(2008) 09 BOM CK 0164

In the Bombay High Court

Case No : Second Appeal No. 18 of 2008

Bank of India APPELLANT

Vs

Shri Ramchandra Shamba Amonkar RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Citation : (2008) 09 BOM CK 0164

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.D. Padiyar, for the Appellant; F.E. Noronha, for the Respondent

Judgement

N.A. Britto, J.—Heard learned Counsel on behalf of both parties. This is plaintiff''s Second Appeal arising from RCS No. 68/2000, which was filed by the plaintiff against the defendant for the recovery of the sum of Rs. 1 lac which according to the plaintiff is due by the defendant as liquidated damages upon breach of bond executed by the defendant with the plaintiff on 12/08/1988. The plaintiff''s suit was initially decreed by the learned trial Court, but came to be dismissed by the learned first appellate

2. There are some undisputed facts which could be stated. The defendant joined as Chief Manager of the plaintiff''s bank at Singapore pursuant to his posting there on 2/10/1980. The defendant handed over charge and was relieved on 7/03/1992, and, returned to India on the same day but joined the plaintiff''s head office at Mumbai on 1/07/1992, after availing of 64 days of overseas leave from 9/03/1992 and further leave up to 30/06/1992 and, was subsequently dismissed from service on 26/04/1997 and that was because of defendant''s refusal to join the plaintiff at Bhopal. The question was as to from which date the 5 years period was to be computed i.e. whether it was to be computed from 7/03/1992 when the defendant was relieved from his foreign service or from 01/07/1992 when the defendant resumed service in Mumbai.

3. The learned first appellate Court referred to the evidence of the only witness

examined, on behalf of the plaintiff, namely Shri Sequeira/PW1 and noted that the defendant had returned to India on 7/03/1992, and further observed that the said Sequeira had stated that the defendant was on overseas leave from 8/03/1992 and he was part of and paid from the Indian establishment and since the defendant''s services were terminated on 26/04/1997, they were terminated clearly beyond the period of 5 years from 7/03/1992 and as such the learned trial Court was not right in making the defendant pay the liquidated damages due by the defendant on the said bond executed by him. It is this conclusion of the learned first appellate Court which is in challenge before this Court in this Second Appeal.

4. Some of the relevant clauses of the bond executed by the defendant are relied upon, on behalf of plaintiff, are clauses 8, 11 and 12, the last being the most important. Clause 8, inter alia, provided that immediately upon completion of service abroad the defendant agreed to resume his duties and to serve the Bank for a minimum period of 5 years at any office branches. By virtue of clause 11 defendant agreed to serve the Bank at any branch outside India for a period of 5 years following the completion of his service abroad. As stated, clause 12 which is by far the most important reads as follows;

If at any time during his service abroad or during the said period of 5 years after completion of the service abroad the employee fails to serve in the Bank, or his services are terminated for any reason whatsoever or if the employee voluntarily leaves the Bank for any reason whatsoever the employee agrees and binds himself to pay to the Bank on demand by way of liquidated damages a sum of Rs. 1,00,000/-. Such payment shall be without prejudice to any other rights and remedies of the Bank against the employee.

5. Shri Padiyar, the learned Counsel on behalf of the appellant/plaintiff submits that the defendant was on overseas leave after he handed over charge on 7/03/1992 and the overseas leave being incident of overseas service have got to be added to his service abroad and the period of 5 years has got to be computed from 1/07/1992 when the defendant actually returned for duty at Mumbai and on which date his service in India started. Learned Counsel further submits that this controversy is already ended by the judgment of this Court dated 9/02/2000 in Appeal no. 478/1995 in Writ Petition No. 2568/1992, wherein the learned Division Bench held as follows:

31. Finally, Mr. Sanglikar contended that the bank erred in calling upon the petitioner to pay liquidated damages payable in terms of the security bond dated 12th August, 1988. This argument is also not sound. It cannot be gainsaid that a foreign posting to an employee entails extra financial burden on the bank, for the bank has to pay not only regular pay and allowances of the employee, but certain additional allowances, that too in foreign exchange. In order to ensure that employee do not use the foreign posting as a jumping board for obtaining a job elsewhere, the bank requires such employees to execute a security bond in the sum of Rs. 1,00,000/-as liquidated damages in case they do not serve the

employer for a period of five years after being repatriated to India. In the present case, the petitioner came back to India some time in March, 1992, and was on leave till 30th June, 1992. When he was transferred to Bhopal, he declined to go there as a result he was suspended from service and later subjected to disciplinary enquiry. Since the enquiry was itself pending for some time and the service was terminated only by the order dated 26th April, 1997. The contention is that the period of five years contemplated by clause 8 of the security bond having expired by 26th April, 1997, there was no warrant for calling upon the petitioner to pay the liquidated damages of Rs. 1,00,000/- stipulated in clause 1 of the security bond. This argument is too facile to hold any merit. The security bond required that when the employee came back to India, he would "serve" the employer for a period of 5 years thereafter. In our view, the act of the petitioner-employee in declining the transfer order was itself a breach of the terms of security bond dated 12th August, 1988 for which the respondent-bank is justified in invoking the liquidated damages clause. At any rate, if the respondent-Bank has invoked the liquidated damages clause under the bond, we find no fault with its action.

6. On the other hand, Shri Noronha, the learned Counsel on behalf of the plaintiff submits that the learned first appellate Court had correctly interpreted clause no. 12 of the said bond executed by the defendant with the plaintiff and as such no substantial question of law arises. Learned Counsel further submits that the plaintiff''s only witness the said Shri Sequeira was himself unable to know the exact nature of the overseas leave and considering that the said overseas leave was enjoyed by the defendant while in India and after handing over the charge abroad and as the defendant was paid for the same from the Indian Establishment, the said leave could not be added to the tenure of service of the defendant while he was abroad.

7. The only question is whether the overseas leave is to be added to the service rendered by the defendant to the plaintiff in Singapore. In case that is done the defendant would be guilty of violating the conditions of the bond and in case it is not than the defendant will not violate any of the conditions of the bond and, as such, would not be liable to pay any liquidated damages to the plaintiff, assuming such damages were otherwise liable to be paid.

8. As already stated, there is no dispute at all, that the defendant handed over the charge of his post on 7/03/1992 and was relieved from service from Singapore and he returned on the same day to India, as stated by the said Shri Sequeira. The defendant enjoyed the overseas leave and also extended leave (privilege leave) while in India and, there is no dispute that on the expiry of the said leave on 30/06/1992, the defendant joined the plaintiff''s head office at Mumbai on 01/07/1992. In the findings in the judgment at para 31 of the learned Division Bench, there is no reference to clause 12 of the bond which, as already stated, is far the most important and the last clause dealing with the conditions of the bond between the defendant and the plaintiff and to that

extent, the findings of the learned Division Bench would not be binding. Learned Counsel on behalf of the plaintiff has also not been able to explain as to why in case the said findings were binding, the plaintiff had to file the suit to recover the amount due under the bond executed by the defendant. It is not the case of the plaintiff in the plaint or otherwise that liquidated damages were to be recovered for breach of clause 8 of the bond. In my view, the learned first appellate Court was right in concluding that the service of the defendant abroad came to an end on 7/03/1992 when the defendant handed over the charge of his office and was relieved from there. Obviously, the services of the defendant were not terminated within 5 years from completion of service of defendant abroad but were terminated on 26/04/1994 that is beyond the period of 5 years. The view held by the learned first appellate Court, in my view, is correct and calls for no interference. In the light of the above discussion, none of the questions framed arise in this Second Appeal and therefore I find that there is no merit in this second