

(2008) 07 CAL CK 0051

In the Calcutta High Court

Case No : G.A. No. 734 of 2008 and C.S. No. 198 of 2006

Shri Chinmoy Pathak

APPELLANT

Vs

Standard Chartered Bank Limited

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 14 Rule 2, Order 7 Rule 11

Citation : (2008) 4 CALLT 217 : (2009) 2 SLR 438

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : S. Deb and K.H. Dasan, for the Appellant; P.S. Sengupta, S. Ghosh, A.D. Ray and A.K. Dey, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The defendant in the suit has taken out this application seeking an order rejecting the plaint on the ground that it does not disclose any cause of action.

2. The plaintiffs case in the plaint is this. He is the general secretary of ANZ Grindlays Bank Retired Management Staff Pensioners" Association. He and the members of his association are former members of the management staff of ANZ Grindlays Bank that merged into the defendant on or about September 1st, 2002. In terms of Grindlays Bank Limited Indian Staff Pension Scheme Rules, made for implementation and operation of the Grindlays Bank Limited Indian Staff Pension Scheme Trust Deed dated December 27th, 1974, the members of the association are entitled to get pension; and on retirement from service they are getting it. Before its merger ANZ Grindlays Bank increased the rate of pension from time to time. But the defendant wrongfully failed and neglected to increase the rate of pension. Though the pension scheme does not provide for any revision, periodical or otherwise, of the pension linking it to the cost-of-living index, and pension was never Increased by linking it to the cost-of-living index, by not increasing the pension periodically, linking it to the cost-of-living index, in

due exercise of its discretion and power, the defendant has failed and neglected to discharge its duty and obligation. The pensioners are entitled in law to get their pension periodically revised, linking it to the cost-of-living index. Since by its inaction the defendant has thrown a cloud on their such right, they have become entitled to seek a declaration that the defendant is duty bound to revise the pension, and pay it at the revised rate, with arrears thereof.

3. Making out a case as stated in the preceding paragraph, the plaintiff prayed for leave under Order 1, Rule 8 of the Code of Civil Procedure, 1908 and sought a declaration that he and all the other members of the association are entitled to a periodical review of the rate of pension payable to them, on the basis of rise or fall of the price index, He has also prayed for the consequential reliefs.

4. Mr. Deb, counsel for the plaintiff, has taken a preliminary objection that in the affidavit in support of the master's summons taking out the application the deponent thereof having not stated that she had read the whole of the plaint or part thereof, the affidavit, an incompetent one, cannot be entertained, and hence the application should be dismissed.

5. I am unable to accept the contention. While in para 1 of the affidavit the deponent has said that she made herself acquainted with the facts and circumstances of the case, in para 3 thereof she has said,".... from the plaint it would appear that the plaintiff is asking for declaration for increasing the amount paid to him as pension not in pursuant to any right of the plaintiff to claim the same but as a benevolent gesture of the defendant bank towards its employees of non-award cadre as such cannot be demanded under any law for the time being in force."

6. I agree with Mr. Sengupta, counsel for the defendant, that these statements made by the deponent of the affidavit are sufficient to hold that she took out the application after reading the plaint and forming an opinion that it did not disclose any cause of action. Mr. Sengupta is also right in saying that such a hyper-technical objection as raised by Mr. Deb should not be entertained, especially when the provisions of Order 7, Rule 11 of the Code of Civil Procedure, 1908 cast a duty on the Court to reject a plaint in the circumstances mentioned therein.

7. According to Mr. Sengupta, the plaint does not disclose any cause of action for the simple reason that it is the plaintiff's own case that the pension scheme and the rules do not provide for any revision, periodical or otherwise, of the pension payable to the plaintiff and the members of his association, and hence the question of revising the pension, linking it to the cost-of-living index cannot be a matter of right of the plaintiff and the persons claiming through him. His contention is that a civil suit can be maintained for enforcing either a right of the plaintiff or any person claiming through him, or any duty or obligation of the defendant, but not for creating a right, such as the one for which the plaintiff has instituted the suit.

8. Mr. Deb has said that on a meaningful reading of the plaint it cannot be said

that it does not disclose any cause of action. He, however, could not show me any pleading in the plaint that the pension scheme and the rules provided for any sort of revision of the pension payable to the persons governed by them, linking it to the cost-of-living index or otherwise.

9. The pension scheme and the rules have been annexed to the plaint; and they do not contain any provision for any sort of revision of the pension payable to the persons governed by them. Rather in paras 8 and 22 of the plaint it has been stated that not only the scheme does not provide for any revision of the pension payable thereunder, but the pension has never been paid to the eligible persons revising it on the basis of the cost-of-living index as well.

10. Mr. Deb has referred me to p.88 of the plaint. It is a letter of ANZ Grindlays Bank dated March 15, 1999 stating that though there was no inflation protection clause in the pension scheme rules, from time to time it increased the pension of its own accord. I fully agree with Mr. Sengupta that the increases by the bank, of its own accord, did not create any enforceable legal right of the plaintiff and the members of his association to get their pension periodically revised and increased, or any obligation of the defendant to increase it periodically on the basis of the cost-of-living index or otherwise.

11. The case pleaded in the plaint leads to the only conclusion that the plaintiff is not seeking enforcement of his any existing right, or any existing duty or obligation of the defendant. He has instituted the suit rather by saying that the defendant should increase the pension revising it on the basis of rise or fall of the price index.

12. Mr. Deb has argued that as will appear from the decisions in *Bharat Petroleum Management Staff Pensioners v. Bharat Petroleum Corporation Ltd. and Ors.* 1988 SCC (L & S) 706; *Subrata Sen and Others Vs. Union of India and Others*, ; and *Pensioners" Assc., Ex-Assam Oil Officers and Others Vs. Union of India (UOI) and Others*, - pension being not a bounty, an employer, irrespective of whether the employee has a right or not, is under an obligation to revise it periodically for increasing it on the basis of rise or fall of price index. I am unable to accept that the authorities say what he says.

13. In *Bharat Petroleum*, a writ petition under Article 32, the Apex Court proceeded on the basis that the state had taken the liability that was sought to be enforced. In *Subrata Sen*, once again a writ petition under Article 32, the Apex Court, considering whether in terms of the rules the petitioners therein were entitled to get pension, held that the liability had been undertaken by the company concerned under the rules. The observation that pension is not a bounty was made by their Lordships in that context. In *Pensioners" Assn. Ex-Assam Oil Officers*, again a writ petition under Article 32, the petitioners contended that in terms of the scheme they were entitled to get pension and the benefit of revision thereof.

14. Mr. Deb has relied on *State of Karnataka and Others Vs. C. Lalitha*, , and has

said that as was held therein parity in employment has to be maintained, even when a single person approaches the Court. I am unable to see how this authority can be of any assistance in the present case.

15. As to application of the provisions of Order 7, Rule 11, he has referred me to British Airways Vs. Art Works Export Ltd. and Another, , and has said that as was held by the division bench of this Court for ascertaining whether the plaint discloses a cause of action, the plaint has to be read meaningfully. In my view, the proposition is unexceptionable. There is no question of ascertaining the position by reading the plaint casually or cursorily. I even venture to go to the extent of saying that for the purpose the plaint should be read as liberally as possible.

16. On the basis of Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, he has said that since a mixed question of law and fact cannot be decided as a separate issue even under the provisions of Order 14, Rule 2, and when the plaint in the instant case discloses mixed issues of law and fact, there is no reason to apply the provisions of Order 7, Rule 11.

17. I am unable to accept the proposition. What is necessary is to see whether the plaint, read as a whole, discloses a cause of action. If it does not disclose one, to my mind, there is no scope for saying that the plaint should not be rejected and the issues that can be framed should be tried all together. Such an approach will defeat the whole purpose of the provisions of Order 7, Rule 11, meant for nipping frivolous and vexatious litigations in the bud.

18. For these reasons, I allow this application, and reject the plaint on the ground that it does not disclose any cause of action. I am, however, not inclined to make any order for costs. Hence there shall be no order for costs.

19. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.