

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

% **Date of decision: 28th September, 2018.**

+ **RSA 144/2018 & CM No.40240/2018 (for condonation of 20 days delay in re-filing the appeal)**

MANZOOR UL HAQUE

..... Appellant

Through: Mr. Anis Ahmed and Mr. Rizwan Ahmed, Advs.

Versus

**BOMBAY MERCANTILE CO-OPERATIVE
BANK LTD & ANR**

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.40239/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RSA 144/2018 & CM No.40240/2018 (for condonation of 20 days delay in refiling the appeal).

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 3rd April, 2018 in RCA No.1220/16 of the Court of Senior Civil Judge (Central)] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 20th October, 2014 in Civil Suit No.444/13/05 (Unique ID No.02401C0916092005) of the Court of Civil Judge-07 (Central)] of dismissal of the suit filed by the appellant/plaintiff

against the two respondents/defendants i.e. Bombay Mercantile Co-operative Bank Ltd. and its Deputy General Manager at New Delhi.

4. The appeal is accompanied with an application for condonation of delay in re-filing of 20 days. However the question of consideration of the said application will arise only if any merit were to be found in the appeal. This being a Second Appeal, is not to be admitted as a matter of course and as per dicta of the Supreme Court in *Surat Singh Vs. Siri Bhagwan* (2018) 4 SCC 562 and *Vijay Arjun Bhagat Vs. Nana Laxman Tapkire* 2018 SCC OnLine SC 518, notice thereof has to be issued only on the High Court satisfying that the appeal entails a substantial question of law and after framing the said substantial question of law.

5. The counsel for the appellant/plaintiff has been heard and the copies of the Trial Court record annexed perused.

6. The suit, from which this appeal arises, was filed by the appellant/plaintiff for (i) declaration that the letter dated 11th June, 2005 issued by the respondent/defendant no.1 dismissing the appellant/plaintiff from service of the respondent/defendant no.1 was illegal, void *ab initio* and for setting aside of the same; and, (ii) consequential relief of mandatory injunction directing the respondents/defendants to reinstate the appellant/plaintiff in service as an officer of the respondent/defendant no.1 with all service benefits including the payment of salary for the intervening period and continuity of service and maintenance of seniority, promotion etc. as per rules.

7. The respondents/defendants contested the suit and on the pleadings of the parties the following issues were framed in the suit on 23rd January, 2006:-

- “1) Whether the suit is hit by the provisions of section 115 of Multi State Cooperative Societies Act, 2002 as per preliminary objection No.1? OPD*
- 2) Whether this court does not have the jurisdiction to entertain the matter and plaint is liable to be returned as per the preliminary objection No.2?*
- 3) Whether the suit is without cause of action as per the preliminary objection No.3? OPD*
- 4) Whether the suit is bad for mis-joinder of the parties as per preliminary objection No.4? OPD*
- 5) Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 6) Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
- 7) Relief.”*

8. The Suit Court, on the basis of evidence led, decided each of the aforesaid issues in favour of the respondents/defendants and against the appellant/plaintiff and resultantly dismissed the suit.

9. The First Appellate Court, in the first seven pages of its judgment, reproduced paragraphs, perhaps from the memorandum of the First Appeal and has in the remaining pages of its judgment, merely agreed with the reasons given by the Suit Court for dismissal of the Suit.

10. The counsel for the appellant/plaintiff, before me has argued (i) that Section 115 of the Multi State Cooperative Societies Act, 2002 requiring a pre suit notice did not apply to the subject suit; (ii) that the Courts at Delhi, where the appellant/plaintiff was employed, had jurisdiction to entertain the suit inasmuch as the letter of termination was served on the appellant/plaintiff at Delhi and the appellant/plaintiff was posted at Delhi before being transferred, first to Bombay and then to Jaipur; and, (iii) that the very fact that the services of the appellant/plaintiff had been terminated without holding any enquiry, furnished cause of action to the appellant/plaintiff.

11. I have enquired from the counsel for the appellant/plaintiff that since the appellant/plaintiff was employed with the respondent/defendant no.1 as an officer, whether not the employment of the appellant/plaintiff with the respondent/defendant no.1 was under a private contract of employment.

12. The counsel for the appellant/plaintiff agrees.

13. I have next enquired from the counsel for the appellant/plaintiff that once it is so, whether not the said contract of employment was by its very nature terminable.

14. The counsel for the appellant/plaintiff though again agrees, but contends that since the termination of employment of the appellant/plaintiff was stigmatic, an enquiry was required to be held before so terminating the services of appellant/plaintiff.

15. On being asked to show the letter of termination, the counsel for the appellant/plaintiff has drawn attention to page 254 of the paper book, being

the letter dated 11th June, 2005 of the Managing Director at Bombay of the respondent/defendant no.1 and which is as under:-

“The Management has decided to terminate your services with immediate effect.

A Payorder No.68/STF/SP/110044 dated 11th June, 2005 for Rs.63,117/- (Rupees Sixty Three Thousand One Hundred Seventeen Only) being your three months pay and allowances is enclosed herewith, in lieu of notice.

Since you stand relieved from the services of the Bank with immediate effect you are advised to submit the Stagg Identity Card issued to you and any other documents/articles of the Bank which are in your possession.”

16. I have enquired from the counsel for the appellant/plaintiff, whether not termination of employment vide the aforesaid letter is without any stigma.

17. The counsel or the appellant/plaintiff though yet again agrees but states that prior to the said termination letter, the respondent/defendant no.1 had issued three letters accusing the appellant/plaintiff of misconduct and misbehaviour.

18. Even if that be so, from the fact that the termination of employment is not on account of misconduct and misbehaviour and is of termination simpliciter, it is obvious that the respondent/defendant no.1 did not choose to pursue the accusation earlier made against the appellant/plaintiff and dropped the same. Once it is so, the respondent/defendant no.1 was fully entitled to so terminate the employment of the appellant/plaintiff. It has

been held by the Supreme Court in *A.G. Benjamin Vs. Union of India* (1967) 1 LLJ 718 and *Radhey Shyam Gupta VS. U.P. State Agro Industries Corporation Ltd.* (1999) 2 SCC 21 that even in cases where a departmental enquiry is initiated but subsequently dropped in favour of a simple notice of termination, such termination would not be punitive. In *State of Uttar Pradesh Vs. Kaushal Kishore Shukla* (1991) 1 SCC 691, *State of Punjab Vs. Sukhwinder Singh* (2005) 5 SCC 569 and *Kendriya Vidyalaya Sangathan Vs. Arun Kumar Madhavrao Sinddhave* (2007) 1 SCC 283 it was held that as long as the termination order/letter is innocuous and does not indict of any misconduct, the enquiry, even if any held prior thereto, of a preliminary nature, does not change the nature of the order/letter of termination into that of punishment, as after preliminary enquiry no steps to punish were taken and instead power to terminate in accordance with contract of service was exercised.

19. The counsel for the appellant/plaintiff then states that the respondent/defendant no.1, immediately after termination, leaked news to a *Urdu* newspaper of the appellant/plaintiff having siphoned of Rs.24,00,000/- from the respondent/defendant no.1.

20. On being told that the remedy if any thereagainst was of suing the respondent/defendant no.1 for defamation and which had not been done in the suit from which this appeal arises, the counsel for the appellant/plaintiff states that the appellant/plaintiff has already done so by way of a criminal complaint and which is pending.

21. Suffice it is to state that the suit, on the date of institution, was not maintainable and ought not to have occupied the judicial time of the Suit

Court and the First Appellate Court and should have been dismissed at the threshold.

22. There is thus no merit in the appeal, what to talk of any substantial question of law.

Dismissed.

No costs.

SEPTEMBER 28, 2018
'pp'..

RAJIV SAHAI ENDLAW, J.

