
(1966) 11 SC CK 0019

In the Supreme Court Of India

Case No : Regular First Appeal Nos. 88-D of 1956 and 104-D of 1956

Bharat Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Paramshwari Prasad Gupta

RESPONDENT

Date of Decision : 25-11-1966

Acts Referred:

Evidence Act, 1872 — Section 91

Citation : (1966) 11 SC CK 0019

Hon'ble Judges : K. S. Hegde, C.J.; S. K. Kapur, J

Bench : Division Bench

Final Decision : dismissed

Judgement

S.K. Kapur, J.

(1) This judgment will dispose of three regular first appeals, being R. F. A. Nos. 88.D of 1956, 89-D of 1956 and 104-D of 1956.

(2) Parmeshwari Parshad Gupta (hereafter referred to as Gupta) filed a suit against Bharat Fire and General Insurance Limited (hereinafter referred to as the company) for a declaration that he continues to be the General Manager of the company and recovery of Rs. 31,152.00/13.00. In the alternative, he asked for a decree for Rs. 1,63.00/8,201.00 as money due to him from the company as detailed in the plaint. This suit was registered as suit No. 282 of 1954. The trial Court declined the decrees for declaration but awarded to Gupta a decree for Rs. 73,936/15/9 as under (1) Rs. 1,480/10/3 as salary for 7 days from 1st December, 1953 to 17th December, 1953, at the rate of Rs 2700.00 per month ; (2) Rs. 52/4/3 as the pay of the chauffeur for that period ; (3) Rs. 2,700.00 on account of one month's salary in lieu of notice ; (4) Rs. 16,200.00 on account of gratuity for six months at the rate of Rs. 2,700.00 per month ; (5) Rs. 5,100.00 as bonus for the years 1951 and 1953 ; and (6) Rs. 48,404/1/3 on account of provident fund. The company also filed a suit against Gupta for the recovery of Rs. 1,10,000.00, being suit No. 306 of 1954, in which the company was granted a

decree for Rs. 5,759/9/6 with proportionate costs. This amount consists of-

(a) Rs. 2,443.00/8.00 on account of income tax and super-tax on bonus ; (b) Rs 2.975.00/6 on account of income tax and super-tax on cash received in lieu of leave ; (c) Rs. 90.00 on account of telephone charges ; (d) Rs. 32.00/5.00 being the amount spent on petrol ; and (e) Rs. 218.00/12.00 on account of the excess amount in the hands of Gupta out of the advance obtained by him for his trip to Bombay. Regular First Appeal No 88-D of 1956 is the appeal by the company against the rejection of its claim in suit No. 306 of 1954. Regular First Appeal No. 89-D of 1956 is also company's appeal against the award of a decree for Rs. 73,936/15/9 passed in favour of Gupta and Regular First Appeal No. 104-D of 1956 is Gupta's appeal against the rejection of his other claim's in his suit.

(3) I will first take up Regular First Appeal No, 88-D of 1956 and deal with only those items which have been disputed at the bar. Before doing so I may point out a few salient facts having a bearing on the matter. Gupta was appointed on 16th October, 1942, as Secretary of the company. At the relevant time in the year 1953 he was working as General Manager of the company and claim of Gupta is that his salary at that time was Rs. 2,700.00 per month, while the company maintains that it was Rs. 2,600.00 per month and that is one of the controversies which will have to be resolved. The company's case is that an anonymous complaint had been received showing various irregularities by Gupta and as a result thereof the Chairman had a discussion with Gupta in which the latter agreed to leave the company. On 23rd December, 1953, a letter was written by the company to Gupta (Exhibit D. 19) calling upon him inter alia to hand over all papers and books of the company in his possession as various irregularities committed by him had come to the notice of the company. Before that an emergent meeting of the Board of Directors of the company had been convened on 16th December, 1953, where at four Directors, namely, Shri Shriyans Prasad, Shri Rajendra Kumar Jain, Brij Mohan Lal and Sh. Ravi Parkash Jain were present. It is alleged by the company that at that time there was another Director also but since he was at Calcutta he could not be contacted and admittedly no notice of the meeting had been given to him. The proceedings of the said meeting are Exhibit D. 95. "The minutes of the meeting show that the Chairman placed an anonymous typed letter dated 10th October, 1953, before the meeting and pointed out the result of his discussion with Gupta on the subject. It was inter alia resolved that Gupta be relieved of his office with immediate effect and the powers of attorney granted to him on 12th November, 1942 and 16th January, 1947, be cancelled. On, the same date, that is, 16th December, 1953, Gupta wrote a letter to the company (Exhibit D. 6) asking for leave for eight months. On 17th December, 1953, the Chairman of the company sent a telegram to Gupta (Exhibit D. 8) intimating that his services had been terminated by the Board of Directors with immediate effect. On the same date the Chairman of the company also wrote a letter to Gupta (Exhibit D. 89) dealing with his leave application. In the said letter it was inter alia pointed out :

(1) "It looks obvious that having known the decision regarding the severance of your connection with the company, you have sent this application ; and (2) "it has come to light that you have drawn your remuneration in excess. According to the resolution of the Board of Directors your remuneration was fixed, only free of the income tax, while you have drawn free of all taxes. Extra receipts of the amounts on this account be please refunded."

On 22nd December, 1953, Gupta wrote to the Chief Accountant of the Company asking for up-to-date accounts and this letter was replied to vide- Exhibit D. 8 which has already been mentioned above. On 23rd December, 1953, another meeting of the Board of Directors of the company was convened after proper notice to all the Directors. The proceedings of the said meeting a re Exhibit D.96. In this meeting the following four Directors were present :-

1. Shri Shriyans Prasad. 2. Shri R.K. Jain. 3. Shri B.P. Khaitan 4. Shri Brijmohan Lal Raizada.

The proceedings of the meeting of the 16th December, 1953 were read and confirmed and the action taken in terminating the services of Gupta was also approved. On 12th May, 1954, a letter was addressed by Mr. K. C. Jain, Advocate for- the Company, to Gupta pointing out that a promissory note for Rs. 15,000.00 was taken from one Shri M.M. Bhatt, Branch Manager of the company at Bhavnagar, though no amount was paid to him and comments ot Gupta were invited in this behalf. Again, on 19th May, 1954, Mr.K.C, Jain, Advocate for the company, wrote to Gupta a letter (Exhibit D. II) enumerating various irregularities alleged to have been committed by Gupta and asking him to show cause why the order of termination of services be not reviewed and converted into an order of dismissal. On 26th July, 1954, Shri L. N. Modi sent a telegram to Gupta saying that no explanation regarding the allegations contained in Mr. KC. Jain's letter had been received and the committee referred to in the letter dated 19th will hold its sitting on 28th July at 4 P.M. to go into the matter and report their views to the Board for its decision. Gupta was asked to send his written explanation if he so desired and even if he did not want to do so he could be present at the deliberations of the committee. This telegram was subsequently confi- rmed by a lötter (Exhibit D. 26) and on 14th June, 1954 Gupta wrote to Mr. K.C. Jain a letter (Exhibit D. 14) broadly denying all the charges against him. On 27th July, 1954, Gupta instituted the suit for declaration, being suit No. 284 of 1954 as already mentioned.

(4) In Regular First Appeal No. 88-D of 1956 the first point urged by M". K. C. Jain, the learned counsel for the company, relates to the payment of super-tax on Gupta's salary by the company. The contention of Mr. ain is that the company was only obliged to pay incometax on the salary of Gupta and not the super-tax and consequently Gupta is liable to refund the benefit received by him on this account. The relevant documents in this connection are three resolutions dated 16th May, 1944, 29th June, 1945, and 3rd June, 1946. They have been marked as Exhibits D. 5/A to D./5/C. In the resolution dated 16th May, 1944, it was

decided that Gupta will get his salary free of incometax from 16th October, 1942 onwards. By the resolution dated 29th June, 1945, it was resolved that the remuneration of Gupta at the rate of Rs. 1,500.00 per month, free of income tax, with retrospective effect from 1st January, 1944 to 31st December, 1944, and at the rate of Rs. 1,600.00 per month, free of income tax, with effect from 1st January, 1945 onwards be confirmed. By the third resolution dated 3rd June, 1946, Gupta's salary at the rate of Rs. 2,000.00 per month, free of incometax, with effect from 1st January, 1946, onwards was confirmed. The company's claim was that Gupta was allowed salary free of only incometax but he during the period 1st April, 1946 to 30th November, 1953, drew his salary not only free of income tax but also free of super-tax and thereby over drew Rs. 25,790.00/6.00. Refund of this amount was - claimed by the company. The decision on the question, therefore, turns on the interpretation to be placed on the words "free of income tax". The meaning of the term has to be ascertained not only having regard to the language used but also the surrounding circumstances I must, however, confess that even on the basis of the plain language used, my opinion is that Gupta was entitled to salary free of super-tax as well. I base this opinion on the ground that the words "free of income tax" clearly imply free of taxes on income and there is no ambiguity about the same. I am not unmindful of the well accepted principle that if the contract is wholly in writing the parties are confined within the four corners of the document in which they have chosen to enshrine their agreement and neither of them can adduce evidence to say that his intention has been misstated in the document or that some essential feature of the transaction has been omitted : But, at the same time, in cases where it is considered that the language of the contract is susceptible of two interpretations, it is not unknown that the Courts do resort to the surrounding circumstances to find out the intention of the parties and it is for this reason that I mentioned "the surrounding circumstances" a little while ago. What then is the meaning to be given to the words "free of income tax". Perusal of section 55 of the Indian Income- tax Act, 1922, would show that super-tax is nothing but "an additional duty of income tax.....". I am conscious of the distinction sought to be pressed on us by the learned counsel for the company between the two expressions as used in the Act. The argument on behalf of the 'company is that when the law has chosen to use two different expressions, the agreement referring to only one of them must be held confined to that alone. Apart from the fact that in the choice of words the contracting parties cannot be attributed the same wisdom as is attributed to the Legislature. I find that in every essential feature super-tax and income tax are the same. I feel myself, therefore, unable to recognise any distinction between 'income tax' and 'super-tax' when construing the word 'income tax' as used in the resolutions. This conclusion of mine is supported by *In re Reckitt*. *Reckitt v Reckitt*. Mr. K. C. Jain has referred us to a decision of their Lordships of the Supreme Court in *State of Madhya Pradesh and Others Vs. Sirajuddin Khan*, That decision is of no assistance to Mr. Jain for every case has to be decided on the facts and circumstances thereof and the words cannot be put into a straight Jacket of a definition Judicially evolved. In

Sirajuddin's case rule 2(2) (c) of Schedule I to the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, tell for consideration and the question was whether for computing the compensation super-tax had to be deducted besides the income tax from the gross income under rule 2(2) (c) of the said schedule. Two reasons were given by their Lordships of the Supreme Court in coming to the conclusion that the expression 'income tax' in rule 2 (2) (c) of Schedule I excluded super-tax

(I) It was not legally possible to disintegrate and allocate a portion of the super-tax to the income attributable to the big forest and the rules made under the Act did not provide for any machinery for allocating the super-tax payable on the total income in the different sources; and

(ii) the mention of one of the two well understood expressions was an indication that only income tax was intended to be deducted. It would thus appear that the decision was based on the construction of the rule itself having regard to, and in the light of, the various provisions of the Act under consideration. In the result, my conclusion on this point is that Gupta was entitled to salary free of supertax as well and this is further strengthened by the fact that for several years super-tax was paid by the company without any objection. I am not prepared to accept the suggestion by the learned counsel for the company that its Directors may not have noticed this irregularity for all these years.

The lest of the judgment relates to decisions on various facts and is not necessary for reporting purposes. Editor.]

(5) In the result, Regular First Appeal Nos. 88-D of 1956 and 104-D of 1956 fail and are dismissed with costs, but Regular First Appeal No. 89-D of 1956 is partially allowed to the extent indicated above with pro- portionate costs.

K. S. Hegde. Cj

(6) I agree.