
(1995) 08 MAD CK 0093

In the Madras High Court

Case No : O.A. No. 822 of 1995 in C.S. No. 1135 of 1995

Symphony Recording Co.

APPELLANT

Vs

P.K. Raghuram alias Veeramani Dasan alias Krishnakumar

RESPONDENT

Date of Decision : 22-08-1995

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1995) 08 MAD CK 0093

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : S. Guru Krishnakumar, for the Appellant; G. Balasubramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Govardhan, J.—The applicant in his affidavit contends briefly as follows: The applicant has filed the suit for permanent injunction restraining the respondent from rendering his voice to any other third party in violation of the suit agreement, till 9-10-1995 and for a mandatory injunction directing the respondent to render his voice to the applicant till the term of the agreement. The applicant is engaged in the business of producing audio cassettes since 1988 under the name and style of "Symphony Recording Company". He had entered into an agreement with the respondent on 10-10-1992 for singing either in his name or in the name of Veeramani Dasan or Krishnakumar. The applicant would produce programmes sung by the respondent and be recorded and sold in the form of audio cassettes. As per Clause 2, the respondent shall render his voice only to the applicant for a period of three years from 10-10-1992 to 9-10-1995. As per Clause 3, the respondent agreed that he would not render his voice to any other person. The applicant will have the sole rights to produce cassettes or records with the voice of the respondent. The applicant shall arrange to produce a minimum of five programmes per year as per the agreement. There was a guarantee of a minimum of fifteen programmes during the period of three years.

The applicant produced and released audio cassettes bearing the respondent's voice and thereby discharged its obligations. The applicant has paid royalty to the respondent at a rate more than a sum of Rs. 2500/- that was to be paid as per the agreement. The agreement is still in force. The respondent refuses to render his voice in gross violation of the agreement. He is proceeding to participate and sing in programmes which are produced by some third parties in violation of the agreement entered into with the applicant. The respondent is refusing to sing the programmes to be produced by the applicant in spite, of several requests. Hence the applicant has filed the suit and the present application for restraining the respondent from rendering his voice to any person other than the plaintiff in any programme. The respondent in his counter contends briefly as follows: It is true that there is an agreement entered into between the applicant and the respondent on 10-10-1992 for a period of three years. But it is an unconscionable contract i.e., the gross inequality of bargaining, together with the terms unreasonably favour to the stronger party, the weaker party has no meaningful choice. All rights have been given only to the applicant in the said agreement. No right has been given to the respondent. There is no mutuality in the said agreement. The agreement that the respondent will render his voice only for the applicant for a period of three years is opposed to public policy. The applicant cannot put up a total restraint on the respondent of his voice. The respondent has to perform a minimum of fifteen programmes during the three years period. So far, he has performed 17 programmes. Even though the contract is unlawful, the respondent has performed his part without any breach. The applicant has not been making payment properly. The allegation that the applicant has paid royalty even at a rate more than a sum of Rs. 2,500/- is denied. The respondent has not been ever paid the minimum amount of Rs. 2,500/- per programme. The applicant made an arrangement for recording programme in July, 1995. There is no question of refusal by the respondent. The total restriction imposed in the agreement is violative of Article 19 of the Constitution. The prayer in the application therefore, cannot be complied with. Interference with the individual liberty of action is contrary to the public policy. The agreement is therefore unlawful. A negative covenant that the respondent would not engage himself in rendering his voice to the others is nothing but a bond and it is unconscionable. The same cannot be enforced. The applicant is therefore not entitled to the injunction prayed for. The petition is liable to be dismissed.

2. The plaintiff has filed the suit for permanent injunction to restrain the defendant from in any manner rendering his voice to any person other than the plaintiff in any programme that may be produced by such person in the form of live or Studio recording either for commercial exploitation or for private circulation and for a mandatory injunction directing the defendant to render his voice for the programmes to be produced by the plaintiff that are to be recorded- The plaintiff and the defendant have entered into an agreement on 10th March, 1992 under which the defendant had agreed that he will not render or sing five

songs mentioned in the application either in part or in full for any person or Company. In the said agreement, the defendant has also agreed to seek for the plaintiff the above five songs to enable the plaintiff to record and sell the same either as audio cassette, tape etc., in part or full. The Learned Counsel appearing for the applicant-plaintiff has made it clear that he wants only to invoke negative covenant in the agreement and he is not pressing the positive covenant in the same to get the relief of mandatory injunction at this stage. The Learned Counsel appearing for the defendant would contend that the entire agreement provides only for the interests of the petitioner and there is no clause providing for any penalty to the petitioner in case the petitioner commits default and therefore, the agreement is unconscionable and therefore, it cannot be enforced. In support of his above contention, the Learned Counsel appearing for the respondent-defendant also relies upon the decision reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, In the above decision, the effect of unconscionable contract has been stated as follows:

If a contract or term thereof is unconscionable at the time the contract is made, a Court can refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.

Therefore, even assuming that the contract is unconscionable, it is not as if, the entire agreement has to be rejected. The policy against unconscionable contract or terms applies to a wide variety of types of conduct. The determination that a contract or terms in it is, or is not unconscionable is made in the light of its setting, purpose and effect. Relevant factors include weakness in contracts of process, rules as to contractual capacity, fraud and other invalidating causes. In the present case, there is no weakness in the contract of process or rules involving the contractual capacity of the parties. There is also no fraud or any other invalidating causes to hold that the entire contract is an unconscionable one in view of the fact that the interests of the defendant have been safeguarded by the provision for payment of royalty in the said agreement itself. The royalty has also been paid as seen from the vouchers. The Learned Counsel appearing for the respondent would contend that the vouchers are not genuine and the signatures in them are not genuine and they are fabricated documents. It is a matter to be decided at the time of the trial, suffice it to hold that there are vouchers showing payment of royalty to the defendant. Therefore, I am of opinion that prima facie case has been made out by the petitioner to hold that interests of the defendant have been safeguarded. In the present case, the agreement between the plaintiff and the defendant provides that the defendant shall perform his obligation during the period of three years and it also provides that the respondent-defendant shall not perform his service conditions to the others during the course of this period. Even though the Court shall not grant specific performance of contract of service, when a person engaged by reason of special qualification, enters into a contract prohibiting him or her, from working

for anyone else, the negative stipulation could be enforced by an injunction. Restrictions that are to operate will be there only till the employee is contractually bound to serve his employer and the restrictions cannot be regarded as a restraint of trade during the period of service of the employer. Therefore, a negative stipulation in a contract of service that the employee would not serve any other employee or would not engage himself in any trade or business similar to that of his employer during the currency of the contract period cannot be regarded as a restraint in trade. When we apply this principle to the facts of this case, the restraint which the respondent has to face is only during the period of the contract viz., three years. The Supreme Court has held in the decision reported in *Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.*, that a covenant-that employee would not, during contract period, engage in trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties, is not restraint of trade, unless the contract is unconscionable or excessively harsh or one sided. In the present case, it cannot be stated that the agreement between the plaintiff and the defendant is either unconscionable or excessively harsh or one-sided, since the interests of the defendant- respondent have been taken care of by payment of royalty. Therefore, the applicant is entitled to injunction during the remaining part of the contractual period, even though considering the nature of employment viz., singing by the respondent, the applicant may not be entitled to a mandatory injunction compelling the respondent to sing for him alone during the period of three years. In that view, I am of opinion that the plaintiff has made out a prima facie case and is therefore entitled to the injunction prayed for.

In the result, the application is ordered. Interim injunction is granted.