

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 29th October, 2013

+

RFA 532/2004

UNION OF INDIA

..... Appellant

Through: Mr. Amrit Pal Singh, CGSC with Mr.
R.P. Singh, Advs.

Versus

A.M.MISHRA & ORS

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 1st April, 2004 of the Addl. District Judge, Delhi of dismissal of Suit No.115/2002 filed by the appellant for recovery of Rs.16,11,569.44p jointly and severally from the three defendants/respondents.

2. Notice of the appeal was issued and the Trial Court record requisitioned. The appellant/plaintiff did not take any steps for service of the respondents/defendant and vide order dated 27th February, 2007 last opportunity was given to the appellant/plaintiff with the direction that if the appellant/plaintiff did not take steps the appeal shall be dismissed for non-

prosecution. Thereafter, though steps were taken but ineffective. Ultimately notice was issued pursuant to order dated 10th March, 2008. The said notices were received back with the report that the respondents/defendants No.1&2 were not found at the address furnished and the respondent/defendant no.3 had died. Thereafter again no effective steps were taken on behalf of the appellant/plaintiff, neither for furnishing fresh addresses of the respondents/defendant no.1&2 nor for substitution of the legal representatives of the respondent/defendant no.3. Ultimately on notice being issued it was reported that the respondent/defendant no.2 had also died. Thereafter also no steps were taken for substitution of legal heirs of the respondents/defendants no.2&3. As far as the respondent no.1 is concerned, he was ultimately ordered to be served by publication in the newspaper Times of India and was so served. The order dated 10th September, 2013 of the Registrar (Appellate) records that the respondent/defendant no.3 had been ordered to be deleted from the array of defendants before the Trial Court itself. None appeared for the respondent/defendant no.1 despite publication. The respondent/defendant no.1 was vide order dated 8th October, 2013 proceeded against *ex parte*. The appellant/plaintiff having not taken any steps for service of the legal heirs of the respondent/defendant

no.2, the appeal in so far as against the respondent/defendant no.2 has abated. The counsel for the appellant/plaintiff has been heard.

3. The appellant/plaintiff on 3rd June, 2002 instituted the suit from which this appeal arises, pleading:-

- (a). that the appellant/plaintiff has been administering the National Scheme of Scholarship for study Abroad to provide financial assistance to meritorious students who are citizens of India and who do not have the means to go Abroad for higher studies;
- (b). that in response to the offer for grant of scholarship under the said scheme for the year 1984-85, the respondent/defendant no.1 applied and was selected and awarded the scholarship for a period of two years i.e. from 23rd September, 1985 to 22nd September, 1987 on the terms & conditions contained in the letter dated 10th October, 1984 of the appellant/plaintiff to the respondent/defendant no.1 who accepted the said conditions and which *inter alia* provided for execution of a bond with the appellant/plaintiff;

- (c). that in accordance with the aforesaid terms & conditions, each of the respondents/defendants no.1 to 3 executed a bond, binding themselves that in case of violation they and their heirs would pay to the appellant/plaintiff all monies paid to the respondent/defendant no.1 or expended on his account as part of the said scholarship together with interest thereon;
- (d). that at the time of grant of scholarship, the respondent/defendant no.1 was an employee of J.K. Paper Mills, Jaykapur, Korput, Orissa and as per terms of the bond he was to rejoin his employer within a period of not more than one month from the date of arrival back in India and to serve in India for a minimum period of three years;
- (e). that the term of scholarship of the respondent/defendant no.1 was extended till 22nd September, 1988;
- (f). that the respondent/defendant no.1 however did not return to India and chose to remain in USA;

- (g). that the respondent/defendant no.1 was accordingly declared a violator of the bond executed by him and the appellant/plaintiff on 10th May, 1991 raised a demand for Rs.15,99,469.44p against him besides some other expenses and on 31st July, 1995 increased the demand to Rs.16,11,569.44p by addition of the other expenses;
- (h). that in accordance with the bond, the respondent/defendant no.1 is also liable to pay interest at 14.5% per annum;
- (i). that no response was received from the respondent/defendant no.1 and enquiries were made from the respondent/defendants no.2&3;
- (j). that the respondent/defendant no.1 ultimately on 20th October, 1995 responded stating that if suitable job according to his qualifications was offered, he was willing to return to India;
- (k). that the said response of the respondent/defendant no.1 was not in accordance with the terms on which scholarship was granted to him; and,

(1). accordingly the suit for recovery of Rs.16,11,569.44p with *pendente lite* and future interest at 14.5% per annum from the respondent/defendant no.1 and if not paid by the respondent/defendant no.1, from the respondents/defendants no.2&3, was filed.

4. The respondent/defendant no.2, upon being served with the summons of the suit, besides written statement filed an application under Order 7 Rule 11 of the CPC on which the following preliminary issue was framed on 1st November, 2002:-

“Whether the suit is barred by limitation?”

5. Vide order dated 23rd November, 2002 the said preliminary issue was decided in favour of the appellant/plaintiff by observing that the application under Order 7 Rule 11 was premised on the limitation being three years from the date of cause of action but the applicable Article of the Schedule to the Limitation Act, 1963 was Article 112 since the suit was on behalf of the Union of India i.e. Central Government and the limitation for filing the suit was 30 years and which had not expired and the suit was thus within time.

6. Summons of the suit sent to the respondent/defendant no.3 were received back with the report that he had died. The counsel for the appellant/plaintiff on 23rd April, 2003 informed the Suit Court that it had been confirmed by the District Authority that the family of the deceased respondent/defendant no.3 was not in a comfortable position from the financial point of view and so the appellant/plaintiff was not desirous of impleading his legal representatives. The counsel for the respondent/defendant no.2 opposed, stating that the liability was joint and several on all the respondents/defendants and non-impleadment of the legal heirs of the respondent/defendant no.3 would affect the rights of the respondent/defendant no.2. However the said objection was overruled reasoning that the decretal amount of the share of the legal heirs of the respondent/defendant no.3 could be recovered by the respondent/defendant no.2 and the appellant/plaintiff was exempted from substitution of the legal heirs of the respondent/defendant no.3 whose name was struck off from the memo of parties of the suit.

7. The respondent/defendant no.1 failed to appear before the Suit Court also despite service by publication and was on 28th May, 2003 proceeded against *ex parte*.

8. The respondent/defendant no.2 contested the suit besides on legal pleas, pleading that the appellant/plaintiff did not care to make any arrangement for the job security and employment in India of the respondent/defendant no.1 and the respondent/defendant no.1 had thus not violated any terms & conditions of the bond.

9. Even though the aspect of limitation had been decided on 23rd November, 2002 under a preliminary issue but on 17th July, 2003 on the pleadings of the parties, the following issues including on the aspect of limitation were framed:-

- “(i). Whether the plaintiff is entitled to the decree of the suit amount with interest? OPP
- (ii). Whether this Court has no territorial jurisdiction to entertain the present suit? OPD
- (iii). Whether the suit has been signed, verified and filed by duly authorized person? OPP
- (iv). Whether the suit is barred by limitation? OPD
- (v). Whether the suit is without any cause of action qua defendant No.2? OPD
- (vi). Whether the suit is bad since the bond is not adequately stamped and as such suit is liable to be dismissed? OPD
- (vii). Whether Court fees paid on the plaint is insufficient? OPD
- (viii). Relief.”

10. The appellant/plaintiff examined its Under Secretary, Ministry of Human Resource Development in support of its claim. The respondent/defendant no.2 alone appeared as a witness in his defence. No other witnesses were examined.

11. The learned Addl. District Judge, vide the impugned judgment has dismissed the suit, finding/observing/holding:-

- (A). that the Court at Delhi had territorial jurisdiction to try the suit;
- (B). that the plaint in the suit, though could be signed and verified by an Under Secretary of the Government conversant with the facts, but the Under Secretary who had signed and verified the plaint had joined the Department only on 1st January, 2001 and was thus not conversant with the facts and the suit was thus not signed, filed and verified by a competent person on behalf of the appellant/plaintiff;
- (C). that the respondents/defendants no.1 to 3 had executed the bond on 5th September, 1985; that the terms and conditions of the

bond were violated when the respondent/defendant no.1 failed to return to India on/or before 22nd September, 1988; that Article 30 of the Limitation Act provides limitation of three years on a bond subject to a condition, commencing from the date when the condition is broken; that the suit had been filed on 3rd June, 2002 i.e. after more than three years when the cause of action accrued to the appellant/plaintiff; the suit was thus barred by time; issue No.5 was accordingly decided in favour of the respondent/defendant No.2 against the appellant/plaintiff;

- (D). that bond on which the suit was based was not duly stamped and was thus impounded and issue no.6 decided accordingly; and,
- (E). the appellant/plaintiff was held to have paid appropriate Court Fees on the plaint.

however in view of the findings on issues no.3,4&6 the suit was dismissed.

12. To summarize, though the appellant/plaintiff was held entitled to the monies for recovery of which the suit was filed, the suit was dismissed on the grounds of:-

- (i). the claim therein being barred by time;
- (ii). the suit having not been filed and the plaint having not been signed and verified by a duly authorized person on behalf of the appellant/plaintiff and;
- (iii). the bond on which the suit was based being not duly stamped.

13. I find error apparent on the face of the record in so far as the first and the third of the aforesaid three grounds on which the suit has been dismissed. The learned Addl. District Judge under issue no.6 having impounded the document and having directed recovery of deficient stamp duty and penalty thereon, could not have dismissed the suit on the said ground. Moreover the learned Addl. District Judge totally lost sight of the fact that the appellant/plaintiff was the Union of India and even if, as a party to the bond, liable for payment of stamp duty, was exempt under Proviso (1) to Section 3 of the Indian Stamp Act, 1899 from payment of Stamp Duty.

14. As far as the first of the aforesaid grounds of limitation on which the suit has been dismissed is concerned, the counsel for the appellant/plaintiff is correct in contending that the issue of limitation having been decided on 23rd November, 2002 on a preliminary issue framed at the instance of the respondent/defendant no.2, could not have been revisited by the learned Addl. District Judge. Not only so, the learned Addl. District Judge while adjudicating the aspect of limitation, again lost sight of the fact that the appellant/plaintiff was the Central Government/Union of India the limitation prescribed for suits by whom is 30 years and not three years. Thus the said ground given for dismissal of suit is also patently erroneous.

15. That leaves the ground, of the suit having not been filed and the plaint having not been signed and verified by a duly authorized person on behalf of the appellant/plaintiff. In this respect the learned Addl. District Judge though has held that person who had filed the suit and signed and verified the plaint on behalf of the appellant/plaintiff was occupying the office which was authorized to institute the suit and sign and verify the plaint but has held the suit to be not duly filed, signed and verified for the reason of the said officer being not familiar with the facts for the reason of having joined the concerned Department after the date when the cause of action had accrued. I

am afraid this is not the correct position in law. The officers in the various departments of the Government are transferred/shuffled from time to time and it is not essential that the officer in whose regime the cause of action has accrued would be there when the suit is filed, especially when the limitation therefor provided is of 30 years. Moreover, familiarity with the facts can also be on the basis of records and need not be only by being personally present in the office when the cause of action accrues. I have also perused the affidavit by way of examination-in-chief and the cross examination of the said officer and therefrom also find that the said officer on the basis of the records was fully familiar with the facts of the case. The said ground given by the learned Addl. District Judge thus also has no legs to stand.

16. As far as the merits of the claim of the appellant/plaintiff is concerned, the only defendant i.e. the respondent/defendant no.2 who contested the suit did not deny execution of the bond or the amount claimed being due thereunder. The only defence raised was of the appellant/plaintiff having not provided suitable employment opportunity for the respondent/defendant no.1 in India. However a perusal of the bond executed by all the respondents/defendants shows that there was no such obligation thereunder on the appellant/plaintiff. Moreover it was for the

respondent/defendant no.1 to plead as to what attempts he had made for finding employment in India. This was not done, neither by filing a written statement nor was it so stated in the response sent by the respondent/defendant no.1 to the demand preceding the suit. Even otherwise, for such beneficial schemes to continue to run and for more and more deserving candidates to reap benefit therefrom, it is essential that the terms of the bond are strictly adhered to and the defaulters made to plough back what they had agreed to.

17. The appeal therefore succeeds. The impugned judgment and decree is set aside. The suit of the appellant/plaintiff is decreed for recovery of Rs.16,11,569.44p together with *pendente lite* and future interest till the date of payment at 14.5% per annum, however against the respondent/defendant no.1 only. The appellant/plaintiff shall also be entitled to the costs of the suit and the costs of this appeal from the respondent/defendant no.1.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

OCTOBER 29, 2013

pp