(2006) 08 DEL CK 0210

In the Delhi High Court

Case No : LPA 669 and 670 of 2006

Mysore Sales International Limited and Another — APPELLANT

Vs

Tarun Chaturvedi — RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Citation : (2006) 91 DRJ 91

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Rajesh Mahale and C.B. Guru Raj, for the Appellant; Subhash Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—These appeals are directed against an order dated 17.5.2005 of the learned Single Judge allowing the Writ Petition(C) 11124 of 2004 filed by Respondent and against an order dated 21.2.2006 passed in CM No 6673 of 2005 by which the application filed by the appellants for recall of the order dated 17.5.2005 was rejected by the learned Single Judge.

2. The brief facts leading to the filing of the present appeals are that the respondent joined the services of the Appellant No. 1 in April 1984. Later on, he was promoted as Sales Supervisor in 1987, and as Sales Officer in 1996. From 1997 he was designated as Assistant Sales Manager in the Delhi office of the Appellant No. 1. A Voluntary Retirement Scheme (VRS) was introduced by the Appellant No. 1 on 2.12.2003. The salient features of the VRS are as under:

(v) An employee whose request for VRS is accepted would be entitled to an ex-gratia payment equivalent to an amount consisting of salary of 35days for every completed year of service and 25 days for every year of service left before superannuation. However, it shall be subject to minimum amount of salary calculated at the rate of 45 days for every completed year of service only. It shall also be subject to a maximum amount not exceeding any of the following.

1.amount of salary calculated at the rate of 60 days for each completed year of service.

2.monthly salary at the time of voluntary retirement multiplied by the balance months of service left before normal date of retirement

3.Rupees five lakhs.

(vi) The management reserves the right to accept or reject any request for VRS without assigning any reason.

(vii) Once the option exercised by an employee under VRS has been accepted by the company and communicated to the employee in writing it shall not be open to the employee to withdraw the option.

(xii) An application for voluntary retirement shall not be accepted from the employee against whom proceedings for termination of employee on disciplinary grounds of unsatisfactory performance while in service are in progress or under contemplation or under litigation.

(xiii) The Managing Director of the company has powers to accept or reject the application for voluntary retirement up to the level of Manager (E-1 cadre). In the case of employee above this level, the Board of the company is the authority for accepting rejecting the application of voluntary retirement.

(xiv) All the amounts payable under the scheme shall be generally settled within 30 days from the date of acceptance of the option under VRS by account payee cheque.

3. The respondent accordingly, applied for the VRS on 12.1.2004 and it is not dispute that his application was accepted by the Appellant No. 1 by its letter dated 28.1.2004. According to the said letter, the respondent was permitted to voluntarily retire from the services on 31.1.2004. It is also not in dispute that as per the calculation under para (v), the sum payable to the respondent on account of the VRS was around Rs 8.6 lakhs. Since no payments were forthcoming despite the reminders dated 27.3.2004, 5.4.2004 and 14.5.2004 sent by the respondent to the Appellant No. 1, he filed Writ Petition (C) 11124 of 2004 in this Court.

4. The Appellant No. 1 in its reply to the writ petition stated for the first time that certain losses caused to it on account of the dealings of the respondent with third parties had been noticed some time in 2003; that an Explanation had been sought from one Shri Ganesh, the then Manager of the Delhi Branch who was the senior officer of the respondent. Shri Ganesh had by his reply dated 15/19.3.2004 informed the Appellant No. 1 that the lapses were attributable to the respondent and another employee. Accordingly on 17.6.2004 a show cause notice was issued to the respondent by which he was asked to explain certain transactions pertaining to the period of July 2001 to March 2003.

5. When the writ petition was taken up for final hearing before the learned Single

Judge, none appeared for the appellant herein. The learned Single Judge, after noticing the facts, held that the entire story of losses caused on account of the respondent in dealings with third parties had been concocted in order to delay if not defeat the pecuniary commitment and liability of the appellant to make payment under the VRS. It was held that losses frequently occur in business, and this by itself would not justify fastening the blame on any of the employees or withholding the VRS payment. While allowing the writ petition and directing the appellant to pay the respondent a sum of Rs. 8,60,000/- together with interest @ 6% per annum the learned Single Judge, by the first impugned order dated 17.5.2005, allowed Appellant No. 1 to take action that was permissible to it in law against the respondent for recovery of losses intentionally caused to the Appellant No. 1 by the respondent. It was further clarified that this remedy shall not be foreclosed by the fact that the writ petition was being allowed.

6. Since the appellant''s counsel was not present at the hearing when the said order dated 17.5.2005 was made, the appellant No. 1 filed an application being CM No 6674/2005 for ''recall'' of the said order. The said application was dismissed by the learned Single Judge by the second impugned order dated 21.2.2006. The learned Single Judge, however, reiterated that recourse to any other remedy was not foreclosed.

7. While admitting the present appeal on 28.4.2006, this Court granted a stay of the operation of the impugned orders subject to the Appellant No. 1 depositing in this Court a sum of Rs. 4,30,000/- within two weeks from the date of order. The Court further directed that the said amount shall be released in favor of the respondent subject to his furnishing an undertaking to the Court that he shall refund the same to the appellant if the appeal is eventually decided against him.

8. We have heard the submissions of Mr. Rajesh Mahale, the learned Counsel for the appellant and Mr. Subhash Oberoi, the learned Counsel for the respondent and perused the records. Mr.Mahale submits that the payment of dues under VRS was withheld on account of the facts that emerged subsequent to the acceptance by Appellant No. 1 of the application made by the respondent. He further relied on a special provision introduced in the rules governing the services of the employees of Appellant No. 1, approved by its Board of Directors on 1.8.2003, whereby departmental proceedings could be instituted even against a retired employee. This provision also permitted the Appellant No. 1 to withhold the payment of gratuity and other terminal benefits to such an employee till the conclusion of the proceedings. He expressed the apprehension of Appellant No. 1 that if the amount due under the VRS was paid to the respondent and later he was found guilty in the departmental proceedings, it would be impossible for Appellant No. 1 to recover the said sum from the respondent.

9. Mr.Subhash Oberoi, learned Counsel for the respondent submits that Clause (xii) of the VRS scheme specifically states that an application for voluntary retirement ''''shall not be accepted from the employee against whom proceedings for termination of employment on disciplinary grounds of unsatisfactory

performance while in service are in progress or under contemplation or under litigation.'''' He submits that if the story now put forth by Appellant No. 1 about certain enquiry having been initiated in 2003 itself, was true, then it was open to the Appellant No. 1 not to have accepted his application for VRS. On the contrary, having accepted the application by its letter dated 28.1.2004, and permitting him to retire with effect from 31.1.2004, the Appellant No. 1 was bound to settle all the amounts payable under the scheme within 30 days thereafter in terms of Clause (xiv) of the VRS. He pointed out that till date the Appellant No. 1 had not withdrawn its letter dated 28.1.2004 permitting him to retire and Therefore, the logical consequence of such letter of acceptance could not be avoided by Appellant No. 1. While denying the allegations now made by Appellant No. 1 against the respondent Mr. Oberoi submits that respondent has always been ready and willing to answer the show cause notice dated 17.6.2004. He showed us copies of the letters dated 29.11.2004, 6.12.2004, 30.5.2006, 16.7.2006 and 22.7.2006 addressed to the Appellant No. 1 seeking copies of certain documents which were required by him for replying to the show cause notice. However, according to Mr. Oberoi, till date these documents have not been supplied to him by Appellant No. 1. He reiterates the willingness of his client to furnish an Explanation to the show cause notice provided the documents were given to him.

10. After considering the submissions of the learned Counsel for the parties and perusing the records, we are of the view that there is no merit in this appeal. The Appellant No. 1 considered and accepted the application made by the respondent under the VRS and conveyed its acceptance by a letter dated 28.1.2004 addressed to the respondent. The respondent was permitted to voluntarily retire with effect from 31.1.2004. We find no justification for Appellant No. 1 not having made the payment of VRS within 30 days thereafter in terms of Clause (xiv) of the VRS. The Explanation now offered that pursuant to show cause notice dated 29.12.2003 issued to one Shri Ganesh, the Appellant No. 1 received a reply dated 15/19.3.2004 implicating the respondent herein also does not impress us. On its own showing, the Appellant No. 1 waited for another three months thereafter to issue the show cause notice dated 17.6.2004. By this time the respondent had already sent three reminders on 24.7.2004, 5.4.2004 and 14.5.2004. The Appellant No. 1 could have easily replied to the respondent. If it was contemplating any disciplinary action it could have easily informed him of the same. For reasons best known to it, it did not do so. Learned Counsel for the appellant concedes that Appellant No. 1 may have been remiss on this score but is unable to explain how it could avoid paying the dues under the VRS on this ground.

11. The learned Counsel for respondent is right in contending that the letter of acceptance dated 28.1.2004 not having been withdrawn, there was no justification for the Appellant No. 1 not to make the payment under the VRS. We also find that the reliance placed by the Appellant on the special provision in the rules permitting disciplinary proceedings against the retired employees does not

constitute a justification for Appellant No. 1 to withhold the payment under the VRS. In the memorandum of appeal in para 4.5, the Appellant No. 1 states that ''MSIL is yet to initiate proceeding as MSIL has not received the reply of the respondent it is only at this stage of preliminary enquiry that MSIL has issued the notice to the respondent''. Therefore, the factual position is that no departmental proceeding has in fact been initiated against the respondent as yet. Therefore, the reliance placed by the appellants on the said special provision of the service rules is to no avail.

12. In any event we find that the learned Single Judge has taken care to protect the interests of the Appellant No. 1 by not foreclosing its right to proceed departmentally against the respondent if it finds that such a course is warranted. The assurance on behalf of the respondent that he will co-operate with the Appellant No. 1 and reply to the show cause notice should allay the apprehensions of the Appellant No. 1 on this score. Learned Counsel for the appellant informed us that Appellant No. 1 had written to the respondent asking him to come and inspect the relevant documents at the office of the Appellant No. 1. We do not appreciate the reluctance on the part of Appellant No. 1 to supply copies of documents asked for by the Appellant, who is a retired employee and cannot be expected to have easy access to the records of Appellant No. 1. By refusing to give the copies of the documents demanded by respondent the Appellant No. 1 is itself contributing to the delay in the respondent replying to the show cause notice. We are of the view that Appellant No. 1 should not delay any further giving copies of documents requested for by the respondent. As and when such copies are received by him, the Respondent will reply to the same without any delay, consistent with the assurance given to this Court.

13. The learned Counsel for the Appellant sought to contend that his non-appearance before the learned Single Judge at the hearing on 17.5.2005 was on account of a genuine mistake in noting of the date of hearing. He further submits that on the application for recall, the learned Single Judge ought to have heard the Appellants on merits. We find that the second impugned order dated 21.2.2006 does indicate that the learned Single Judge had heard the Appellants on merits. In any event, we have ourselves considered the submissions of learned Counsel for the Appellants on merits at length. Therefore there is no merit in this submission as well.

14. Finally, we would like to observe that the learned Single Judge has expressed certain views on the tenability of the allegations made by Appellant No. 1 against the respondent in regard to certain transactions during the period from June 2001 to March 2003 which are alleged to have caused losses to the Appellant No. 1. We may clarify that if the Appellant No. 1 decides to initiate departmental proceedings against the respondent after receipt of a reply to show cause notice dated 17.6.2004, these observations would not influence such departmental proceedings.

15. We are of the considered view that the learned Single Judge was right in concluding that there was no justification for Appellant No. 1 to withhold the dues of the respondent under the VRS and that the direction given in the impugned order dated 17.5.2005 in that regard does not call for any interference whatsoever.

16. Pursuant to the order dated 28.4.2006 passed by this Court, Appellant No. 1 had deposited a sum of Rs 4,30,000/- in this Court. The respondent had filed C.M. No. 9860 of 2006 along with an affidavit of undertaking for release of the said sum. We direct Registry to release the said sum of Rs. 4,30,000/- to the respondent not later than 30.9.2006 and discharge the undertaking since we are dismissing the present appeals. CM No. 9860 of 2006 is accordingly disposed of. We also direct the Appellant to pay to the Respondent the balance sum of Rs 4,30,000/- not later than 30th September 2006.

17. Learned Counsel for the Appellant finally submitted that the directions given in the impugned order for payment of costs of Rs 5,000/- to the respondent may not be justified. In the facts and circumstances of the present case, we see no reason to interfere with this direction as well.

18. With the above observations and directions, the appeals are dismissed, with no order as to costs.

