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(2011) 12 DEL CK 0298

In the Delhi High Court

Case No : Regular First Appeal No. 556 of 2002

Shri Satya Narain Garg through his Legal Heirs — APPELLANT

Vs

DCM Ltd. and Others — RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Companies Act, 1956 — Section 630
Contract Act, 1872 — Section 23, 73

Citation : (2012) 187 DLT 25 : (2012) 127 DRJ 216

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.P. Mittal with Mr. Nitin Nayyar, for the Appellant; Sanjeev Anand with Mr. Vikram Singh and Mr. Abhas Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment dated 26.4.2002 passed by the Trial Court. By the impugned judgment, the suit of the deceased plaintiff (now represented by his legal heirs - appellants) for declaration and damages for wrongful termination of services was dismissed.

2. The facts of the case are that the plaintiff joined the defendant No.1/DCM Ltd. as a Clerk in the accounts section on 1.4.1960. As a benefit arising out of the employment, the plaintiff was let out quarter No.5, U.F. Mill Gate, DCM Quarters, DCM Road, Bara Hindu Rao, Delhi in January 1975 and for which rent was being deducted by the respondent No.1. The plaintiff claims to have been promoted as an officer w.e.f. 1.1.1985 and was also honoured with a long service certificate on 21.4.1986. The plaintiff then pleaded that his services were assigned to another unit of the same group known as M/s. Shriram Industrial Enterprises Ltd. w.e.f. 1.4.1990. Plaintiff further pleaded that he was given increments in the job. It is then pleaded that a settlement was arrived at between the respondent No.1

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and its workmen before this Court in Civil Writ Petition No.2476/1988 on 1.10.1993 and as per which all the workmen were bound to vacate their quarters in their occupation by 31.10.1993. Disputes arose when the deceased plaintiff failed to vacate the quarter. The deceased plaintiff claimed that his services were sought to be terminated, not on account of any inefficiency on his part, but only as he refused to vacate the quarter. The services of the deceased plaintiff were terminated on 22.9.1993. The subject suit for declaration /injunction, therefore came to be filed in which a decree was also prayed for Rs. 4,99,116/- being the monetary claim for alleged illegal termination.

3. The respondent No.1 contested the suit and stated that the suit was filed as a counterblast to the company having initiated criminal proceedings against the deceased plaintiff. It was also pleaded that in spite of termination of the licence of the deceased plaintiff with respect to the quarter which he was occupying, the deceased plaintiff failed to vacate although he was bound by the judgment rendered by the High Court in Civil Writ Petition No.2476/1988. It was then pleaded by the respondent No.1 that the deceased plaintiff was given numerous opportunities to improve his performance and work and only on his failure to do so his services were terminated.

4. After completion of pleadings, the Trial Court framed the following issues:

(i) Whether the pltf. is entitled to a decree in the sum of Rs. 4,99,116/- and if so, the rate of interest to which he is entitled? OPP

(ii) Whether the pltf. is entitled to a declaration that the letter dt.22.9.1993 terminating his service is illegal and void? OPP

(iii) Whether the plaint discloses no cause of action and is barred under the Specific Relief Act? OPD

(iv) Whether the suit has been filed as counterblast to the criminal proceedings initiating against the pltf? OPD

(v) Relief.

5. The main issues before the Trial Court were issues No.1 and 2 as to whether the services of the plaintiff were validly terminated. The Trial Court has held that the services of the deceased plaintiff were validly terminated by giving the following observations:

I have considered the rival contentions. First of all it is to be seen by the Court whether the termination of the pltf. on 22.9.93 vide Ex.P6 was illegal and unjustified solely with a view to punish the pltf. for not vacating the quarter. The pltf. has admitted in his cross examination that deft. company instituted a complaint u/s 630 of Companies Act. Sec. 630 of Companies Act reads as under:-

(1) If any officer or employee of a company -

(a) wrongfully obtains possession of any property of a company; or

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(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorized by this Act;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

Although the details of filing the complaint or where it is still pending or stands decided are not available on record but it becomes very clear that deft. company was proceeding in accordance with law to take back the possession of the quarter allotted to the pltf. Although the pltf. had been claiming himself to be the tenant in respect of the quarter allotted to him but in cross examination he admitted the execution of licence deed Ex.PW1/D2 in respect of the said quarter which makes the status of the pltf. in respect of the suit property very clear. The judgment of Hon''ble High Court dt. 1.10.93 Ex. DW1/5 further shows that in respect of the quarters in occupation of the employees of the DCM, the company was not resorting to the practice of terminating the services of those employees who refused to vacate the quarter but took recourse to law and got the possession only through Court orders. Hence there is no force in the contention of the pltf. that his services have been terminated only because he refused to vacate the quarter allotted to him. The pltf. has also admitted in his cross examination that the deft. company asked him to vacate the quarter in 1986 as well as in 1991-92. In view of this admission of the pltf. and subsequent letters of recommendation and increments granted to him are sufficient to establish that refusal of the pltf. not to vacate the quarter was never linked by the management with his services so as to take the extreme step of terminating his services just on this third ground. The letter dt. 1.5.92 Ex.P7 goes in favour of the pltf. to the extent that deft. was not having any kind of malice towards the pltf. for his refusal to vacate the quarter and as late as 1.5.92 his performance during the period 1991-92 was reported to be satisfactory and he was also informed that his next appraisal will be due on 1.4.93. It was only after 1.4.93 when the performance of the pltf. was found not to be satisfactory and he was given a chance to improve his performance but when he failed to improve his performance that the report dt. 23.7.93 was given by Departmental Head and signed by Personnel Head on 26.7.93 to the effect that Mr. S.N. Garg''s performance has been deteriorating continuously over the last two years inspite of numerous attempts at counseling, in view of this he may be discharged. Ex.DW1/4 further shows that General Manager (HRD) on the basis of last performance appraisal of the pltf. done in the last week of July, 1993, again required Senior Manager, Taxation & Finance Department to give the performance of the pltf. for the month of July - August, 1993. The document

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Ex.DW1/4 shows that again it was opined that there was no change in the contents or the observations made for the period April to June, 1993. It was also suggested that the pltf. may be discharged from the services with immediate effect and after reviewing the performance of the pltf. for sufficient time giving him a chance to improve, the pltf. was discharged from the services of the Company w.e.f. 22.9.93. In these circumstances I do not find any illegality in the order Ex.P6 vide which pltf. was discharged from the services of the company. So far as the contention of ld. counsel for the pltf. regarding business being run by the son of the pltf. that this part of evidence of the deft company is not only beyond pleadings but also not proved from any documentary evidence that the son of the pltf. is carrying on any such business at Anand Parbat. The oral testimony of DW1 and DW2 in this regard cannot be believed. Keeping in view that the deft has no where taken the plea that the pltf. was putting more attention to the business of his son, this argument has no relevance to decide the matter in issue regarding the alleged illegal termination of the pltf. that how the letter dated 1.5.92 could be given to the pltf. if his performance was not satisfactory, I feel that this letter rather goes in favour of the deft to show the fair manner in which the deft was dealing with its employee i.e. the pltf. If there was any ill-will or bias against the pltf., the Management would not have given a rise in the salary of the pltf. w.e.f. 1.1.92. Since this increment was based on the satisfactory performance of the pltf. during the year 1991-92 it shows that Management was judging the performance of the employees on the basis of their work and conduct and not for any extraneous consideration like not vacating the quarter. In these circumstances, I am of the view that there is no illegality in the act of the deft in discharging the pltf. from the services of the deft Co. Hence pltf. is not entitled to any declaration as prayed for. As the pltf. is not entitled to any declaration to the effect that termination of his services vide letter dated 22.9.93 be declared illegal, in-operative and void ab initio, there is no question of pltf. being entitled to any amount towards damages. Both these issues are decided against the pltf.

(underlining added)

6. A reading of the aforesaid conclusions shows that the deceased plaintiff though claimed to be a tenant in the quarter, however, he admitted to the execution of the licence deed, Ex. PW1/D2 with respect to the quarter, and which established that the deceased plaintiff was only a licensee. With respect to the contention that the services of the deceased plaintiff were terminated for not vacating the quarter, the Trial Court has given a finding that the respondent No.1/ defendant No.1 got vacated the quarters from various employees, including the deceased plaintiff by due process of law only through court orders. The Trial Court finally has referred to the performance appraisal reports and the counseling given to the deceased plaintiff to hold that in spite of reviewing the performance, and giving sufficient time to improve, the deceased plaintiff did not improve his performance and, therefore, his services were terminated. The Trial Court has referred to the appraisal report Ex.DW1/4 to show that in spite of

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notice plaintiff had failed to improve his performance and, therefore, his services were validly terminated.

7. Merely because two views are possible, this Court will not interfere with the conclusion arrived at by the Trial Court, unless the conclusion is illegal or perverse or causes grave injustice. In case of private employment, the employers are fully justified in taking steps for termination of services, if it finds that the employee is not upto the mark. Principles applicable in public law domain do not apply with respect to employees in private employment. Employment in private sector is governed by the terms and conditions of employment, and unless the termination is shown to be violation of the terms and conditions of employment, it cannot be said that the termination is illegal. In the present case, in my opinion, since there was no fixed period of employment so far as the deceased plaintiff is concerned, the deceased plaintiff could have been terminated from services even by a simplicitor notice, assuming even if the services of the deceased plaintiff were upto the mark. Further, even if there is illegal termination of services, it is not possible to grant damages as claimed inasmuch as the principle of mitigation of damages squarely applies. As per this principle of mitigation of damages enshrined in Section 73 of the Contract Act, 1872 even if an employee is illegally terminated from services, he cannot sit at home and he must take sufficient steps to procure alternative employment. The law in this regard is contained in the judgment of the Supreme Court reported as S.S. Shetty Vs. Bharat Nidhi, Ltd., . Paras 12 and 13 of this judgment are relevant and the same read as under:

12. The position as it obtains in the ordinary law of master and servant is quite clear. 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.

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.

(Chitty on Contracts, 21st Edition, Vol (2), p. 559 para. 1040).

13. If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide Collier v. Sunday Referee Publishing Co. Ltd., 1940 ALL. E.R. 234 at p.237 (A). The servant would then be entitled to the whole of the salary,

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benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment."

8. A reference to the evidence led on behalf of the deceased plaintiff shows that the following is the only evidence which is led to show efforts made for alternative employment:

I did not join any service after termination by defdt No.1. I am not doing any job since 22.9.93 as I could not find any job despite my efforts.

9. Surely, these types of self-serving averments cannot be held as discharge of onus of proof of mitigation of damages. The statement made by the deceased plaintiff is bereft of any details as to which companies or firms or persons he applied to, and on which dates, and for what position, and for what salary and also the details as to why he could not obtain the alternative employment. I am, therefore, of the opinion that the deceased plaintiff, even assuming he was wrongly terminated from services, failed to prove that he had taken sufficient steps for mitigation of damages.

10. One issue argued before this Court on 17.11.2011 was with regard to a decision of a learned Single Judge of this Court in the case of Tarlochan Singh Mokha v. M/s. Shriram Pistons & Rings Limited & Ors., 74 (1998) DLT 455, wherein a learned Single Judge of this Court has, relying upon the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , held that public policy principles contained and explained in the Brojo Nath Ganguly''s case will also apply to private employment. This judgment, however, in my opinion, no longer lays down the correct law inasmuch as the Supreme Court recently in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, has held that public policy principles cannot apply to private employment. Head note "E" of the judgment succinctly brings out the ratio in this regard and the same reads as under:

E. Constitution of India - Art. 226 - Maintainability - Generally - Relief, held, cannot be granted once writ petition is held to be not maintainable

Public-policy principles can be applied to employment in public sector undertakings in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of the private sector. The service rules and regulations which are applicable to government employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. (Para 26)

In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts have been reluctant to exercise

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the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on the public law element involved therein. (Para 16)

The Praga Tools Corporation Vs. Shri C.A. Imanual and Others, ; VST Industries Ltd. Vs. VST Industries Workers'' Union and Another, ; General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, ; Federal Bank Ltd. Vs. Sagar Thomas and Others, , followed Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , explained and distinguished Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , distinguished

The decision of the employers in the preset cases to terminate the services of their employees cannot be said to have any element of public policy and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments, especially in view of the disputed questions involved as regards the status of employees and other matters. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as being opposed to the principles of public policy and thus as void and illegal u/s 23 of the Contract Act, 1872. (Para 31)

11. Thus the following conclusions emerge:

(i) The services of the plaintiff were terminated as in spite of counselling and notice his performance did not improve.

(ii) In private employment, in fact there need not be any valid reason for termination and where there is no fixed period of employment there can be termination simplicitor. Public law principles do not apply to private employment.

(iii) If there is violation of the terms of employment while terminating employment and thus termination is illegal, the employee is only entitled to reasonable damages by applying the principle of mitigation of damages. The plaintiff, assuming his services were illegally terminated, failed to show steps taken to obtain alternative employment and hence was rightly held disentitled to damages.

12. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial court record be sent back.

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