

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 2678/2012 and I.As. No.16212-16213/2012**

Date of Decision: 17th October, 2012

IN THE MATTER OF
C.P. KAPUR

..... Plaintiff

Through: Mr. Narendera Kalra, Advocate

versus

THE CHAIRMAN & ORS

..... Defendants

Through: None.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present suit has been instituted by the plaintiff for the recovery of a sum of Rs.54,50,960/- jointly and severally against the defendants.

The reliefs sought by the plaintiff in the present suit are as follows:-

- (A) Pass a decree for a sum of Rs.54,50,960.00 in favour of the plaintiff and against the defendants jointly and severally.
- (B) Pass an interim order to pay the monthly pension with immediate effect as it is required for the plaintiff to meet out the route expenses and other expenses such as medical as the plaintiff do not have any regular source of income at this age.
- (C) Pass necessary directions against the defendant No.6 i.e. M/s Oracle Financial Services Software Ltd. thereby directing this defendant to pay the highest value of the shares which were allotted to the employees of M/s Citi Bank to the plaintiff of his share.

- (D) Allow interest pendentility and future @ 12% per annum in favour of the plaintiff and against the defendant from the date of filing of the suit till its realization.
- (E) Allow cost of the suit."

2. The present suit was listed before the Joint Registrar for admission on 4.9.2012 on which date, learned counsel for the plaintiff had sought some time to produce the case law on the issue of limitation of the present suit. At his request, the matter was adjourned to 22.09.2012.

3. On 22.09.2012, the Joint Registrar heard the counsel for the plaintiff and was of the opinion that the present suit has been filed beyond the period of limitation and, therefore, the same has been placed before the Court.

4. Though it has been averred in the plaint that the plaintiff was employed with the Citibank in the year 1972 and his services were illegally terminated in the year 1994, for reasons best known to him, he has not impleaded Citibank as a defendant in the present suit. Instead, the plaintiff has impleaded the Chairman, Central Board of Direct Taxes as defendant No.1 the Trustee, Citi Bank Provident Fund Branch as defendant No.2, the Vice President & Managing Director of Citibank by name as defendant No.3, M/s Oracle Financial Services Ltd. as defendant No.5 and the Regional Provident Fund Commissioner as defendant No.6 (wrongly described as D-7 in the memo of parties).

5. Learned counsel for the plaintiff submits that the services of the plaintiff were actually terminated in the year 1991 and this had resulted in litigation between him and Citibank which was finally settled in the year 1999 when Citibank had agreed to pay a sum of Rs.64 lacs to the plaintiff as a settlement amount. It is the case of the plaintiff that it was mandatory for Citibank to have issued to him a TDS Certificate under the Income Tax Act, but the needful was not done at the relevant time and nor did the bank provide him with Form 16 due to which he could not claim refund of the excess tax deposited by him with the Income Tax Authorities.

6. It is averred in the plaint that the aforesaid inaction on the part of the bank had resulted in huge losses to the plaintiff and after running from pillar to post for refund of the TDS deducted by the Bank, the plaintiff had written several letters/legal notices to the bank. Specific reference is made by learned counsel for the plaintiff to the letter dated 10.06.2010 addressed by the plaintiff to the CEO of Citibank and the reply dated 11.08.2010 addressed by the lawyers of the bank to the plaintiff.

7. A perusal of the letter dated 10.06.2010 addressed by the plaintiff to Citibank reveals that he had himself admitted that he had waited for a period of 12 years for issuance of the TDS Certificate and despite the same, the said certificate was not issued by the bank. In reply to the aforesaid letter, the lawyers of the bank had stated in their letter dated

11.08.2010 that all amounts that were due and payable to him by the bank had been duly paid and were accepted by him in full and final settlement and nothing further was due or payable by the Bank.

8. Learned counsel for the plaintiff states that as the defendants had replied to the plaintiff for the first time on 11.08.2010, the said reply forms a part of the cause of action for instituting the present suit and therefore, the same is not barred by limitation.

9. Pertinently, the cause of action para of the plaint reads as below:-

"Para 34. That the cause of action arose in favour of the plaintiff and against the defendants firstly when the plaintiff joined the services of the bank, it again arose when the services of the workman were terminated. It again arose on all the dates when the bank imitated writ petition before Hon'ble Delhi High Court, it further arose when the settlement was arrived at, when the payment was released by the bank, when the defendants failed to issue form 60 and the certificate of TDS, it kept on accrue when the plaintiff attain the age of 60 years and started writing letters and meetings the officials of the defendant bank, it again arose on 5.5.2012 when the bank failed to release the payment. Since no payment has been released the cause of action is continuing one."

10. A perusal of the aforesaid para relating to cause of action itself reveals that the plaintiff has been deliberately vague and has refrained from mentioning any relevant date in the said para, except for the date 05.05.2012, when he claims that he had sent a final legal notice to

Citibank, a party that has not even been impleaded as a defendant in the present proceedings.

11. It is settled law that parleys between the parties cannot be treated as a substitute for invoking legal remedies and nor can such correspondence enlarge the period of limitation for instituting appropriate legal proceedings. It has been held in a catena of judgments that the starting point of limitation shall remain unaffected by the conduct of the parties or by the correspondence exchanged between them and that mere attempt on the part of a litigant to persuade the authorities to accede to his claim by dispatching letters may not be a ground for claiming extension of limitation for institution of a suit. [Ref: East and West Steam Ship Company, George Town, Madras Vs. S. K. Ramalingam Chettiyar reported as **AIR 1960 SC 1058**, Bhootamal Vs Union of India reported as **AIR 1962 SC 1716**, S. S. Rathore Vs State of Madhya Pradesh reported as **AIR 1990 SC 10** and Balram Sehgal Vs Vinod Kumar Sehgal reported as **156(2009) DLT 538**].

12. In the present case, the plaintiff has stated that his services were terminated as long back as in the year 1991 and that he had received the entire amount as agreed upon between him and his employer, Citibank in the year 1999 when a writ petition was filed by the bank against the judgment of the Labour Court, registered as W.P.(C) 2145/1995 and the same was ultimately disposed of in the year 2000. If the plaintiff had a

grievance as to the non-issuance of the TDS Certificate at the relevant time, then it was for him to have approached the competent court for appropriate relief within a reasonable time therefrom. However, no such efforts were made by him.

13. As per the counsel for the plaintiff, the plaintiff had filed an application in the aforesaid disposed of writ petition filed by the bank, seeking revision of the TDS Certificate, but he was directed to approach the Income Tax Authorities for appropriate reliefs. Again, the plaintiff did not do so and nor did he seek any legal recourse against the Income Tax Authorities. The cause of action to institute the present suit had at best arisen in the year 1999, when the plaintiff claims to have arrived at a settlement with Citibank. The said limitation can neither be extended on the strength of a notice issued by the plaintiff on 10.06.2010, nor on the repudiation of his claim by the bank, vide its letter dated on 11.08.2010. It is also relevant to note that the aforesaid correspondence exchanged between the plaintiff and Citibank did not make any mention of the non-issuance of the TDS certificates and further, that the said correspondence between the parties can hardly be relied upon by the plaintiff, when he has not sought any relief against Citibank and has not impleaded it as a defendant in these proceedings.

14. In the aforesaid facts and circumstances, this Court is constrained to hold that the present suit is patently barred by limitation. It is also

relevant to note that even while instituting the present suit, no relief whatsoever has been sought by the plaintiff for issuance of revised TDS Certificates or for issuance of Form 16, which were grievances that he claimed he had raised in his correspondence with Citibank and were responded to by Citibank in its letter dated 11.08.2010 addressed to him. Under the Limitation Act, the period of limitation for recovery of amounts as claimed by the plaintiff is to be reckoned as three years from the date when the demand was made. Admittedly, the plaintiff had been making such demands upon Citibank for the past about 12 years and in such circumstances the starting point of limitation would remain the same. The present suit, as instituted by the plaintiff is therefore found to be hopelessly barred by limitation and is accordingly dismissed as not maintainable alongwith the pending applications.

HIMA KOHLI, J

OCTOBER 17, 2012
mb/mk/rkb/sk