

(2005) 04 BOM CK 0037

In the Bombay High Court

Case No : Originating Summons No. 153 of 1995 in Originating Suit No. 478 of 1995

Mr. S. Sundara Raman and Another

APPELLANT

Vs

Mr. P. Singh and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 238

Citation : (2005) 04 BOM CK 0037

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Advocate : H. Tur and Balkrishna, instructed by Crawford Bayley and Co, for the Appellant; None, for the Respondent

Judgement

S.U. Kamdar, J.—The present Originating summons raises certain questions of interpretation scheme as provided under Rule 238 of the Bombay High Court (Original Side) Rules. Some of the brief facts of the present case are as under:

2. The company known as IBM World Trade Corporation (hereinafter referred to as "the Company") constituted a trust known as IBM World Trade Corporation India Superannuation Scheme Trust. The scheme was constituted for welfare and benefit of the employees of the Company. The trust was executed on 10.3.70. The essential object of the trust was to establish a pension scheme for the benefit of the employees. The company was contributing towards the said corpus of the trust for conferring the benefits of pension under the scheme to the employees. The said deed of trust was executed on 10.3.70 and the supplemental Deed of Trust was executed on 27.10.77. Some of the clauses of the deed of trust which are relevant for the purpose of interpretation of the questions of law framed before me are briefly set out hereunder:

3. The Trusts declared by this Trust Deed shall be irrevocable and is subject to the law for the time being in force in India relating to Superannuation Funds.

7. The sums in cash and other assets retained by the Trustees shall constitute the funds of the Scheme and the Trustees shall hold said funds upon such trusts and with and subject to such powers and provisions as are or shall be contained in these presents as the Rules for the time being in force to the intent that the said funds shall be established for the benefit of the Members as defined by the Rules. No money belonging to the Fund shall be receivable by the Company under any circumstances nor shall the Company have any lien or charge on the funds.

31. The Trusts hereof shall be determined in the following events: (a) When the purpose for which the Scheme was established has been accomplished. (b) The Company resolves that the Scheme shall be terminated. This clause shall be subject to the limitations provided in clauses 32 and 33.

32(a). It shall be impossible by operation of the Scheme, by natural termination thereof, by power of revocation, or amendment, by the happening of any contingency, by collateral arrangement, or by any other means for any part of the corpus or income of the Fund to be used for or diverted to purposes other than the exclusive benefit of Member, retired Members, and their dependents.

(b) Notwithstanding any provision herein to the contrary, during the first ten years after the effective date hereof, the benefit provided by the Company's contributions for Members whose annual benefit provided by such contributions will exceed Rs.11,350/-but applicable only to the 25 higher-paid employees who are not Members at that time but may later become Members, shall be subject to the following conditions:

(1) Such benefits shall be paid in full which have been provided by Company Contributions not exceeding the larger of the following amounts:

(i) Rs.150,000/-

(ii) A sum computed by multiplying the number of years since the effective date hereof by 20% on the first Rs.375,000/- of the Member's average annual salary paid in the last five years.

(2) If the Scheme is wound up or the full current costs thereof have not been met at any time within ten years after such effective date, the benefits which any of the Members described in paragraph (b) of this clause may receive from the Company's contribution shall not exceed the benefits set forth in (1) of this clause.

(3) If a Member described in paragraph (b) of this Rule leaves the service of the Company for reasons other than retirement, when the full current costs have been met, the benefits which he may receive from the Company's Contributions shall not at any time within the first ten years after the effective date exceed the benefits set forth in (1) of this clause.

(4) If at the end of the first ten years the full current costs or not met, the

limitations will continue until the current costs are met for the first time.

33(a). The Employer may, at any time, on giving seven days' notice in writing to the Trustees, cause contributions to the Scheme cease and, on such notice being given by the Employer, the benefits which have accrued prior to the effective date of such discontinuance of Company contributions are non-forfeitable to the extent then funded.

(b) If the Scheme shall be terminated, the benefits which have accrued prior to the date of termination are non-forfeitable to the extent then funded.

(c) Subject to the approval of the Commissioner of Income Tax, if the Scheme is terminated or in the event of complete discontinuance of Company contributions, any excess which shall remain in the Scheme, after all liabilities have been satisfied or fully provided for, shall be allocated to the Trustees for the purpose of distribution among the members in the proportion that each member's accrued benefits bears to the total accrued benefits of all members of the Scheme at the date the Scheme is terminated or at the effective date of the complete discontinuance of Company contributions.

(d) Subject to the approval of the Commissioner of Income Tax, in the event of termination of the Scheme, the Trustees may make such arrangements, including the establishment of a new Trust, or enter into such agreements as they in their uncontrolled discretion shall deem fit for the distribution to the members of accrued benefits and any excess which may be allocated to the members.

3. Sometime in or about 1973 an act known as Foreign Exchange Regulation Act, 1973 was enacted by the Parliament. Under the provisions of the said Act foreign companies were put under certain restrictions and curbs were imposed on their activities in India. In view of the aforesaid provisions, the company decided to wind up its operation in India. Thus, it became necessary that the employees of the said company were required to be given either retrenchment or voluntary retirement. In view thereof, company prepared a scheme known as Special Opportunity Program for its employees in the month of November 1996 and under the said scheme it was provided that those employees of the company who desired voluntarily to leave employment of the company could do so on receiving a special compensation package. In November 1977 another such package was formulated and the said plan was made applicable to all the employees of the company who would leave the services of the company as on 31.5.78.

4. Under Clause 33(a) of the said deed of trust, it was inter alia provided that the employer i.e. the Company after giving requisite notice in writing to the plaintiffs, ceased contributions to the trust. On such notice being given the said scheme will be wound up and discontinued subject to further terms and conditions contemplated under the said scheme. In view thereof, on 30.11.77, the company exercised their right to stop the contribution to the said scheme and they ceased to contribute to the said trust. In view of the aforesaid act on the part of the

company in effect the said trust ceased to continue and whatever amount available in the trust as corpus of the said trust was required to be distributed among the beneficiaries. On 9.1.78 the plaintiff addressed a letter to all eligible members and/or beneficiaries of their entitlement amount from the said fund. The company had carried out their own computations of the entitlement of the beneficiaries and they called upon each of them to collect the said amount from the trust. In view of the complete discontinuity of the scheme by the company certain disputes arose and earlier an Originating Summons was moved by the trustees being Originating Summons bearing No.105 of 1979 in Suit No.317 of 1979 in this Hon"ble Court. By an order dt.18.12.80, this Hon"ble Court answered the said questions raised in the said Originating Summons and accordingly disposed of the same.

5. However, there was a litigation initiated by some of the employees who voluntarily resigned from the company before the Labour Courts of Madras and Bombay contending that they are entitled to receive certain benefits of the scheme and by order and Judgment dt.18.2.97 Supreme Court has resolved the said issue by holding that the consolidated sum of Rs.5000/-each be paid to each of the said employees who resigned and left on or before 1.11.76. This payment will be in full and final settlement of all the claims including claim for superannuation against the management and the trust.

6. On 4.9.87, trustees who are the plaintiff before the court approached the Commissioner of Income Tax for his approval to disburse the funds which were lying in the said trust so that effectively the said trust can be wound up. By an order dt.4.9.87, the Income Tax Officer has granted the approval for the disbursements of the said fund. Accordingly in November 87 in accordance with the direction of the Supreme Court the entitlement of each employee was recalculated and by letter dt.9.10.87 plaintiffs informed various beneficiaries of the trust of the orders of the Apex court and their revised entitlement amount. It seems that out of 850 members who were entitled to under the orders of the Apex Court for revised entitlement amount 840 members has collected the same. However, the plaintiffs have been unable to disburse the entitlement amounts to 10 members because these members are either untraceable or have not come forward to claim their dues from the fund. The aggregate amount is Rs.2,68,000/-. The said amount since not disbursed have also been accumulated with interest and is lying with the trustees. It is the case of the trustees that inspite of various efforts said members are not available. The plaintiffs have inserted several advertisements setting out the names of the members in national newspapers like the "Indian Express", the "Times of India". Still the members did not come forward to take the money. Thus, they were required to file the present petition for direction for disbursal of the said amount. It has been prayed by the trustees that this court should permit the amount lying in the trusts be paid over to Indian Red Cross Society or such other organisation. Seeking the aforesaid relief the following questions are framed by the plaintiffs for the purpose of answering the same.

(a). Whether the fact that the members entitled to moneys in the fund are untraceable would mean that the fulfilment of the purposes for which the Trust was set up becomes impossible and the Trust is thereby extinguished?

(b) Irrespective of the answer to question (a) above, whether in view of the fact that the members entitled to the moneys lying with the fund have not come forward to claim the same despite all reasonable efforts by the Plaintiffs, it would in the circumstances be proper for the Plaintiffs to donate in the name of the respective members the moneys lying with the fund to The Indian Red Cross Society, a recognised charity or to such other charity as may be directed by this Hon"ble Court?

(c) Whether the balance moneys, if any, lying with the fund after meeting or providing for all expenditure and liabilities can be donated by the Plaintiffs in the name of the Trust to the Indian Red Cross Society or to such other charity as may be directed by this Hon"ble court?

(d) Whether on the donation by the Plaintiffs of the moneys lying with the fund to the said recognised charity or to such other charity as may be directed by this Hon"ble Court, the Trustees can be considered to have been relieved of all their duties and obligations under the Deed of Trust dated 10th March, 1970 and the said Trust can be said to have been extinguished?

(e) What provision should be for the costs of this Originating Summons?

(f) And generally, what further and other orders should, in the circumstances, be made?

7. In my opinion, only one question is required to be answered to answer all the aforesaid questions framed by the plaintiffs i.e. whether on ceasing of the contributions to the scheme by the employer and consequently on discontinuance of the scheme under clause 33(a) the amount which is lying therein as unclaimed can be disbursed to the third party who are the charity organisation or whether a trust contemplates a further disbursement of the amount which is accrued with interest in the said trust. The answer to the aforesaid question in my opinion lies in correct interpretation of clauses 31, 32 and 33 of the said trust. C.31 provides for determination of the trust under various events. Under clause 31(a) the company has been empowered to resolved that the scheme shall be terminated. However, such termination of the scheme is made subject to limitation provided under clause 32. Clause 32(a) is wide enough to cover all grounds of termination. Firstly, it declares that it shall be impossible by operation of the scheme by natural termination. Secondly, it provides termination by revocation, or amendment, by the happening of any contingencies, by collateral arrangement. Clause 33 in terms provide for an option to the employer for termination of the scheme by giving 7 days notice in writing. It is an admitted position in the present case that such a power as contemplated under 33(a) has been exercised and the company has ceased to contribute under the said scheme. Clause 33(c) provides that if the scheme is terminated or in the event of

complete discontinuance of Company contributions, any excess which shall remain in the Scheme, after all liabilities have been satisfied or fully provided for, shall be allocated to the Trustees for the purposes of distribution amongst the members of the Scheme.

8. In my opinion, the answer to the questions lies in clause 33(c) of the said scheme. Clause 33(c) in terms provides for eventuality of the termination of the scheme and consequence distribution of fund lying in the account of the said trust. Firstly, the trust is required to discharge its liability which will include distribution to the members in accordance with the terms of the scheme and after discharge of liability the balance amount has to be allocated to the trustees for the purpose of further distribution among the members in the proportion that each member's accrued benefits bears to the total accrued benefits of all members of the scheme as on the date of termination of the scheme or at the effective date of the complete discontinuance of Company's contributions.

9. Thus, in my opinion clause 33 contemplates further discharge of all liabilities including liability of the beneficiaries and the trust. If there is any amount still outstanding then the same is to be redistributed among the beneficiaries themselves in proportion to the amount they will be entitled to before discontinuation of the said scheme.

10. However, the learned counsel for the plaintiff has vehemently contended that clause 33(c) applies only to the termination as contemplated under clause 31. The said clause provides that the scheme shall be terminated subject to the limitations provided in clauses 32 and 33. It has been thus, contended that clause 33(c) is not connected with clause 33(a). I am unable to accept the aforesaid contention. Clause 33(a) is a scheme by itself and (a), (b) and (c) of the said clause 33 are integral part thereof and are to be read in consonance with each other. Apart therefrom the words in clause 33(c) "or in the event of complete discontinuation of company contributions" itself signify that in an event of any eventuality as contemplated under clause 33(a) occurring the provisions and consequence contemplated under clause 33(c) would follow. Thus, there is a direct nexus between clauses 33(a) and 33(c) of the scheme and therefore in my view the distribution of the amounts has to be in accordance with clause 33(c).

11. The learned counsel for the plaintiff has however, contended that the distribution contemplated under clause 33(c) is not a distribution in respect of the excess amount which is not claimed and lying with the trust but which is in respect of the original corpus. I am not in a position to accept the aforesaid contention also because clause 33(c) itself contemplates the payment of liability only in respect of excess amount. Not only that but the said amount is directed to be paid on the basis of the proportionate benefits which the employees have already received in first round of distribution from, the trust fund. In the aforesaid circumstances, I am unable to accept the interpretation sought to be placed by the learned counsel for the plaintiff. I, therefore, answer the questions as under: That the trustees will be liable to redistribute the balance of the

amount lying in the corpus of the trust which is inclusive of interest once again to all the members who are beneficiaries under the said trust in proportion to their entitlement and are not entitled to transfer the said amount to Indian Red Cross Society and/or any other charity organisation as claimed by them.

12. For the aforesaid purpose I had already directed by my order dt.28.3.05 for the plaintiffs to give an advertisement in the two leading newspapers in Delhi inviting claims. However, the learned counsel states that there is a delay in giving an advertisement and accordingly, I direct that the trustees must invite claim from the members who are the employees of the company by giving advertisement in two leading newspapers where operations of the company were carried out and invite all such employees and beneficiaries to take the amount lying in the trust in the proportion to their entitlement as provided under clause 33(c) of the said trust. I answer the question accordingly. In view thereof, the Originating Summons as well as Suit stands disposed off in the aforesaid terms. However, there shall be no order as to costs.