

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.314 OF 2015
IN
SUIT NO.410 OF 2014**

Johnson and Johnson Pvt. Ltd.	...	Applicant
and		
Dr. Ajit S. Telang	...	Plaintiff
versus		
Johnson and Johnson Pvt. Ltd.	...	Defendant

Mr. Arif Bookwala, Senior Advocate with Mr. Ankit R. Tripathi, Ms. Aparajita Chandra i/by Ms. Amrita Saldana, for Plaintiff.

Mr. E.P.Bharucha, Senior Advocate with Mr. Sarosh Bharucha, Mr. Parag Sharma, Ms. Auchita Bhagwat i/by M/s. Udwardia Udeshi, for Defendant/Applicant.

CORAM: S.J. KATHAWALLA, J.

DATE: 6th OCTOBER, 2015

P.C.:

1. The above Notice of Motion is taken out by the Defendant – Johnson and Johnson Pvt. Ltd., seeking an order and directions against the Plaintiff to amend the Plaint by striking out certain portion of the Plaint set out in the Schedule annexed to the Notice of Motion on the ground that they are scandalous and defamatory.
2. The Notice of Motion is opposed by the Plaintiff, who has filed his detailed Affidavit dated 03-07-2015.
3. The Plaintiff – Ajit S. Telang has a Doctorate in Polymer Science from University Department of Chemical Technology and a Licentiate of Plastics and Rubber Institute, London, joined the Defendant Company in 1989 as a Technical

Services Officer. In the year 1992, the Plaintiff was promoted as Technical Services Executive and in the year 1997, he was promoted as Assistant Technical Services Manager. In 2003, he was further promoted as Technical Services Manager and since then, he was working as such. Thus, the Plaintiff works with the Defendant Company for 21 years, until his services were terminated by a letter dated 16-10-2010, which reads thus :

“We had a series of discussions, communication and counseling sessions concerning your performance issues impacting key projects and expected deliverables. Numerous opportunities have been given with agreed plans for improvement of your performance. Besides, performance, issues impacting job deliverables, your attitude, behaviour and interaction with superiors and peers is found to be inappropriate and unacceptable from a Manager. Post counseling and feedback session, you have neither demonstrated improvement in your performance nor you have changed your attitude and behaviour which is vitiating the work environment. In these compelling circumstances, Management is left with no other option but to terminate your employment with the Company. Please note that you are relieved from the Company from Friday, October 15, 2010. Your payroll bank account will be credited with one month's salary in lieu of notice period. Please cooperate and handover all company property including laptop which is in your possession and custody”.

4. The Plaintiff therefore, filed the present Suit seeking the following reliefs :

- “(a) that the termination letter dated 15-10-2010 be declared as illegal and void by this Hon’ble Court;
- (b) that the Hon’ble Court be pleased to direct the Defendant Company to reinstate the Plaintiff as from 15-10-2010;
- (c) the Defendant Company be directed to pay the back wages @ Rs.13,55,758/- being the last drawn wage with an increment for each year as more specifically stated in annexure N from the date of termination till the date of reinstatement along with interest @ 15%;
- (d) the Defendant Company be directed to deposit the back wages in this Hon’ble Court from date of termination till the date of filing of the present Suit;
- (e) the Defendant Company be directed to pay liquidated damages of Rs.1,00,00,000/- (Rupees One Crore only) for loss of reputation, mental agony and loss of job opportunities”;

5. As set out earlier, the present Notice of Motion is taken out by the Defendant for an order directing the Plaintiff to strike out certain portion of the Plaint set out in the Schedule annexed to the Notice of Motion on the ground that the same are unnecessary, frivolous, vexatious and not directly connected with the purported issue of challenge to the termination raised by the Plaintiff and the same are meant to prejudice and delay the fair trial of the present Suit.

5. Mr. Bharucha, Senior Advocate appearing for the Defendant in support of the Notice of Motion has submitted that the Defendant on a justifiable ground of breach of terms of employment was entitled to terminate the Plaintiff's employment in

accordance with the terms of the employment contract. The Defendant, accordingly, by a notice dated 15-10-2010, terminated the employment of the Plaintiff offering payment of salary in lieu of notice period as well as all legitimate legal dues. It is submitted that the only questions which the Court can consider in the Suit are whether the services of the Plaintiff was terminated in accordance with the employment contract and whether the Plaintiff is entitled to damages as sought. The maximum damages can only be salary in lieu of the notice period, which has already been paid to the Plaintiff. It is further submitted that the perusal of the Plaintiff however, makes it clear that the Plaintiff has merely with a view to prejudice the Defendant and with a view to delay the trial, alleged a purported motive behind the act of the Defendant in terminating his employment. The Plaintiff has given three specific instances in which he complained about his superiors, which according to the Plaintiff, was the real reason behind the termination of his services. This is neither true nor as mentioned above, is relevant. It is submitted that the Pleadings in support of none of the three instances are relevant for this Court to decide whether the Plaintiff's employment was terminated in accordance with the employment contract and whether the Plaintiff is entitled for damages as sought. It is submitted that the Court has inherent powers to strike out such scandalous pleadings which ought not to be permitted to remain on record. Mr. Bharucha, has in support of his submissions also relied on a compilation of Judgments separately tendered in Court.

6. As set out hereinabove, the Plaintiff has filed a detailed affidavit opposing the above Notice of Motion. Mr. Bookwala, the learned Senior Advocate appearing for the Defendant has on behalf of the Defendant, submitted that though the employment of the Plaintiff with the Defendant was governed by the employment contract, the impropriety done by the Defendant in terminating the services of the Plaintiff without any cogent and genuine reasons and only with an intention to get rid of a whistle blower, leaves much to be desired and the Defendant cannot use the terms of the employment agreement to defend its wrongful and illegal acts. A compilation of judgments is also tendered on behalf of the Plaintiff to oppose the Notice of Motion.

7. I have considered the submissions advanced by the learned Senior Advocates for the parties and the judgments relied upon by them. As set out hereinabove, by the above Suit, the Plaintiff inter alia seeks a declaration that the termination letter dated 15-10-2010 served on him by the Defendant, is illegal and void. In support of his case, he has relied upon certain alleged wrong doings of the officers of the Defendant, which were allegedly exposed by him. According to him, since he has played the role of a whistle blower, the Defendant issued a letter of termination. He has submitted that the Defendant cannot use the terms of the employment agreement to defend its wrongful and illegal acts. On the other hand, Mr. Bharucha, Senior Advocate, has submitted that the only issue which the Court is required to decide is whether the Defendant was entitled to terminate employment of

the Plaintiff for committing breach of the terms of employment governed by the employment contract.

8. In my view, in the above Suit, the primary issue required to be framed would be whether the letter of termination dated 15-10-2010 issued by the Defendant to the Plaintiff is illegal and whether the employment of the Plaintiff was wrongly terminated by the Defendant. The initial burden of proof qua the said issues would be on the Plaintiff. The Plaintiff has relied on certain instances in order to contend that the letter of termination dated 15-10-2010 is a result of the Plaintiff exposing certain happenings/mis doings pertaining to the said instances. If the allegations made by the Plaintiff in the Plaint are directed to be struck off at this stage, the Plaintiff will not be able to prove his case. On the other hand, if the allegations made by the Plaintiff turn out to be scandalous as alleged by the Defendant, the Court would certainly make a note of it in its final order. In view thereof, the judgments cited on behalf of the Defendant does not lend assistance to them. The Notice of Motion is therefore, rejected.

9. At the request of the learned Advocate for the Defendant, time to file Written Statement is extended till 26-10-2015. Stand over to 26-10-2015.

(S.J.KATHAWALLA, J.)