

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

RFA.No. 498 of 2006 ()

AGAINST THE JUDGMENT & DECREE IN OS 1184/1987 of III
ADDL.SUB COURT,ERNAKULAM.

APPELLANT(S/IST DEFENDANT:

T.K.UNNIKRISHNAN,
THACHOTHU KALAPURACKAL HOUSE,
OPPOSITE FACT WHARF GODOWN, UDYOGAMANDAL P.O.,
NOW EMPLOYED IN SULTANATE OF OMAN.

BY ADVS.SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENT(S)/PLAINTIFF AND 3RD DEFENDANT:

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1. H.M.T. LTD.,
KALAMASSERY.
 2. P.MURALEEDHARAN,
PAZHORE HOUSE, KODANNUR P.O., THRISSUR DISTRICT.

R1 BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
R1 BY ADV. SRI.SAJI VARGHESE
R1 BY ADV. SMT.MARIAM MATHAI
R2 BY ADV. SRI.K.G.CLEETUS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY
HEARD ON 02-06-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

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R.F.A. No. 498 of 2006
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Dated this the 2nd day of June, 2015.

JUDGMENT

A very narrow point arises for consideration in this Appeal. It relates to the applicability of Exts.A10 and A11 Circulars to the facts of the case.

2 Most of the facts are not in dispute. The first defendant joined the plaintiff Company and he was then made to execute Ext.A1 bond undertaking to serve the Company for five years after completion of two years training period. Subsequently he was sent abroad for a training. At that time, he was asked to execute Ext.A2 agreement dated 31.5.1985 undertaking to serve the Company for a further period of three years.

3. It is not in dispute that after return, he left the service of the Company and joined Kerala State Electricity Board. The Company sought to enforce the bond and issued notice to the

erstwhile employee. The plaintiff informed the Company that he is willing to join the services of the Company which was not replied by the Company and the Company sought to enforce the bond.

4. Much of the dispute is resolved by the decision of this Court in A.S. 327 of 1991 between the same parties wherein identical issue was raised. The issue that came up for consideration before this Court was with regard to the applicability of the two Circulars issued by the Central Government, namely, Exts. A10 and A11. The two Circulars have been extracted in the judgment dated 1.4.2005 in A.S. 327 of 1991 and it is unnecessary to reiterate them in this judgment.

5. This Court, in the earlier round of litigation, felt that it is necessary to ascertain as to which of the Circulars would govern the field. For that purpose, the matter was remanded. It may be noticed here that the appeal was preferred against the finding of the court below in

1991. After the matters had gone back, even though the employee concerned sought records from the KSEB, he was unable to establish that it was Ext.A11 Circular dated 13.6.1987 which was applicable to the facts of the case. The result was that the finding of the trial court was that Ext.A10 Circular dated 26.2.1987 will apply. Therefore, he was not exonerated and the following decree was passed by the trial court:

"(a) Plaintiff is entitled to realise Rs.12,884.88 from defendants 1 and 2 and their assets with 6% interest p.a from the date of decree till the date of realization.

(b) Plaintiff is entitled to realise Rs.56,937.90 from defendants 1 and 3 and their assets with 6% interest p.a from date of decree till realisation.

© Defendants 1 to 3 are liable for the costs of the plaintiff."

6. The said decree is assailed in this appeal.

7. In the light of the remand order, the scope of consideration in this appeal is only limited. It is only regarding the applicability of Ext.A10 and Ext. A11 which remains to be considered. If Ext.A10 applies, the decree is only to be confirmed.

8. The remand order referred to earlier was for the purpose to enable the employee to produce documents to establish that Ext.A11 Circular dated 13.6.1987 was applicable to the case, while the company contended that Ext.A10 Circular was applicable. The Company's stand was accepted and the matter was remanded. After remand, even though the employee summoned the relevant documents from the KSEB, he was unable to show that Ext.A10 was not applicable. If Ext.A10 applies, the decree has to stand. Even before this Court, the appellant was unable to establish that Ext.A10 does not apply to the case on hand. If that be so, the decree is only to be confirmed.

9. Then, the learned Senior Counsel for the appellant submitted that he is given to understand that some amount has already been recovered and unless it is made clear that the amount which has already been recovered will be credited towards the decree, he will be mulcted with the whole liability. The request made seems to be reasonable.

In the result, this appeal is disposed of confirming the decree of the court below. It is made clear that if any amount had been recovered from the appellant in respect of any of the bonds, that will be given credit to with respect to that decree passed by the court below. There will be no order as to costs.

sb.

P. BHAVADASAN,
JUDGE