

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1211 of 1999

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SECOND APPEAL No.387 of 2001

COMMON JUDGMENT:-

These two second appeals are directed against a common judgment dated 30.10.1999 of the learned I Additional District Judge, Krishna District at Machilipatnam passed in A.S. No. 24 of 1992 and A.S. No.26 of 1992.

1.1 Hence, these two second appeals are being disposed of by this common judgment.

2. I have heard the submissions of the learned counsel for the appellant/Bank in both these appeals. During the pendency of these appeals, the sole plaintiff had died; and, his legal representatives were brought on record as respondents 2 and 3. In spite of granting sufficient time for the said respondents, there was no representation for them and no submissions were made on their behalf. It is treated that the respondents 2 and 3 herein have no submissions to make on their side in these appeals.

3. Having heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for brevity), I have perused the material record.

4. This Court, while admitting these two second appeals, had taken note of the following two substantial questions of law formulated in the grounds of appeal:-

- 1. *Whether the Courts below acted legally in entertaining the suit in O.S.No.43 of 1981 and granting permanent injunction against the appellant in respect of the service contract and also in granting arrears of salary of Rs.13,720/- when the Civil Courts have no jurisdiction for granting such reliefs in view of the bar contained under Section 14-B of the Specific Relief Act?***
- 2. *Whether the Courts below acted legally in decreeing the suit O.S.No.43/1981 when the judicial pronouncements of this***

Hon'ble Court and the Hon'ble Supreme Court of India are to the effect that no such reliefs can be granted by the Civil Courts in respect of the matter of contract of service?

5. To adjudicate the /is and answer the questions, which are stated to be substantial questions of law, it is necessary to refer to the pleadings of both the sides.

6. The appellant herein viz., the State Bank of India is the sole defendant in O.S. 43 of 1981 on the file of the learned Senior Civil Judge, Machilipatnam. That suit was brought by the sole plaintiff (since died) against the defendant bank for perpetual injunction restraining it from terminating his services pursuant to the notification published in the Eenadu Telugu daily newspaper dated 28.12.1980 and for recovery of arrears of salary due from 01.01.1990 amounting to Rs.13,720/- together with costs. The defendant bank had resisted the suit admitting that the plaintiff is an employee of the bank having joined service as Clerk in the year 1972. It had further contended as follows: "He was mentally ill since 1979. He cannot seek enforcement of personal contract of service by instituting a suit before the Civil Court. The suit filed by the plaintiff, who is not mentally sound, is not properly instituted. The plaintiff had unauthorizedly absented from attending to his duties. The truth of the matter is that after his transfer to Machilipatnam, he, impersonating himself as I.G. of the Police, Andhra Pradesh on Special Duty at Machilipatnam, had issued advertisement to the public calling for applications for jobs in Police Department and, therefore, he was taken into custody by the police and a crime was registered against him for the offences punishable under Sections 419 and 420 r/w 511 of the Indian Penal Code on 30.03.1979; and, he was remanded to judicial custody. Later, he was sent by the police to Mental Health Hospital, Visakhapatnam. Afterwards, he had reported to duty on 23.07.1979 and his said absence from duty was treated as privilege/sick leave. In response to the letter of the defendant-bank, the Superintendent of the Government Hospital for Mental Care, Vizag, had informed that the plaintiff is a paranoid schizophrenic with systemized delusion and that it cannot be said that he is fully cured; therefore, he had not issued the fitness certificate to the plaintiff to join duty; and, he was asked to

appear before the District Medical Officer, Machilipatnam, for fitness certificate; and, on 10.09.1979, after examination, it was found that the plaintiff was unfit to return to duty and it was opined that the plaintiff should be further examined for his fitness after treatment for about three months under a psychiatrist. Therefore, the plaintiff was advised to produce a certificate from the competent authority to consider his continuance or otherwise in the service of the bank. However, the plaintiff had failed to produce the fitness certificate from the Government Hospital for Mental Care, Waltair, in spite of insistence by the bank. And, a remainder was also sent to him in this regard. Therefore, under the said circumstances, the bank was constrained to issue notification dated 26.12.1980 in the local papers for intimating that the plaintiff is absent from duty from January, 1980 without authority and that he should report back to duty at the branch of the Bank within 30 days from the date of publication of the notification together with a certificate from the Government Hospital for Mental Care, Waltair certifying that he is mentally and physically fit to resume duty. It was also intimated that failing which, it will be deemed that he has voluntarily vacated his job or abandoned his job in the bank and that the bank will be free to proceed accordingly. The plaintiff's father sent in reply, a representation on 20.01.1981 requesting the bank not to take any disciplinary action stating that his son is being admitted in the mental hospital for treatment and that the fitness certificate will be produced after his discharge from the hospital. Later, no such certificate was produced and the plaintiff had not approached the bank subsequent to 04.01.1980. Hence, there is no occasion for the bank to inform him that his services would be terminated. Therefore, the plaintiff is not entitled to the reliefs claimed by him in the suit. The Civil Court has no jurisdiction to entertain the suit and the plaintiff has to approach the Labour and Industrial Tribunal.”

7. Basing on the above pleadings, the trial Court had framed the following issues:-

1. *Whether the plaintiff is entitled to the permanent injunction as prayed for?*

2. *Whether the plaintiff is entitled for the arrears of the salary of Rs.13,720/- as prayed for?*
3. *Whether the suit is properly instituted?*
4. *Whether this Court has got jurisdiction?*
5. *To what relief?*

8. At trial, on the side of the plaintiff, the plaintiff and two supporting witness were examined as PWs 1 to 3 and exhibits A1 to A11 were marked. On the side of the defendant bank, one V. Ramakrishna was examined as DW1 and exhibits B1 to B27 were marked. Exhibits X1 and X2 were also marked.

9. On merits, the trial court had partly decreed the suit with costs and granted a decree directing the defendant to pay the sum of Rs.13,720/- towards arrears of salary due to the plaintiff from the defendant Bank for the period from 01.01.1980 to 19.03.1981. But, the trial Court had dismissed the suit in so far as the rest of the claims. The plaintiff had preferred the first appeal in AS 26 of 1992 assailing the decree of the trial Court in so far as the dismissal of the suit in regard to the relief of perpetual injunction. The defendant-Bank had also preferred the other appeal in AS 24 of 1992 assailing the decree granted for recovery of money towards arrears of salary.

The learned additional District Judge had dismissed the appeal suit 24 of 1992 filed by the defendant-Bank and had allowed the appeal suit 26 of 1992 of the plaintiff. The Court below had held that the plaintiff's services were not terminated and that the plaintiff was discharged on 04.03.1981 from Government Hospital for Mental Care, Waltair and that he was not allowed to work when he had approached the defendant bank on 06.03.1981. Therefore, the defendant-Bank had preferred both these second appeals under Section 100 of the Code of Civil Procedure assailing the decrees and the common judgment dated 30.10.1999 passed in the said two first appeal suits.

10. The learned counsel for the defendant bank would contend as follows:-

The Court below has not properly appreciated the evidence and had

illegally granted a perpetual injunction against the bank when the Civil Court has no jurisdiction to grant such a relief in view of bar under Section 14-B of the Specific Relief Act. The Court below had erred in holding that there is no termination of service of the plaintiff. Since the publications were issued by the defendant bank for unauthorized absence, the Court below ought to have seen that there will not be any termination order and it will be deemed that the plaintiff is out of service in case he had not reported to duty within 30 days of the notice. The Court below had ignored the judicial pronouncements, wherein, it was categorically held that a perpetual injunction of the nature claimed by the plaintiff shall not be granted by the civil Court. The trial Court ought not to have granted the relief of recovery of arrears of salary of Rs.13,720/- since it has no jurisdiction to entertain the suit for the main relief of perpetual injunction.

11. Dealing with the first aspect namely the decree granted by the trial Court in favour of the plaintiff for arrears of salary and the decree of the Court below confirming the said portion of the decree of the trial Court, it is worthy to note that after the decree of the trial Court and during the pendency of the appeal before the Court below, the said arrears were already paid to the plaintiff as per the decree. The plaintiff is now no more. Having examined the facts and the evidence analytically, this Court finds that the concurrent findings of fact recorded by both the Courts below that the salary was not paid during the subject period by the Bank to the plaintiff and that, therefore, the plaintiff is entitled to a decree for the recovery of arrears of salary, are well reasoned findings recorded after accurate consideration of facts and proper appreciation of the evidence brought on record and that, therefore, the said findings do not call for any interference and that the second appeal preferred challenging the same is liable to be dismissed.

12. Coming to the aspect of the decree for perpetual injunction not to remove the plaintiff from service granted by the Court below, the said relief has become infructuous by virtue of the fact that the plaintiff had died. Therefore, nothing survives for adjudication in the other second appeal filed

by defendant bank challenging the decree for perpetual injunction granted by the Court below to the plaintiff.

13. Accordingly, the S.A.No.387 of 2001, which is filed assailing the decree and judgment of the Court below decreeing the suit in favour of the plaintiff for the arrears of salary in a sum of Rs.13,720/-, is dismissed being devoid of merit holding *inter alia* that no questions of law much less substantial question of law is involved in the said appeal; and the S.A.No.1211 of 1999, which is filed assailing the decree and judgment of the Court below insofar as the decree granting perpetual injunction to the plaintiff is dismissed as nothing survives for adjudication in the said appeal. There shall be no order as to costs.

Miscellaneous petitions, in any, pending in both these appeals shall stand dismissed.

M. Seetharama Murti, J

03rd July, 2015
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