

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

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Date of decision: 18th November, 2013

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RFA NO.530/2013

VIMAL KUMAR GOYAL

..... Appellant

Through: Mr. Jos Chiramel & Mr. Ajay Singh,
Advs.

Versus

**THE NEW INDIA ASSURANCE
COMPANY LTD.**

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This appeal impugns the judgment and decree dated 25.07.2013 of the Court of the Additional District Judge (ADJ)-I, New Delhi District, Patiala House Courts, New Delhi of dismissal as time barred of suit No.402/2010 (I.D. No.02403C0243242008) filed by the appellant / plaintiff for recovery of Rs.14,40,577/-.

2. Though the appeal has come up before this Court for the first time today only but the learned Additional District Judge (ADJ) having dismissed the suit claim of the appellant / plaintiff on the ground of limitation, which in

the facts and circumstances enumerated herein below is more a question of law than an intertwined question of law and facts, the counsel for the appellant / plaintiff has been heard at length; though I must record that at the fag end of the hearing, the counsel for the appellant / plaintiff realizing that I was not agreeing with his contentions played the card of this being a First Appeal and which is required to be considered after summoning the Trial Court record and issuing notice to the respondent / defendant. However, when the judgment of the Trial Court is based on a legal question and when all the Trial Court records have been filed along with the appeal and there is no dispute on that count, I see no reason to, for the sake of lip service, admit the appeal when no merit is found therein and when the counsel for the appellant / plaintiff inspite of addressing for over 45 minutes is unable to convince this Court.

3. The undisputed facts are as under:

- (a) the appellant / plaintiff was employed with the respondent / defendant;

- (b) the appellant / plaintiff during the course of his employment was posted abroad subject to his giving a personal bond as per Service Rule No.32;
- (c) the appellant / plaintiff furnished a bond whereunder, he *inter alia* agreed that on his return to India, he will serve the respondent / defendant for a period of at least three years and in default thereof pay to the respondent / defendant liquidated damages as mentioned therein;
- (d) the appellant / plaintiff remained abroad from 24.11.1999 till he joined back services in India on 07.11.2003;
- (e) the respondent / defendant on 01.01.2004 launched a Voluntary Retirement Scheme (VRS) for its employees;
- (f) the appellant / plaintiff on 20.02.2004 applied for voluntary retirement;
- (g) the Competent Authority under the VRS, vide internal communication dated 04.03.2004 accepted the application of the appellant / plaintiff for voluntary retirement;

- (h) the respondent / defendant vide letter dated 12.03.2004 intimated to the appellant / plaintiff of the acceptance of his application for voluntary retirement and further intimated him that since he had furnished the bond, the bond money would be recovered from his terminal dues;
- (i) the appellant / plaintiff was on 12.03.2004 relieved from the employment of the respondent / defendant;
- (j) the respondent / defendant, under cover of letter dated 16.09.2004 to the appellant / plaintiff paid his terminal dues as per the VRS, after deduction therefrom of the bond amount; and,
- (k) the appellant / plaintiff on 11.08.2009 instituted the suit from which this appeal arises for recovery from the respondent / defendant of the amounts so deducted from his VRS package on account of the bond.

4. The learned ADJ has vide the impugned judgment and decree though held such deduction by the respondent / defendant of the amount on account

of bond to be illegal and further held that the respondent / defendant had waived the condition of deduction of bond amount from the appellant / plaintiff but has dismissed the suit as time barred.

5. The learned ADJ on the aspect of limitation has found / observed / held:

- (i) that it was the contention of the respondent / defendant that the decision to forfeit and adjust the bond amount was communicated to the appellant / plaintiff on 12.03.2004 itself and thus the suit filed in August, 2009 was clearly time barred;
- (ii) on the other hand, it was the contention of the appellant / plaintiff that limitation would run from the date when the appellant / plaintiff's demand was rejected and rejection communicated to the appellant / plaintiff;
- (iii) it was further the contention of the appellant / plaintiff that the appellant / plaintiff had made a representation dated 17.04.2004 to the Competent Authority of the respondent / defendant company i.e. the Chairman-cum-Managing Director of the

respondent / defendant company and rejection whereof was communicated to the appellant / plaintiff for the first time vide respondent / defendant's letter dated 20.07.2006 posted on 08.08.2006 and thus the suit filed on 07.08.2009 was within time (I may however notice that the suit was not filed on 07.08.2009 but on 11.08.2009 as per the decree sheet and was thus filed beyond three years from 08.08.2006 also);

- (iv) however the representation made by the appellant / plaintiff was not under any statute nor was it provided for under any Rules governing the services of the appellant / plaintiff and thus the communication of rejection of the said representation could not extend the time;
- (v) the representation made by the appellant / plaintiff or its rejection would thus not enhance the limitation; reliance in this regard was placed on *S.S. Rathore Vs. State of M.P.* 1989 (4) SCC 582; and,
- (vi) that thus the cause of action had accrued to the appellant / plaintiff on 12.03.2004 when the appellant / plaintiff was

communicated that the bond amount would be deducted from his VRS package and the appellant / plaintiff could have filed the suit only within three years therefrom.

6. The counsel for the appellant / plaintiff commenced his argument by contending that the learned ADJ has in the impugned judgment wrongly relied upon Article 58 of the Schedule to the Limitation Act, 1963 which has no application.

7. However, a perusal of the impugned judgment shows that the learned ADJ has not relied on Article 58 of the Schedule to the Limitation Act and has referred thereto merely to deal with the argument of the counsels and has else held the suit to be time barred merely on the finding that the cause of action therefor had accrued on 12.03.2004 and the limitation therefor was of three years.

8. I have repeatedly enquired from the counsel for the appellant / plaintiff as to under which Article of the Schedule of the Limitation Act, the said suit would lie. No answer has been forthcoming.

9. I have further enquired from the counsel for the appellant / plaintiff whether not the present suit would fall under Article 7 of the Schedule to the Limitation Act providing for a suit for recovery of wages, a limitation of three years commencing from the date when the wages accrue due. No answer has been forthcoming from the counsel for the appellant / plaintiff to this also.

10. I am unable to find any other Article in the Schedule to the Limitation Act under which the suit can be said to fall. The only other Article under which the suit can fall is the residuary Article 113, the limitation provided wherein also is of three years from the date when the right to sue accrues. A perusal of the plaint filed by the appellant / plaintiff shows the appellant / plaintiff to have also pleaded the cause of action to have accrued on 12.03.2004 when the respondent / defendant communicated its decision to recover the bond amount out of the VRS package of the appellant / plaintiff; the appellant / plaintiff however further pleaded the cause of action to have accrued thereafter on 06.08.2004 when the respondent / defendant conveyed the details of deduction towards bond to the appellant / plaintiff; on 16.09.2004 when the respondent / defendant made the actual payment of terminal dues after deducting the bond amount therefrom; on 29.10.2004

when the respondent / defendant gave details of statement of terminal dues and thereafter on various dates when the appellant / plaintiff made requests in writing and orally to release the bond money; on 08.08.2006 when the respondent / defendant sent thier letter dated 20.07.2006 rejecting the request of the appellant / defendant for waiver of the bond money; on and around 11.08.2006 when the appellant / plaintiff received the said letter dated 20.07.2006; and, lastly on 03.08.2009 when the appellant / plaintiff served the respondent / defendant with the legal notice.

11. The only thing thus for adjudication was whether the service on the appellant / plaintiff of the letter dated 20.07.2006 of rejection of his representation could be said to be the cause of action.

12. The counsel for the appellant / defendant upon being so confronted, has contended that the Competent Authority under the VRS was the Chairman-cum-Managing Director only; that the Chairman-cum-Managing Director had accepted the application of the appellant / plaintiff for VRS unconditionally; that it is the authority other than the Competent Authority which has taken a decision to deduct the bond amount from the VRS package; that the said decision could have been taken by the Competent

Authority only and not by any other authority; that it was for this reason that the appellant / plaintiff made a representation to the Competent Authority and rejection of which representation was communicated to the appellant / plaintiff within three years prior to the institution of the suit.

13. The aforesaid argument, at the outset is contrary to the pleadings. A perusal of the plaint does not show the appellant / plaintiff to have pleaded that only the Competent Authority could have taken a decision for enforcing the bond against the appellant / plaintiff. Moreover, the said Competent Authority is under the VRS only i.e. for acceptance of applications for voluntary retirement and not for taking a decision on enforcement of the bond. A perusal of the copy of the bond filed with the memorandum of appeal shows the same to have been furnished in favour of the respondent / defendant and it is not the case of the appellant / plaintiff that there was any Competent Authority under the bond or that the decision for enforcement of the bond had not been taken by such Competent Authority.

14. The counsel for the appellant / plaintiff has then argued that the acceptance by the respondent / defendant of the application of the appellant / plaintiff for voluntary retirement shows that the respondent / defendant did

not require the services of the appellant / plaintiff and it is for this reason that it could have been only the Competent Authority under the VRS which could have taken the decision for enforcement of the bond.

15. Though the aforesaid argument is on merits and is not on the aspect of limitation but even otherwise no merit is found therein. The counsel for the appellant / plaintiff admits that in the VRS there was no provision with respect to the officers / employees serving the period for which they may have furnished a bond, though officers posted abroad or on deputation abroad were made ineligible to avail of the Scheme. However, a perusal of the said Scheme shows Sub-clause (ix) of Clause 8 titled 'General Conditions' to be providing as under:

“(ix) All payments under this scheme, and any other benefit payable to an officer shall be subject to prior settlement or re-payment or adjustment in full, of loans, advances, returning of Company’s property and any other outstanding dues against him / her and payable by him or her to the company.

It has thus been enquired from the counsel for the appellant / plaintiff whether not the aforesaid clause made it abundantly clear that acceptance of application for voluntary retirement would not relieve the appellant /

plaintiff from liability under the bond executed by the appellant / plaintiff in favour of the respondent / defendant.

16. It has yet further been enquired from the counsel for the appellant / plaintiff whether the appellant / plaintiff, who was informed of the deduction of the bond amount from his VRS package in the same communication in which he was informed of the acceptance of his application for voluntary retirement took a stand of being willing to serve the respondent / defendant for the bond period if the application for voluntary retirement was treated to be in violation of the bond.

17. The counsel for the appellant / plaintiff has fairly admitted that no such stand was taken and the only protest made by the appellant / plaintiff was against the deduction of the bond amount from the VRS package.

18. A perusal of the letter dated 12.03.2004 served by the appellant / plaintiff to the authority of the respondent / defendant which had communicated to him the acceptance of his application for voluntary retirement and deduction of the bond amount from the VRS package also shows the appellant / plaintiff to have merely asked for 'waiver' of the recovery of the bond amount. It was not the stand of the appellant / plaintiff

that he had applied for voluntary retirement assuming that his leaving the employment of the respondent / defendant prior to the bond period under the VRS was not in violation of the bond and offering his services to the respondent during the bond period. Moreover, the appellant / plaintiff in the letter dated 12.03.2004 had not disputed the right of the respondent / defendant to recover the bond amount and merely sought waiver thereof. Though the appellant / plaintiff thereafter served a detailed representation dated 19.04.2004 but therein also did not offer his services for the bond period.

19. The counsel for the appellant / plaintiff faced therewith, abandoned the attempt to justify the suit claim being within time and contended that his alternative submission is that since the impugned judgment and decree otherwise upholds his right to the said amount, the respondent / defendant being a State ought not to deprive, on the ground of limitation, the appellant / plaintiff of his just dues. Reliance in this regard is placed on:

- (i) ***Madras Port Trust Vs. Hymanshu International*** (1979) 4 SCC 176 where the Supreme Court finding, the claim held to be barred by time to be a just one supported by the

recommendations of the Assistant Collector of Customs also, in exercise of discretion under Article 136 of the Constitution of India directed payment thereof;

(ii) ***Mahabir Kishore Vs. State of Madhya Pradesh*** (1989) 4 SCC 1 but which is found to be a case of refund of money paid by mistake of law and not applicable to the facts of the present case;

(iii) ***India International Textile Machinery Exhibitions Society Vs. The India Trade Promotion Organization*** MANU/DE/9491/2006 but which is also a judgment on whether the claim is within limitation or not and thus not in support of the proposition aforesaid.

20. The counsel for the appellant / plaintiff has further argued that the enforcement of the bond by the respondent / defendant amounts to unjust enrichment and is inequitable.

21. However that is again not found to be the case pleaded by the appellant / plaintiff though the learned ADJ undoubtedly in the impugned

judgment has observed that no monies were incurred by the respondent / defendant on any training of the appellant / plaintiff. The appellant / plaintiff, in the suit, did not seek any declaration that the said bond was illegal or unenforceable. The plain and simple case of the appellant / plaintiff which was put to trial was, of the appellant / plaintiff being not in violation of the bond by leaving the services of the respondent / defendant prior to the bond period under the VRS. The appellant / plaintiff, without having set up a case of illegality of the bond, cannot in appeal be heard to contend that enforcement of the bond amounts to unjust enrichment of the respondent / defendant. Moreover, a perusal of the bond shows that the consideration thereof was the posting abroad by the respondent / defendant of the appellant / plaintiff at the salary stipulated for postings abroad and not any training to be imparted to the appellant / plaintiff. The said argument is thus not available to the appellant / plaintiff.

22. The contention then of the counsel for the appellant / plaintiff is that since the other issues have been decided in favour of the appellant / plaintiff, his suit claim should be held to be just.

23. I am unable to agree. The *Madras Port Trust* supra, the only of the three judgments applicable to such an argument, was a case of exercise of discretion under Article 136 of the Constitution of India by the Supreme Court and cannot be said to be a precedent. Moreover, the claim therein was held to be a just claim since even the respondent / defendant (in that case) had on merits not contested the same. In fact, subsequently in *Krishna Gopal Lakani Vs. Bank of Baroda* (2008) 13 SCC 485 the argument (on the basis of *Madras Port Trust* supra) that it is inappropriate for a public sector undertaking to raise a plea of limitation when the amount was due was not accepted. The position here is entirely different. The respondent / defendant has contested the claim of the appellant / plaintiff on merits also.

24. Though undoubtedly the learned ADJ has decided the other issues in favour of the appellant / plaintiff but I entertain grave doubts with respect to the reasoning of the learned ADJ. Though Sub-clause (ix) of Clause 8 supra of the VRS was cited before the learned ADJ but the learned ADJ held the claim of the respondent / defendant under the bond to be not covered thereby and the said Clause being confined to re-payment / adjustment of loans / advances and return of company's property. I am unable to agree, there is no reason to so narrowly interpret the said clause, the language whereof

extends to all amounts payable to the respondent / defendants. Undoubtedly, the bond amount was payable by the appellant / plaintiff to the respondent / defendant company and there is no reason to exclude the same from Sub-clause (ix) of Clause 8. Moreover, the appellant / plaintiff as part of his application for voluntary retirement had also authorized the respondent / defendant to recover and adjust all dues payable by him to the respondent / defendant from his terminal benefits including ex-gratia. The appellant / plaintiff at that stage also did not make the same subject to the dues under the bond.

25. The learned ADJ relying on certain judgments dealing with other Schemes which expressly provided that persons opting thereunder would be subject to the bond has held that the respondent / defendant ought to have expressly provided so in the VRS and having not provided so cannot enforce the bond. I am unable to agree with the said reasoning also of the learned ADJ. The Sub-clause (ix) of Clause 8 supra coupled with authorization aforesaid in the prescribed format was sufficient for the appellant / plaintiff to at least entertain a doubt that acceptance of his application for voluntary retirement would not relieve him from the bond condition. The appellant / plaintiff could have sought a clarification from the respondent / defendant in

this regard. The appellant / plaintiff did not do any such thing and which shows that he was very eager to leave the services of the respondent / defendant prior to the bond period.

26. Though the counsel for the appellant / plaintiff has contended that as per the VRS, the appellant / plaintiff was not entitled to withdraw his application for voluntary retirement but the appellant / plaintiff upon being told of the decision of the respondent / defendant to deduct the bond amount from his VRS package could have at least informed the respondent / defendant that he had applied for VRS under the impression that he would be relieved from the liability under the bond and if were not to be so relieved was desirous of serving the respondent / defendant for the bond period. The failure of the appellant / plaintiff to do so *res ipsa loquitur* speaks of the intent of the appellant / plaintiff being to leave the employment of the respondent / defendant during the bond period. The reason therefor is obvious. On enquiry, it is informed that the appellant / plaintiff since immediately after leaving the employment of the respondent / defendant on 12.03.2004 is working as an Insurance-cum-Share Broker. The appellant / plaintiff was thus obviously seeking greener pastures. His claim for being relieved from the liability under the bond while admittedly being in breach

thereof is thus not found to be just. Rather, a perusal of the documents filed along with the appeal show that the respondent / defendant at the time of accepting the application for voluntary retirement of the appellant / plaintiff also accepted the similar application of one Mr. Ravi Shankar also who had also furnished a bond for overseas posting and orders for recovery of the bond money from his VRS package also were passed. It is not the case of the appellant / plaintiff that the respondent / defendant has discriminated against the appellant / plaintiff; rather the respondent / defendant appears to have acted uniformly against all similarly placed as the appellant / plaintiff.

27. The counsel for the appellant / plaintiff has lastly contended that the appellant / plaintiff had got issued a notice under Order 12 Rule 8 of the CPC to the respondent / defendant to produce the documents containing the decision for acceptance of his application for voluntary retirement and for recovery of the bond amount from him and since the respondent / defendant had failed to produce the same, the learned ADJ had vide order dated 03.03.2011 directed that the effect thereof shall be taken into consideration at the time of final decision but has not considered the same.

28. The aforesaid argument also has no merit. The said documents are found to be of no relevance to the claim of the appellant / plaintiff in the suit.

29. Before parting with the case, I may notice that while perusing the file at the time of dictation, it has been found that the claim of the appellant / plaintiff besides for the bond amount deducted from his VRS package was also for a sum of Rs.25,000/- which he claimed to be due to him towards profit incentives and which had been withheld and which claim was also upheld by the learned ADJ. However, the counsel for the appellant / plaintiff has not raised any argument with respect thereto. Moreover, the said claim was also held to be barred by time and would be governed by the discussion hereinabove.

30. There is thus no merit in the appeal which is dismissed. However, the appeal having been dismissed at the initial stage, no costs.

Decree sheet be prepared.

NOVEMBER 18, 2013
'gsr'

RAJIV SAHAI ENDLAW, J