

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

+ **RFA No. 735/2018**

% **4th September, 2018**

RAJNISH KOHLI Appellant

Through: Mr. Raman Kapur, Sr. Adv.
with Mr. Aviral Tiwari,
Advocate.

versus

HCL TECHNOLOGIES LTD. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 35801/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is
condoned.

CM stands disposed of.

CM No.35802/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No.735/2018

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 27.2.2018 by which the Trial Court has dismissed the suit filed by the appellant/plaintiff. By the suit the appellant/plaintiff sought the relief of mandatory injunction for grant of 1950 Shares of the respondent/defendant company to the appellant/plaintiff under the Employees Stock Option Plan (ESOP) or in the alternative the appellant/plaintiff claimed the relief of money decree being the value/price of shares as damages totaling to a sum of Rs.56,55,000/-.

2. The facts of the case are that the appellant/plaintiff was an employee of the respondent/defendant company M/s HCL Technologies Ltd. The earlier name of the respondent/defendant company was HCL Consulting Ltd., and this was during the period when the appellant/plaintiff was the employee of the respondent/defendant company. By the Letter dated 8.11.1995 the appellant/plaintiff was offered by the respondent/defendant company ESOP of 1950 Shares of the respondent/defendant company. This

offer given to the appellant/plaintiff was in terms of the Letter dated 8.11.1995 (Ex.P3). The offer was however subsequently deferred in terms of the Letter dated 20.1.1997 (Ex.P-4) whereby the entitlement of the appellant/plaintiff to the ESOP was to be enforced after 30 days of the Initial Public Offering (IPO) of the respondent/defendant company. Appellant/plaintiff pleaded that he kept on patiently waiting to get the ESOP and that he was orally informed by the officers of the respondent/defendant company that information with respect to the coming out of its IPO shall be conveyed to him. The appellant/plaintiff pleads that he had repeatedly requested the respondent/defendant company through phone calls and e-mails to enable him to exercise the option in terms of the Letter dated 20.1.1997, but the respondent/defendant company refused to grant ESOP for one reason or the other. Ultimately, the appellant/plaintiff was forced to issue a Legal Notice dated 11.10.2004 asking the respondent/defendant company to issue the ESOP shares, and to make good on all losses, and on failing to get the requisite response, the subject suit was filed.

3. Respondent/Defendant company contested the suit by filing its written statement. The first defence raised by the

respondent/defendant company was that the ESOP 1995 was withdrawn in the year 1999. It was further contended by the respondent/defendant company that the appellant/plaintiff knew of the withdrawal of ESOP 1995 Scheme, including because under the ESOP 1999 Scheme of the holding company of the respondent/defendant company namely HCL Corporation Ltd., the appellant/plaintiff was granted 9662 Stock Options at Rs.4/- each and the appellant/plaintiff exercised that option and made profit of about Rs.20 lacs on sale of the said shares. The further case of the respondent/defendant company was that the entitlement for ESOP as claimed by appellant/plaintiff, in terms of the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 as amended w.e.f 30.6.2003, could not be given to the appellant/plaintiff as ESOP benefits were to be given only to an employee of a company or employee of a subsidiary company or an employee of a holding company, and that the appellant/plaintiff admittedly from April 1997 ceased to be the employee of the respondent/defendant company and became the employee, not of a subsidiary or holding company of the respondent/defendant company, but of a joint venture of the

respondent/defendant company and M/s. Perot Systems Corporation, USA. In fact, M/s HCL Perot Systems Ltd. even ceased to be a joint venture company of the group of respondent/defendant company w.e.f 19.12.2003 when it ceased to be a joint venture on account of sale of shares in the joint venture company by the respondent/defendant company M/s HCL Technologies Ltd. to M/s Perot Systems Ltd. It was further pleaded by the respondent/defendant company that since the appellant/plaintiff knowingly failed to participate in ESOP 1999 and therefore now not only it cannot be asserted by the appellant/plaintiff that he came to know only in the year 2004 that the ESOP 1999 had been withdrawn, but infact the suit was barred by time. Suit was hence prayed to be dismissed.

4. After pleadings were complete the trial court framed the issues and parties led evidence, and these aspects are recorded in paras 6 to 7.2 of the impugned judgment, and these paras read as under:-

“6. **Issues**

From the pleadings of the parties, following issues were framed on 23.01.2007:

1. ***Whether in view of SEBI (Employees Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (Guidelines),***

the plaintiff is entitled to exercise the Stock Option Plan of 1950 shares? OPP

2. *Whether the plaintiff is an employee of the defendant company or a subsidiary of the defendant company and as such he is entitled to exercise the balance stock options? OPD.*
3. *Whether the stock option in respect of 1950 equity shares as claimed by the plaintiff is different from the equity shares claimed by the plaintiff in Suit No. 414 of 2006? OPP.*
4. *Whether the plaintiff has approached this Court with clean hands entitling him to the grant of a decree for mandatory injunction? OPP.*
5. *Whether in case plaintiff cannot be granted decree of mandatory injunction, would the defendant be liable to pay damages? OPP*
6. *Whether the ESOP was withdrawn by HCL Corporation which issued the ESOP? OPD*
7. *Whether the suit is time barred?*
8. *Relief, if any.*

7. **Evidence led by parties**

7.1 In evidence, plaintiff examined himself as PW1 vide affidavit Ex.PW1/A. PW1 relied upon documents Ex.P3 to Ex.P7 viz., (i) letter dated 08.11.1995 issued by defendant to plaintiff as Ex.P3; (ii) letter dated 20.01.1997 sent by defendant to plaintiff as Ex.P4; (iii) copy of legal notice dated 11.10.2004 sent by plaintiff to defendant as Ex.P5; (iv) copy of letter dated 24.12.2004 sent by plaintiff to defendant as Ex.P6 and (v) newspaper 'Times of India' dated 07.01.2006 as Ex.P7.

7.2 Defendant got examined Sh. Manish Anand, Deputy Company Secretary of the defendant company as DW-1 vide affidavit Ex.DW1/A."

5. Learned senior counsel for the appellant/plaintiff has argued as under:-

(a) Trial court has committed an illegality in denying the benefit of ESOP 1999 of the respondent/defendant company to the appellant/plaintiff because the respondent/defendant company never informed the appellant/plaintiff of the IPO of the respondent/defendant company taking place in the year 1999. It is argued that since the factum of IPO of the year 1999 of the respondent/defendant company was not informed to the appellant/plaintiff, therefore, the appellant/plaintiff could not exercise the option within 30 days of the IPO in the year 1999, and consequently the right of the appellant/plaintiff is alive for getting the 1950 Shares of the respondent/defendant company in terms of ESOP 1995.

(b) It is argued that the trial court has wrongly held the suit to be barred by time when it was held that the suit should have been filed within 3 years of 1999. Since the suit was filed much later in the year 2006, inasmuch as, the appellant/plaintiff never had the knowledge of the IPO issue of the respondent/defendant company during this period starting from the year 1999, and the appellant/plaintiff came to know of the same only in around October 2004 when the Legal Notice dated

11.10.2004 (Ex.P-5) was sent by the appellant/plaintiff to the respondent/defendant company.

(c) Trial court has gravely erred in placing reliance upon SEBI Regulations of 1999 as amended w.e.f. 2003 because such regulations cannot have retrospective effect to take away the benefit granted to the appellant/plaintiff in the year 1995.

6. In my opinion, the appeal is without merit and is liable to be dismissed. The reasons for the same are stated hereinafter.

7 Firstly in my opinion it cannot be argued by the appellant/plaintiff that he was not aware of the IPO of the respondent/defendant company in the year 1999. Trial court in this regard has, in para 8.25 of its impugned judgment held that appellant/plaintiff had applied as a private investor in IPO 1999 of the respondent/defendant company, and therefore, he would be consequently well aware of the IPO of the respondent/defendant company of the year 1999. Though Learned Senior Counsel for appellant/plaintiff argued that the appellant/plaintiff did not know that IPO was of HCL Consulting Ltd., and under which name the stock options in 1995 in terms of the letter dated 8.11.1995 (Ex.P3),

inasmuch as the 1999 IPO was in the name of the respondent/defendant company HCL Technologies Ltd., however I cannot agree with this argument for two reasons.

(i) Firstly, IPO is in terms of the Prospectus and it is conceded before this Court on behalf of the appellant/plaintiff that in the Prospectus indubitably it is written that the respondent/defendant company's present name which was Hindustan Technologies Ltd. was earlier having the name of Hindustan Consulting Ltd. Once therefore the appellant/plaintiff applied as a private investor in an IPO, he would be deemed to have read the prospectus, and therefore he would have very much known in the year 1999 itself of the IPO having taken place of the respondent/defendant company in the year 1999 itself. This argument of the appellant/plaintiff that he did not come to know about the IPO of the respondent/defendant company in the year 1999 is rejected.

(ii) The second reason why the appellant/plaintiff is deemed to have knowledge of IPO of the respondent/defendant company in the year 1999 is also because the appellant/plaintiff was legally put to regular enquiries after receiving the Letter of the respondent/defendant

company dated 20.1.1997 (Ex.P4) whereby ESOP 1995 was deferred till 30 days after making of the IPO. The appellant/plaintiff cannot claim that he was entitled to keep on sleeping and suddenly wake up in the year 2004 to claim that he did not know that any IPO took place of the respondent/defendant company in the year 1999. Where a person by his own act fails to take requisite steps which he ought to have taken by which such person would have come to know of a fact, then in law the necessary knowledge is imputed to such a person and he is deemed to have such knowledge. This is so in this case, because after the year 1997 there is no correspondence of the appellant/plaintiff with the respondent/defendant company as to whether any IPO of the respondent/defendant company has or has not come out.

8. I also refuse to believe the oral statements and the oral contentions urged on behalf of the appellant/plaintiff, as per his pleadings and evidence, that the employees of the respondent/defendant company kept on assuring him that he will get the shares under the ESOP of 1995.

9. Therefore, in my opinion the appellant/plaintiff was very much aware of IPO of respondent/defendant company coming out in the year 1999, and therefore appellant/plaintiff cannot contend by a suit filed on 1.2.2006 that ESOP 1995 continued to exist although the appellant/plaintiff had failed to exercise the option for ESOP within 30 days of the IPO of the respondent/defendant company coming out in the year 1999. Thus it is held that, by the suit filed by the appellant/plaintiff in the year 2006, the appellant/plaintiff is not entitled to accept the ESOP 1995 by getting the requisite 1950 Shares as appellant/plaintiff had failed to apply for the same within 30 days of IPO of respondent/defendant company in the year 1999.

10. For the self-same reasons as discussed above, the trial court has also rightly held the suit to be barred by limitation which was filed in the year 2006 for ESOP given vide Letter dated 8.11.1995 and postponed vide Letter dated 20.1.1997 to 30 days of the IPO, as it is already held that the appellant/plaintiff had actual knowledge of the 1999 IPO of the respondent/defendant company as discussed above, and also is otherwise deemed to have knowledge of the IPO of the respondent/defendant company in the year 1999 and therefore the suit

had to be filed within 3 years of 1999 but the suit was filed 7 years after the year 1999.

12. I also do not agree with the arguments urged on behalf of the appellant/plaintiff that SEBI 1999 Regulations and as amended from June 2003 will not prevent the exercise of option of ESOP 1995 by the appellant/plaintiff inasmuch as the SEBI 1999 Regulations are prospective. In my opinion in the facts of the present case there is no issue of prospectivity as the prospectivity aspect cannot destroy crystallised rights. In the year 1999 there were no crystallised rights in favour of appellant/plaintiff as he had not accepted in the year 1999 the ESOP. Only when a contract is complete, by acceptance of an offer of ESOP, would crystallised rights come into existence, and by the year 1999 the appellant/plaintiff had not exercised the ESOP option, and in any case not within 3 years of the 1999 IPO of the respondent/defendant company. Since *ignorantia juris non excusat*, the appellant/plaintiff is deemed to have knowledge of the 1999 SEBI Regulations, at least within 3 years from 1999, and thus the appellant/plaintiff should have filed the subject suit for specific performance to claim the shares under the ESOP 1995, but since

admittedly the subject suit has been filed only on 1.2.2006, therefore, for this reason the appellant/plaintiff cannot claim that he is entitled to the benefit of ESOP 1995 in spite of the same being legally barred.

13. Thus when the ESOP 1995 was given at that time the appellant/plaintiff was the employee of the respondent/defendant company, but once appellant/plaintiff ceased to be the employee of the respondent/defendant company w.e.f April, 1997, then because of SEBI 1999 Regulations which provided that the Scheme of ESOP 1999 will not be available to an employee who is not the employee of the company or the subsidiary company and holding company, then statutorily the right of the appellant/plaintiff came to an end because of SEBI 1999 Regulations (and as amended w.e.f June, 2003) had come into force.

13. In my opinion, the trial court has also rightly dismissed the suit by holding that the appellant/plaintiff has failed to prove his readiness and willingness. Readiness and willingness would have been proved by the appellant/plaintiff in case the appellant/plaintiff had sent his cheque for the amount of Rs.19,500/- alongwith his notice

dated 11.10.2004/Ex.P5, but admittedly the appellant/plaintiff failed to pay/tender the amount of Rs.19,500/- alongwith his Legal Notice dated 11.10.2004. Further, and though it may only be a technicality, but the fact is that the appellant/plaintiff has not filed and proved in the suit his financial capacity with respect to the amount payable of Rs.19,500/-, and hence for this technicality also in my opinion, it has to be held that the appellant/plaintiff was not ready and willing for grant of specific performance of the ESOP 1995.

14. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 4, 2018/ib

VALMIKI J. MEHTA, J