
(1968) 04 MP CK 0009
In the Madhya Pradesh High Court
Case No : F.A. No. 31 of 1961

Parashar Singh

APPELLANT

Vs

Hindustan Manganese Mines Ltd. and others

RESPONDENT

Date of Decision : 22-04-1968

Acts Referred:

Contract Act, 1872 — Section 39

Citation : (1969) JLJ 37 : (1968) MPLJ 846

Hon'ble Judges : T.C. Shrivastava, J;G.P. Singh, J

Bench : Division Bench

Advocate : M.Y. Shareef and A.L. Halve, for the Appellant; E.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

This first appeal is by the Plaintiff and arises out of a suit filed by him for arrears of remuneration and damages for wrongful dismissal.

The facts and circumstances leading upto this appeal may first be stated. Certain manganese mines situated near village Tirodi in district Balaghat of Madhya Pradesh and known as Tirodi Group and Mines were owned by one Shyamji Narainji of Nagpur. The Plaintiff Parashar Singh was an employee of Shyamji Narainji and since 1948 was working as General Manager of the Manganese mines. The 1st Defendant, Hindustan Manganese Mines Ltd., is a company which was registered at Nagpur on 17th February, 1953 and was formed with the object of purchasing from Shyamji Narainji the Tirodi Group of Mines and to carry on mining business. This company was at all relevant times managed by the 2nd Defendant, Bhikabhai Purshottamdas and Sons Ltd. a managing agency company which was also registered at Nagpur on 17th February, 1953 and was formed for the management of the mining concerns of the 1st Defendant company. The Defendant No. 3 Natwarlal was one of the promoters of 1st Defendant company

and at all relevant times was its Director as also the Managing Director of the 2nd Defendant company. On 27th January, 1953, the promoters of the 1st Defendant company entered into an agreement with Shyamji Narainji for the purchase of Tirodi Group of Mines. From 1st February, 1953 the mines were worked for the benefit of the promoters and their nominees. The State Government sanctioned the transfer of the mines in favour of the 1st Defendant company some time in June 1953 and thereafter the mines were formally transferred in the company's favour. The Plaintiff, as already stated, was the General Manager of the mines and his services were continued by the promoters and the 1st Defendant company till 31st March, 1954.

The Plaintiff's appointment as General Manager was approved by a resolution of the Board of Directors of the 1st Defendant company passed on 12th August, 1953. According to this resolution the Plaintiff was to receive Rs. 625 as monthly salary. In addition to this the Plaintiff was to receive Rs. 1-4-0 per ton as commission on manganese ore extracted from February, 1953 to July, 1953 and Re. 1 per ton as commission on the manganese ore railed by the company out of the production after July, 1953.

According to the Plaintiff in addition to the above terms it was orally agreed that the Plaintiff's services will not be terminated except for adverse circumstances resulting in stoppage of the mines or working of the mines on profitable basis or for any other just cause and in that eventuality he will be entitled to two months' prior notice and to his allowance at Rs. 1-4-0 per ton on the manganese ore raised and not at Re. 1 per ton on the ore railed.

On 30th March, 1954 the Defendant No. 3 intimated by a letter to the Plaintiff that from 1st March, 1954 the Plaintiff will not be entitled to any commission. The Plaintiff did not accept this variation and his services were discontinued after 31st March, 1954. The Plaintiff according to his case in the plaint remained out of service till 31st March, 1955 when he got employment with J.B. Thakkar and Best Minerals Ltd., another mining concern. The Plaintiff on 30th March, 1957 brought the suit, which has given rise to this appeal for recovery of Rs. 54,580-8-0 against all the Defendants. The Plaintiff per Schedule B to the plaint claimed Rs. 3,592-12-0 as arrears of commission after deducting the amounts drawn by him for the period 1st August, 1953 to 31st March, 1954 at the rate of Rs. 1-4-0 per ton on the ore raised, Rs. 1,250 as salary and Rs. 5,482 as commission for notice period of two months, Rs. 115-5-0 as bonus and Rs. 3,758-7-0 as interest at 1% p. m. The total claim per Schedule B is Rs. 14,198. In addition to this the Plaintiff claimed, per Schedule C, Rs. 7,500 as salary and Rs. 32,892 as commission, in all Rs. 40,392 for the period from 1st April, 1954 to 31st March, 1955.

The trial Court decreed the Plaintiff's claim to the extent of Rs. 8,190 against all the Defendants. The Court found that the arrears of commission should be calculated at the rate of Re. 1 per ton on the ore railed and the Plaintiff was entitled to receive Rs. 3,547 on that account. The Court also found that the

Plaintiff was further entitled to receive one month's salary and commission, i. e. Rs. 625 and Rs. 2,747, respectively, as notice pay. It also allowed Rs. 1,277 as interest for three years on arrears of commission.

The Plaintiff has appealed against the decree claiming that his suit to the extent of Rs. 47,613-25 P. ought to have been decreed. The Defendant 3 has filed a cross-objection that no decree should have been passed against him.

The first contention raised on behalf of the Appellant is that according to the terms of contract his employment was permanent and his services could not be terminated except for adverse circumstances resulting in stoppage of the mines or working of the mines on profitable basis or for other just cause and by giving two months' notice. These terms according to the Plaintiff were orally agreed upon in between him and the Defendant No. 3. The Plaintiff in his evidence as P.W. 3 in para 7 stated that the Defendant No. 3 did show him the resolution of the Directors of the 1st Defendant company passed on 12th August, 1953, containing his terms of employment and he did notice that the aforesaid terms were not contained in the resolution. He further stated that the Defendant No. 3 assured that he need not worry about the omission and the Defendant No. 3 will be responsible for the observance of those terms. The Defendant No. 3 who was examined as D.W. 1, denied that any terms in addition to those contained in the company's resolution of 12th August, 1953 were agreed in between him and the Plaintiff regarding his employment. The Plaintiff's version about the additional terms of employment, which do not find place in the company's resolution, is wholly unbelievable. Had the Plaintiff's version been true, he would have lodged written protest against the company's resolution and would not have felt satisfied with the oral assurance of Defendant No. 3. Further, the Plaintiff is contradicted by his own notice (Ex. P. 14) where in paragraph 3 he enumerated his terms of employment but did not mention that his service was permanent and could be terminated in certain eventualities alone; rather in para 3 (d) of the notice he stated that the service was terminable on two months' notice at the desire of either side. Even this term as to two months' notice is not in the resolution. In our opinion, the terms on which Plaintiff was employed are all contained in the resolution of the 1st Defendant company which was passed on 12th August, 1953, and which reads as follows:

The Directors after thoughtful consideration resolved that the Managing Agents be and they are hereby authorised to appoint Mr. P.B. Bisen as General Manager at the Mines on monthly salary of Rs. 625 including all allowances plus Rs. 1-4-0 par ton as commission on manganese ore extracted from Mines from February 1953 to July, 1953 and upto Re. 1 per ton as commission on manganese ore that may be railed by the company after the transfer of mines, out of the production after July 1953.

It may also be mentioned that the Plaintiff has produced Jethalal (P.W. 5) who was one of the Directors of the 1st Defendant company- Jhethalal did not corroborate the Plaintiff about the additional terms except that of notice. As

already stated, even this alleged term of two months" notice does not find place in the resolution of the company which has been quoted above. Jethalal was confronted in para 15 of his deposition with the resolution passed on 12th August, 1953 as also with the minutes of the proceeding of the next meeting held on 19th December, 1953 when the minutes of the prior meeting were confirmed and he had no reasonable explanation to offer for the omission of the term of two months in the company's resolution. It may further be noticed that the Plaintiff in his letters dated 31st March, 1954 and 13th April, 1954 (Exs. P-9 and P.11) did not mention any special terms including that of notice. This term of notice was first mentioned in the notice Ex. P-14 and the other additional terms were first mentioned in the plaint. As we have already said, in our opinion, all terms and conditions of Plaintiff's employment with the 1st Defendant company are contained in the company's resolution of 12th August, 1953 and the Plaintiff has failed to prove the additional terms pleaded by him.

The second contention raised on behalf of the Appellant is that the termination of his employment from 1st April, 1954 was wrongful. The finding of the lower Court is in favour of the Plaintiff on this point, but as this finding was contested before us on behalf of the Respondent the point requires further examination. The argument of the Respondents is that the Plaintiff in fact resigned his service. The question depends on the construction of two letters which are Exhibits P-8 and P 9. Ex. P-8 is a letter dated 30th March, 1954 which the Defendant No. 3 wrote on behalf of the 1st Defendant. By this letter the Plaintiff was intimated that from 1st April, 1954 he will not be paid any commission and will receive only his monthly salary. The material portion of the letter reads as follows:

It has been decided to discontinue the additional payment of commission to you on manganese ore railed in future. This arrangement will have effect from 1st April, 1954 You will thereafter be entitled to draw your monthly salary only which is already agreed upon.

We regret that adverse circumstances have compelled us to take the above course and hope at the same time that the new terms shall be acceptable to you. Please intimate to us whether you agree to the above proposal.

The language of this letter is clear enough to show that the company took a decision not to pay any commission to the Plaintiff from 1st April, 1954 and the Plaintiff could continue in service only if he accepted this variation. It must be remembered that the term as to payment of commission at the rate of Re. 1 per ton on the manganese ore railed was a very important term of employment and in fact as the accounts show the commission far exceeded the monthly salary of Rs. 625. After receiving this letter the Plaintiff declined to accept the variation and the new arrangement and claimed that the letter P. 8. amounted to premature notice of termination of service. It is thus that the Plaintiff wrote:

I am in receipt of your letter under reference, acting as a premature notice of termination of my services with respect to the previous agreement and inviting

emphatic no from me to your proposed new arrangement, based on imaginary adverse circumstances.

Kindly arrange for payment of my dues resultant to termination of service, which I hope as a gentleman and millionaire your good self will not fail in the test of maintaining your previous agreement and promise, without creating unpleasant complications.

Kindly also name in writing the person to whom I should hand over charge and the specific items of charges besides the manganese ore stacks on siding and mines. (Exh. P. 9.)

The point for consideration on these two letters is whether the Plaintiff resigned or whether his services were abruptly brought to an end by the Defendants. In our opinion, the letter Exh. P. 8 amounted to a repudiation by the Defendants of the previous contract of employment and the Plaintiff was within his rights to put an end to the contract by accepting the repudiation as a breach of contract by the Defendants. Putting in other words the letter, Exh. P. 8, intimating that the Plaintiff in future will be paid only his salary and not the agreed commission was a refusal by the Defendants to perform the promise in its entirety within the meaning of Section 39 of the Contract Act and the Plaintiff could put an end to the contract and sue for breach u/s 75: AIR 1943 34 (Privy Council) . The expression "wrongful dismissal" in itself includes a repudiation by the master of the essential obligation laid on him by the contract. As observed by Mc Cardie J.:

Dismissal may be effected by conduct as well as words. A man may dismiss his servant if he refuses by word or conduct to allow the servant to fulfil his contract of employment. The refusal must of course be substantial in the sense that it is not a mere repudiation of some minor rights of the servant or of non-vital provisions of the contract of employment. The question is ever one of degree. If the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and repudiation of the contract. I see no distinction in such a case as the present between repudiation by the Defendants of their contractual obligations and "a wrongful dismissal" in the ordinary sense of that phrase. [In re Rubel Bronze Metal Company, Limited and Vos. (1918) 1KB 315 at p. 323.].

The employment of the Plaintiff by the Defendants not being for any fixed duration was in the nature of general hiring and the Plaintiff was entitled to a reasonable notice before his contract of employment was brought to an end. As the Defendants by notice Exh. P. 8 issued on 30th March 1954, decided to change the contract in its essentials abruptly from 1st April 1954, they were clearly liable for damages on the footing that the Plaintiff's contract of service was wrongfully terminated.

The next question is on what basis the Plaintiff should be awarded damages. The Plaintiff in addition to arrears of remuneration has been awarded one month's remuneration (salary and commission) as damages for wrongful termination by

the Defendants of Plaintiff's contract of service. On behalf of the Plaintiff it has been urged that the Plaintiff could not secure employment for nearly a year and, therefore, one year's remuneration should be awarded as compensation.

The principles to be applied in determining the quantum of damages for wrongful dismissal were laid down by Erie J., in an oft-quoted passage which runs as follows:

The measure of damages for breach of promise now in question is obtained by considering what is the usual rate of wages for the employment here contracted for, and what time would be lost before a similar employment could be obtained. The law considers that employment in any ordinary branch of industry can be obtained by a person competent for the place, and that the usual rate of wages for such employment can be proved, and that when a promise for continuing employment is broken by the master, it is the duty of the servant to use diligence to find another employment. *Beckham v. Drake* (1849) 2 H L C 579, p. 606 : 81 R R 301, p. 318.

The question was examined by the Supreme Court in *S.S. Shetty Vs. Bharat Nidhi, Ltd.*, . and after stating that "the master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained". Their Lordships quoted with approval the following passage from *Chitty on Contracts*:

They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e. g. a month's notice, the damages will ordinarily be a month's wages

No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment and the fact that he has been offered a suitable post may be taken into account in assessing the damages.

The Plaintiff, according to his case as laid in the plaint, remained out of employment from 1st April 1954 upto 31st March 1955, when he got employment with J.B. Thakar and Best Minerals Lid, another mining concern. He stated the same thing in his examination-in-chief as P.W. 3 (para. 17). However, in cross-examination (para 36) he deposed, when confronted with his previous statement in a criminal case, that he was out of employment for some time during the period and for some time was employed by Shyamji Narayanji. It thus becomes clear that the Plaintiff was not out of employment for the whole year as initially alleged and deposed by him. Moreover, by making contradictory statements the Plaintiff failed to make out as to what period was lost before he was able to obtain a similar employment as he had with the Defendants. In this

state of the evidence, it cannot be said that the Court below was wrong in concluding that one month's remuneration (salary and commission), in addition to arrears due, will be proper measure of damages for wrongful termination of the Plaintiff's employment.

Realising the aforesaid difficulty it was urged on behalf of the Appellant that the Defendant No. 3, Natwarlal acted in excess of his powers in bringing about the Plaintiff's termination of service and, therefore, he was liable for the tort of procuring a breach of contract. It may be recalled that the Defendant No. 3 was a Director of the 1st Defendant company and the Managing Director of the 3rd Defendant company. The Plaintiff's contract of service was with the 1st Defendant company which was being managed by the 2nd Defendant company under a managing agency agreement (Exh. P. 22). Under this agreement the 2nd Defendant company had "the general conduct and management of the business and affairs" of the 1st Defendant company subject to the control, directions and supervision of its Directors. The managing agents were, however, not authorised, except with the previous approval of the Board of Directors, to exercise certain enumerated powers one of them being power to engage staff on behalf of the managed company except staff whose remuneration was within the limits prescribed by the Directors of the said company. By a resolution of the Board of Directors of the 1st Defendant company passed on 20th February 1955, the Managing Agents were given authority to engage employees on salary not exceeding Rs. 600 p m. Since the Plaintiff was getting salary in excess of Rs. 600 p in. his employment was approved by the Board of Directors of the 1st Defendant company. The letter Exh. P. 8, which has already been quoted and which brought about the termination of Plaintiff's employment was written by Defendant No. 3 as Managing Director of the Managing Agents for the 1st Defendant company. The argument is that as the Plaintiff was getting a salary in excess of Rs. 600 p. m. and as his appointment was actually confirmed by the Board of Directors of the 1st Defendant company, the termination of his employment was not within the power of the Managing Agents and, therefore, by writing letter Exh. P. 8 the Defendant No. 3 procured a breach of the contract existing between the Plaintiff and the 1st Defendant company,

The argument stated above assumes that since the Managing Agents could not appoint a person whose salary was in excess of Rs. 600 p. m. they could not also terminate such a person's employment. The Managing Agents had within their power "the general conduct and management of the business and affairs" of the 1st Defendant company. This general power will also include the power to terminate the services of the employees unless it could be said that as a matter of general principle the power to terminate the employment of the staff which could not be appointed by the Managing Agents could not vest in them. No such general principle was brought to our notice. Restrictions on the power to appoint staff whose remuneration exceeded a particular limit was placed with the object of avoiding excessive financial burden on the managed company, but that object does not hold good in restricting the power of termination of employment. In our

opinion, the powers of the Managing Agents in the matter of terminating the services of the staff as distinguished from appointment were not restricted and that power could be exercised, even in respect of an employee drawing more than Rs. 600 p. m., as a part of the general power of management of the business and affairs of the company.

Even otherwise, we are not satisfied that the Managing Agents or their Managing Director could be made liable for the tort of procuring a breach of contract with the managed company. The position of the managing agents or their Managing Director in relation to the managed company is that of an agent. It is true that in *Lumley v. Oye* (1843.60) All E Rule 208 the tort was defined in very wide language:

A person who, during the continuance of a contract of personal service, whether it be executory or not, wrongfully interrupts the relation subsisting between the parties to the contract by procuring one of them to commit a breach of the contract whereby the other party to the contract suffers damage commits a tort for which he is liable to the injured party in damages. [*Lumley v. Oye* ((1843) (60) All ER 208); quotation from head-note.]

But later cases have shown that the tort is primarily restricted to third persons and a servant or agent is not liable in tort for procuring a breach of his master's or principal's contract with another. The reasons for the restriction of the tort were well stated in *Said v. Butt* (1920) All E R R. 240 and 241:

But the servant who causes a breach of his master's contract with a third person seems to stand in a wholly different position. He is not a stranger. He is the alter ego of his master. His acts are in law the acts of his employer. In such a case it is the master himself, by his agent, breaking the contract he has made and, in my view, an action against the agent under the *Lumley v. Gye* (1843) (60) All ER 208 principle must, therefore, fail, just as it would fail if brought against the master himself for wrongfully procuring a breach of his own contract. This, I think, is the true answer to the ingenious arguments of counsel on behalf of the Plaintiff on this point. To hold otherwise might create at least three actions whenever a managing director or other authorised agent, knowingly procured a breach of the employer's contract. First, an action based on contract against the employer for the pecuniary loss caused by the breach of the contract; secondly, an action for tort against the agent who had procured the breach of contract, wherein the damages would be at large and might include every element of annoyance, inconvenience, or indignity; and, thirdly, an action against the employer himself for the tortious wrong committed by his authorised agent in procuring the employer to break his contract with the Plaintiff. This extraordinary result shows, I think, that the contention of the Plaintiff in this case cannot be sound. If the Plaintiff here be right in his submission, then the flood gates of litigation would indeed be widely opened.

Reference in this connection may also be made to *Scammell 67. and Nephew Ltd.*

v. Hurley (1929) 1 K B. 419. and D.G. Thompson and Company Ltd. v. Deakin (1952) 2 All E R 361, p. 370. where Said v. Butt (1920) All E R R. 240 and 241. was applied and approved. The result may be different where the servant or agent acts mala fide and outside the course or scope of employment or authority. But that is not the position in the instant case. In our opinion, the Defendant No. 3 was not liable in tort to the Plaintiff.

There is another reason why the argument seeking to fasten liability on the basis of tort must fail. The tort, if any, was committed on 1st April 1954 when the Plaintiff's employment with the 1st Defendant company was brought to an end. The suit was filed on 30th March 1957 and although within limitation for a cause of action on breach of contract was barred by time on a cause of action on the basis of tort under Article 36 of the Limitation Act, 1908 which prescribed a period of limitation of two years for such a suit.

We will now advert to the cross-objection filed by the Defendant No. 3 which seeks to avoid any liability of the Defendant. The only argument addressed is that the claim in suit being based on breach of contract, the Defendant No. 3 who was in the position of an agent of 1st and 2nd Defendants cannot be made liable. This argument has to be accepted. We have already held that there can be no liability on the 3rd Defendant on the basis of tort. As regards liability on contract, the Defendant No. 3 was in the position of an agent and cannot be made liable for breach of contract.

The result is that the appeal fails and is dismissed with costs. The cross-objection is allowed and the decree of the trial Court is modified to this extent that the Plaintiff's suit will stand dismissed as against Defendant No. 3. There will be no order as to costs of the cross-objection.

Appeal dismissed; cross-objection allowed.