

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA 424/2006**

% Judgment delivered on: 10.02.2011

Mool Chand Gupta Appellant
Through: Ms.Latika Chaudhary, Advocate.

versus

Oriental Bank of Commerce Respondent
Through: Ms.Kittu Bajaj, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral

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1. By this regular first appeal filed under Section 96 of Code of Civil Procedure, 1908 the appellant seeks to

challenge the judgment and decree dated 24.04.2006 passed by the learned trial court whereby the suit filed by the appellant for recovery of Rs.7.60 lacs was decreed in favour of the appellant by only awarding damages of Rs.5,000/- along with interest on the delayed payment.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant was working as a branch office manager in the respondent bank and opted for the Voluntary Retirement Scheme 'VRS' offered by the respondent bank. That as per the said scheme the appellant was to be relieved on 15.1.01 and all his retrial benefits were to be released within 45 days i.e on 1.3.01 but due to delay, the payment was only made on 20.3.01. In the meanwhile, the appellant entered into a transaction for purchase of a plot of Rs.7 lacs and paid an earnest money of Rs 2 lacs by borrowing from his friends and relatives and the remaining amount of Rs.5 lacs was to be paid by 4.3.01, but due to the delay in the release of payment of the retrial dues, the earnest money was forfeited. Thereafter the appellant filed a suit for recovery of

Rs.7.60 lacs which was decreed in favour of the appellant for Rs.5000 with costs alongwith interest. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the said judgment and decree, Ms.Latika Chaudhary, learned counsel appearing for the appellant contended that the learned trial court failed to take into consideration the loss suffered by the appellant due to his failure to pay the balance sale consideration amount of Rs.5 lacs to the seller of the property with whom the appellant had entered into sale transaction anticipating the payment of retiral benefits within the specified time given by the respondent-Bank under the VRS Scheme. The contention of counsel for the appellant was that the appellant had paid the earnest amount of Rs.2 lacs to the vendor of the property, but since the appellant failed to pay the balance sale consideration amount of Rs.5 lacs to the vendor of the said property within the time agreed to between the parties, therefore, the earnest amount of Rs.2 lacs paid by the

appellant was forfeited by the vendor of the property and this loss of Rs.2 lacs can be easily attributed to the respondent-Bank, as had the respondent-Bank paid the said retiral benefits within the said period of 45 days in terms of the VRS Scheme, then the appellant would have been in a position to pay the balance sale consideration amount of Rs.5 lacs to the vendor of the said property within the agreed time.

4. Another contention raised by counsel for the appellant was that the said property was ultimately sold by the vendor to some other person for a sum of Rs.10 lacs which would mean that had the appellant been successful in purchasing the plot then he would have gained the profit of Rs.3 lacs instead of the said vendor of the said property. Counsel thus submits that in this manner the net loss occasioned to the appellant was Rs.5 lacs (Rs.3 lacs plus interest) due to the failure of the said sale transaction. Counsel also submits that the appellant had taken the decision to seek voluntary retirement from the respondent-Bank with a view to purchase a property out of the retiral benefits to be received by him,

but the said purpose and objective of the appellant was defeated by the respondent-Bank due to the delay caused by them in releasing the retiral benefits to the appellant. Counsel for the appellant also submits that in terms of the VRS Scheme announced by the respondent-Bank, the Bank had clearly represented that they will make the payment of the entire retiral dues in lump sum within a period of 45 days from the date when an employee is relieved from his service. The contention of counsel for the appellant is that it was incumbent upon the respondent-Bank to have released the payment of the entire retiral dues in lump sum within the said period of 45 days and for any delay on the part of the respondent-Bank the appellant is entitled to recover the damages as suffered by him due to the failure in the sale transaction. Counsel for the appellant also submits that some of the retiral dues are still outstanding which are yet to be paid by the respondent-Bank.

5. Opposing the present appeal, counsel for the respondent-Bank submits that the period of 45 days given in

the VRS Scheme was never the essence of the Scheme, as the said period was given to the employees seeking VRS to complete all procedural formalities before the release of the final amount of the retiral dues. Counsel further submits that the appellant was paid the entire retiral dues on 20.03.2001 and, therefore, just a delay of 20 days had occurred on the part of the bank in the release of the said dues for which the learned trial court has already granted a compensation of Rs.5,000/- in favour of the appellant. The contention of counsel is that no fault can be found in the impugned judgment and decree passed by the learned trial court, as the learned trial court has already granted the compensation much in excess than the loss suffered by the appellant or proved on record by the appellant.

6. I have heard learned counsel for the parties and have gone through the records.

7. A suit for recovery of Rs.7.60 lacs was filed by the appellant herein against the respondent-Bank. The appellant claimed the said compensation amount from the respondent-

Bank on the ground that he took the voluntary retirement from his service after opting for VRS Scheme announced by the respondent-Bank, but he was not paid the entire retiral dues within the period of 45 days from the date of his being relieved from service and there was a delay of 20 days in the payment of the said retiral dues. The argument of counsel for the appellant is that the said period of 45 days stipulated in the VRS Scheme was of binding nature and under no circumstance the payment of retiral dues could have been delayed by the respondent-Bank. As per the case set up by the appellant this delay of 20 days has caused a loss of Rs.7.60 lacs to the appellant as he had entered into an agreement to sell to purchase a plot for a sum of Rs.7 lacs for which he had paid an amount of Rs.2 lacs towards the earnest money after having borrowed the same from his relatives and friends on interest @ 3.50% p.a. The appellant has further claimed that he could not purchase the said plot because of the said retiral dues not being released by the respondent-Bank within the said time bound period and, therefore, the amount of Rs.2

lacs paid by him towards the earnest money was forfeited by the seller of the said property. The appellant has further claimed an amount of Rs.5 lacs which he is alleged to have suffered due to the sale of the said plot in question by the seller to some other person at a later period for a sum of Rs.10 lacs.

8. It would be thus evident that the compensation amount which has been claimed by the appellant is primarily on account of his failure to purchase the said plot, decision for which he had taken based on the representation made by the respondent-Bank under the VRS Scheme that he would get all his retiral dues within the period of 45 days from the date of his being relieved from the service. Indisputably, the period of 45 days has been duly stipulated under the said VRS Scheme for the final payment of retiral dues and the learned trial court has also taken a view that it was obligatory on the part of the bank to have paid the entire retiral dues of the appellant within the said period of 45 days as announced by the respondent-bank under the VRS Scheme. There was,

however, a delay of 20 days in the payment of said retiral dues.

9. The question which arises is whether this delay of 20 days can make the appellant entitled to claim damages to the tune of Rs.7.60 as claimed by him in the said recovery suit. In order to entitle a person to the grant of any damages by reason of breach of the contract, the injury for which compensation is asked for should be one that may be fairly taken to have been contemplated by the parties as a possible result in the event of breach of the contract. The loss complained of must be immediately flowing out of the breach of the said contract and not merely a loss which is remotely connected with the contract itself or which cannot be foreseen or contemplated by the parties. The present case is a clear depiction of a case where the respondent-bank could not have contemplated that the non-payment of the retiral dues within the said period of 45 days could have resulted in the cancellation of the alleged sale of the plot between the appellant and the seller of the same. The compensation to the

appellant, therefore, cannot be given for such a remote and indirect loss even if the same was suffered by him for the non-payment of the retiral dues by the respondent-bank within the specified period of 45 days. The appellant had entered into the sale transaction at his own peril and his failure for not paying the balance sale consideration amount towards the said plot/property cannot in any manner be attributed to the respondent-bank. The learned trial court has already granted a sum of Rs.5,000/- as damages in favour of the appellant and against the respondent-bank, despite the fact that the amount of interest for a period of 20 days @ 5% was calculated as just Rs.815/-. The remaining amount has been awarded by the learned trial court towards mental agony suffered by the appellant due to the said delay caused by the respondent-bank in the release of the final amount of retiral dues.

10. In the light of the above, I do not find any infirmity, illegality or perversity in the impugned judgment and decree passed by the learned trial court and the same is therefore accordingly upheld by this Court.

11. There is no merit in the present appeal and the same is hereby dismissed.

February, 10 2011
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KAILASH GAMBHIR, J