(2012) 02 DEL CK 0143

In the Delhi High Court

Case No : Regular First Appeal No. 161 of 2009

Renu Aggarwal APPELLANT

Vs

ICICI Bank Ltd. and Others RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Specific Relief Act, 1963 — Section 14

Citation : (2012) 02 DEL CK 0143

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : C.M. Jayakumar, for Mr. C. Hari Shankar, for the Appellant; Rishi Kapoor and Mr. Pankaj, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha

1. The appellant has challenged the judgment and decree of the learned Trial Court whereby the learned Trial Court dismissed the appellant''s suit.

2. The appellant was working as a Manager, ICICI Bank, Vikas Puri Branch. On 27th April, 2000, the respondent bank issued a chargesheet to the appellant containing the following charges:-

i. Allowing LBD facility for selected customer on routing basis exceeding powers without obtaining permission/sanction which are accommodative in nature and are acts highly prejudicial to the interest of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

ii. Maintaining the LBD transactions in manual ledgers although LBD module was available in the system and not making the entries in the manual ledger relating to the Mastan group accounts in order to suppress the acts which are unbecoming of an officer of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

iii. Indulging in fraudulent activities or debiting various customers accounts without the knowledge in order to accommodate selective customers are acts highly prejudicial to the interest of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

iv. Making fictitious entries in "GL : Local Bills Discounted Account" by direct entries as if cheques were purchased are acts unbecoming of an officer of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

v. Allowing TOD to customers far exceeding discretionary powers without obtaining sanction/permission are acts highly prejudicial to the interest of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

vi. Allowing drawals against uncleared effects without authority are acts highly prejudicial to the interest of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

vii. Allowing excess drawings to certain customers beyond the powers, are acts highly prejudicial to the interest of the bank, which if proved, will be misconduct under clause 3(i) read with clause 17 of the Bank of Madura Officer Employees Conduct Regulations.

3. The respondent bank appointed an Inquiry Officer to conduct the inquiry into the matter. After completion of the inquiry, the Inquiry Officer submitted his report on 17th July, 2001 holding all the charges against the appellant as proved except the charge of excess withdrawals which was partly proved. Acting on the said report, the respondent bank dismissed the appellant from service on 12th December, 2001.

4. The appellant instituted the suit seeking the quashing/setting aside of the charge sheet dated 27th April, 2007, the inquiry report dated 17th July, 2001 and order dated 25th August, 2001 issued by the Disciplinary Authority; and re-instatement with all consequential benefits including arrears of pay and allowances of Rs. 9,50,000/-.

5. The following issues were framed by the learned Trial Court:-

1. Whether suit is not maintainable being barred by provisions of Specific Relief Act? OPD.

2. Whether suit has not been valued properly for purpose of court fees and jurisdiction? OPD.

3. Whether suit of the plaintiff is barred by limitation? OPD.

4. Whether departmental proceedings are not subject to judicial review as defendant was private bank? OPD.

5. Whether bank has legally adjusted plaintiff''s gratuity and FDR against the dues of Sh. Mastan? OPD.

6. Whether plaintiff is entitled to an order of quashing charge sheet enquiry report and the order dated 25.08.2001? OPP.

7. Whether plaintiff is entitled to order of reinstatement and payment of allowances amounting to Rs. 9,50,000/-? OPP.

8. Whether the plaintiff is entitled to interest at the rate of 12% or any other rate?

9. Whether plaintiff is entitled to return of FDR? OPP.

10. Relief.

6. The findings of the learned Trial Court are as under:-

6.1 With respect to issue No. 1, the learned Trial Court held that the respondent bank being a private sector bank, the contract of personal service was not enforceable u/s 14 of the Specific Relief Act, 1963 and, therefore, the appellant cannot seek reinstatement. The learned Trial Court held that the appellant''s remedy is a claim for wrongful termination.

6.2 With respect to issued No. 2, the learned Trial Court held the suit to be not properly valued for the purposes of Court fees and jurisdiction. It was held that the appellant has not separately valued all the reliefs and even on the valuation of Rs. 9,50,000/-, there was a short deposit of Court fees of Rs. 1,600/-.

6.3 With respect to issue No. 3, the learned Trial Court held that the suit was not barred by limitation.

6.4 With respect to issue No. 4, the learned Trial Court held that the departmental proceedings were not subject to judicial review except in case of excess of jurisdiction or violation of the principles of natural justice or any dishonest act actuated by bad faith. The learned Trial Court held that neither of the above grounds could be proved by the appellant. It was further held that the Civil Court could not sit as a Court of Appeal from the findings of the departmental proceedings

6.5 With respect to issue Nos.5 and 9, the learned Trial Court held that the appellant has not clearly stated the amount of gratuity and FDR to which she was entitled. The appellant has not given the particulars of FDR i.e. amount of FDR as well as number of FDRs. The learned Trial Court further held that the respondent bank was justified in adjusting the FDRs on account of loss suffered due to the illegal actions of the appellant.

6.6 With respect to issue Nos.6, 7 and 8, the learned Trial Court held that in the absence of verification and supporting affidavit, there was no valid plaint in the eyes of law and the appellant acted mala fide in allowing the opening of accounts of a particular group of companies. The charges against the appellant were duly proved. The learned Trial Court further observed that the department also gave a report against the appellant and the appellant did not make any comment to contradict the finding of the report. The learned Trial Court further held that the appellant exceeded the discretionary powers with respect to the five accounts. The learned Trial Court held that no permission was sought from the higher authorities in this regard. The learned Trial Court held that upon dishonour of a discounted cheque, the account holder was required to deposit the amount with interest to the bank but the appellant, in several cases, did not charge such interest. The learned Trial Court held that the acts of the appellant caused loss to the respondent bank. The learned Trial Court held that the appellant was not entitled to any amount whatsoever from the respondent bank.

7. With respect to findings of the learned Trial Court on issue No. 1, learned counsel for the appellant does not dispute that a contract of the personal service is not enforceable u/s 14 of the Specific Relief Act and, therefore, the appellant cannot seek reinstatement.

8. With respect to issue No. 2, the learned counsel for the appellant submits that the suit has been properly valued for the purposes of court fees. However, the learned counsel for the appellant admits the short deposit of the Court-fees of Rs. 1,600/-. It is well settled by the judgment of this Court in the case of Rampur Distillery and Chemicals Co. Ltd. Vs. Union of India, that the plaintiff has to separately value all the reliefs made in the suit and has to pay separate Court-fees thereon. In para 5 of the plaint, the appellant has neither valued all the reliefs in the plaint nor paid separate court fees thereon. In that view of the matter, there is no infirmity in the finding of the learned trial court with respect to issue No. 2.

9. With respect to issues No. 5 and 9, learned counsel for the appellant admits that the appellant has not clearly stated the amount of gratuity and FDR and has also not given the particulars of the FDR. However, learned counsel submits that the respondent bank was not justified in adjusting the FDRs. With respect to issues No. 4, 6, 7 and 8, learned counsel for the appellant admits that the appellant exceeded her jurisdiction due to which the Bank suffered the loss. It is submitted that the actions of the appellant were bonafide and, therefore, the respondent was not entitled to recover any amount from the appellant. The learned counsel for the appellant refers and relies on paragraph 5.12 of the application filed by the respondent Bank against the debtors before the DRT, in which it is stated that the respondent Bank acted in good faith. The submission of the learned counsel for the appellant is devoid of merit. The appellant has admitted that she exceeded the discretionary powers with respect to five account holders (M/s. Taneja Plastic, M/s. Lovely Gifts Centre, M/s. Bhupinder Singh and

Company, M/s. Cosmic Chic, and Shri Anil Sharma) which were previously at the Karol Bagh Branch and that discounting of the cheque ultimately resulted into losses of several lakhs to the respondent bank. The appellant has also admitted in cross-examination that she failed to enter LBDs favouring Mastan Group of Accounts in LBD ledgers, which shows the mala fide. The respondents have led sufficient evidence before the trial court to prove that the appellant''s action in exceeding her jurisdiction was malafide. There is no infirmity in the finding of the learned Trial Court on the aforesaid issues.

10. There is no merit in the appeal, which is hereby dismissed for the reasons stated above. No costs.

