised a possible case of the payable pension exceeding 75% of the last salary drawn by the beneficiary.

24. I do not find any conflict between the provisions of rule 11(a) and the other provisions of Ex G as amended by Ex H. The provisions of rule 11(a) of Ex G as amended by Ex H clearly created the defendants'' obligation to pay and the

plaintiff''s right to get a full monthly pension at the rate mentioned therein. Under no circumstances, the defendants could pay the plaintiff a pension less than the one payable according to the rate mentioned in rule 11(a). The provisions of rule 11 (a) of Ex G as amended by Ex H are the title of the plaintiff''s right to a full pension, and hence the right is a legal right whose corresponding legal obligation cast on the defendants is also evident from the provisions of rule 11 (a) of Ex G as amended by Ex H. The defendants cannot escape their liability arising out of the obligation taking the plea that an actual discharge of the obligation is not required when there is a shortfall in the investable yield of the contributions made by WPIL from time to time in the discharge of its obligation created by rule 8 of Ex G as amended by Ex H. Its obligation to fund the trustees does not end with just making of the contributions according to rule 8. Clause 2 of Ex G as amended by Ex H clearly says that the pension or annuity would be provided on behalf of WPIL, and clause 6 thereof says that subject to the rules and regulations a beneficiary would be entitled to payment of a pension or annuity from the trustees only. The rules and regulation do not provide that the trustees would be empowered to give a beneficiary a pension or annuity less than the one determined at the rate mentioned in rule 11(a). On the contrary rule 15 of Ex G as amended by Ex H clearly empowers the trustees to pay full pension without regard to the sufficiency of the fund, and rule 6 thereof clearly obliges WPIL to indemnify the trustees for the extra expenses, if any, occasioned by the claim. It is absolutely wrong to say that if the yield of the contributions is insufficient to purchase an annuity for ensuing a beneficiary''s full pension, then the trustees would not be required to follow the directions given by rule 11(a). Even if there was a shortfall, in view of the provisions of rules 11 (a) and 15, the trustees were under an unqualified legal obligation to pay the plaintiff a full pension, and in view of the provisions of rule 6 WPIL was under a legal obligation to indemnify the trustees for the expenses required to meet the claim.

25. There is, however, nothing in Ex G as amended by Ex H to say that the defendants'' failure to pay the plaintiff a full monthly pension according to rule11(a) could make them liable to pay interest at any specified rate. But then, the position that emerges is that the defendants have wrongfully denied the plaintiff a monthly pension to which he was entitled according to rule 11 (a) of Ex G as amended by Ex H. He was entitled to a monthly pension of Rs.29,700 from July, 2002. It has been proved that during the period from July, 2002 to June, 2004 the defendants did not ensure him any pension - they paid him nothing, and that during the period from July, 2004 to February 28, 2005 they ensured him a monthly pension only at the rate of Rs.14,155. Hence the plaintiff is entitled to a decree for Rs.29,700 per month for the period from July, 2002 to June, 2004, and for Rs.15,545 per month for the period from July, 2004 to February 28, 2005; and in my opinion, he will be reasonably compensated, if he is paid interest on all amounts at the rate of 12% per annum from the date the respective amounts became due till the date of their actual payment.

26. I, therefore, hold that the plaintiff is entitled to a decree for the principal amounts mentioned in para 36 with interest, not at the rate of 18%, but at the rate of 12%; and that the monthly pension of Rs.29,700 calculated by him according to rule 11 (a) of Ex G as amended by Ex H is correct. Accordingly, I answer the fourth issue partly in the affirmative and partly in the negative, and the fifth issue in the affirmative.

27. The sixth and seventh issues are: "6) Is the plaintiff entitled to decree of mandatory injunction as per prayers (c) and (d) of the plaint. 7) To what other relief/reliefs, if any, is the plaintiff entitled.?" There is no dispute that according to the provisions of Ex G as amended by Ex H the plaintiff became entitled to a lifelong monthly pension. I have found that he became entitled to a monthly pension of Rs.29,700. Hence the defendants were and still are under an unqualified legal obligation to purchase such an annuity from LICI as would ensure him a lifelong monthly pension of Rs.29,700. In view of the foregoing findings, I hold that the plaintiff is entitled to decrees in terms of prayers (c) and (d). As to his prayer (e), I hold that it will be reasonable to give him further interest and interest on judgment at the rate of 12% per annum. Accordingly, I answer both the sixth and seventh issues in the affirmative.

28. For these reasons, I allow the suit on contest and with costs. There shall be a decree in terms of prayer (a); a decree in terms of prayer (b) for the principal amounts mentioned in para 36 with interest, not at the rate of 18%, but at the rate of 12%; decrees in terms of prayers (c) and (d); and a decree in terms of prayer (e), not at the rate of 18%, but at the rate of 12%. The decrees shall be drawn up, prepared and completed within a fortnight from the date the records are sent down from the Court.

