

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.1842 of 2013 (O&M)
Date of Decision: 20.10.2015**

Dr.(Ms.) Monica Galhotra

....Appellant

Vs

Guru Nanak Mission Hospital Trust

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. R.S. Bajaj, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Defendant-appellant is in second appeal against the judgment and decree dated 14.01.2013 passed by Additional District Judge, Jalandhar vide which judgment and decree passed dated 09.11.2010 passed by Civil Judge (Jr. Divn.) Jalandhar has been upheld.

[2]. Plaintiff-Trust filed suit for recovery to the tune of Rs.2 lacs with interest on account of damages for breach of terms and conditions of agreement dated 03.05.2000 by the defendant. Plaintiff alleged that vide resolution No.5 dated 28.12.2002 an application of the defendant dated 24.04.2000 was entertained and she

was selected as Pathologist by the Selection Committee duly constituted by the plaintiff-Trust. It was agreed that plaintiff should employ the defendant as Incharge of the Pathology Department in Guru Nanak Mission Hospital, therefore, defendant entered into agreement dated 03.05.2000 with the Trust, whereby she agreed to serve the Hospital for a period of three years on the conditions as incorporated therein.

[3]. It is further pleaded that defendant was employed as Incharge of Pathology Department (Laboratory) of the said Hospital vide letter dated 05.05.2000 issued by the General Secretary of the Trust. The terms and conditions of appointment prescribes the following:-

- “(i) *She was appointed as Pathologist Incharge of Pathology Department (Laboratory) of Guru Nanak Mission Hospital w.e.f. 24.4.2000.*
- (ii) *She was on probation for a period of one year and after that she could apply to the Management for confirmation in service.*
- (iii) *She was not permitted to do any private practice at her residence or outside the premises of Guru Nanak Mission Hospital.*
- (iv) *She could not undertake any other institutional work of pathology, State Bank, L.I.C. Etc. or any other related medical commitment without written/prior consent of the Management.*
- (v) *She had to attend all the Camps in or outside the Hospital premises whenever organised by the*

institution.

- (vi) *The Medical samples received in the Hospital become the property of the institution and would not be removed under any circumstances. The same could however be prescribed and issued to poor patients/staff.*
- (vii) *She had to attend urgent calls any time during 24 hours of the day apart from her normal duties, except when she is away from Headquarters on leave.*
- (viii) *She had to abide by the rules and regulations of the hospital which are in vogue or likely to be framed from time to time.*
- (ix) *She would be paid salary at the rate of Rs.11,000/- (Rupees Eleven Thousand only) per month. In addition to this she would also be paid Rs.2,000/- as House Rent and Rs.1,000/- as Conveyance allowance per month. For allowances she would have to submit necessary receipts else she would not be entitled for rebate on T.D.S. for House Rent and Conveyance allowance.*
- (x) *She would have to fill a Service Bond for a minimum period of three years and in case she does not complete the Bond Period she would be bound to deposit a sum of Rs.2,00,000/-(Rupees Two Lacs) with this Trust before leaving her charge.*
- (xi) *In case of resignation or termination of services, after completion of the Bond Period there would be one month's notice from either side, or one*

month's pay be deposited. However, the Management reserve the right to terminate your services during or after the Bond Period on disciplinary grounds.”

[4]. Plaintiff further alleged that the defendant failed to comply with the conditions of her appointment and absented herself from duty w.e.f. 12.10.2002 without any leave or permission from the Management. Notices were sent to the defendant, but she failed to resume duty and the notices were received back unserved. Last notice was issued to her on 16.12.2002 under registered post and the same was refused by the defendant.

[5]. It was further alleged that the defendant started her private practice at Phagwara under the name and style of Dr. Monica's Path Lab at 737, Hargobind Nagar, Phagwara even before expiry of three years of contract period. In this way she abandoned her employment with the plaintiff-Trust and started her own practice thereby violating the terms of the contract. Defendant failed to serve the Trust for stipulated period as per agreement and, therefore, liable to pay the damages as per condition No.10 of the agreement with interest on the damages for breach of contract.

[6]. The defendant contested the suit and challenged the maintainability, *locus standi*, cause of action of the plaint and also pleaded estoppel, agreement being null and void as it was under the influence of dominant bargain of the plaintiff as she was unemployed.

[7]. Her employment on 05.05.2000 with the plaintiff-Trust is an admitted fact. The service contract has been claimed to be illegal, void, *none est* and has suffered with undue advantage in favour of plaintiff being dominant character at a time when defendant was unemployed. Defendant claimed that she became medically unfit on 10.10.2002 and she sent intimation regarding her absence from duty. The intimation was also sent to the plaintiff through UPC on 26.11.2002 and conveyed her inability to attend job through UPC dated 27.12.2002. Subsequently she was declared fit by Dr. Parhar, Phagwara and thereafter she alongwith fitness certificate dated 30.01.2003 approached the plaintiff with request to allow her to join the duties, but her request was not entertained, rather she was told that there are specific instructions from Management that no letter is to be registered in the despatch and receipt register without prior permission of the Authorities. She was informed that Management has terminated her services and some different incumbent has been employed in her place. Private practice has been denied under the name and style of Dr. Monica's Lab and other allegations in the plaint have also been denied.

[8]. After filing of the replication, trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled for the recovery of Rs.2 lacs from the defendant? OPP*
2. *Whether the plaintiff is entitled to interest on the suit amount, if so, on what rate? OPP*

3. *Whether suit is not maintainable in the present form? OPD*
4. *Whether plaintiff has no locus standi to file the present suit? OPD*
5. *Whether no cause of action accrued to the plaintiff before filing the present suit? OPD*
6. *Whether plaintiff is barred by his own act and conduct from filing the present suit? OPD*
7. *Whether agreement dated 3.5.2000 is null, void and not binding upon the defendant? OPD*
8. *Whether this court has got no jurisdiction to try and decide the present suit? OPD*
9. *Whether plaintiff has not come to the court with clean hands?OPD*
10. *Relief.”*

[9]. Both the parties led their respective evidence on the aforesaid issues.

[10]. Trial Court discussed issues No.1 and 2 together and held the plaintiff to be entitled for the recovery of amount alongwith interest. Other issues were also decided in favour of the plaintiff and suit was decreed.

[11]. Defendant-appellant remained unsuccessful in First Appeal before the lower appellate Court which was dismissed vide judgment and decree dated 14.01.2013 passed by Additional District Judge, Jalandhar. Hence, this appeal.

[12]. In para No.14 of the grounds of appeal following legal

questions have been formulated:-

- “(i) Whether the courts below have failed to adjudicate upon the plea of undue influence raised by the appellant?”*
- “(ii) Whether the condition regarding service bond for a period of three years was a result of undue influence as defined under section 16 of the Indian Contract Act, 1872.*
- “(iii) Whether there has been misreading of evidence by the courts below?”*
- “(iv) Whether the findings recorded by the courts below are against the weightage of evidence.”*

[13]. I have heard arguments of learned counsel for both the parties and have carefully perused the material on record.

[14]. Learned counsel for the appellant has argued that question of undue influence and dominant bargain of the employer is an issue involved in the present case and the case has to be treated on different parameters in view of the fact that in cited case before the Courts below the persons failing in performing public duty after executing necessary bonds when the employer had already incurred huge expenses towards their training and developing personality.

[15]. In the instant case the appellant was already a qualified doctor and no such training and other related expenses were incurred by the Management towards her upgradation of status and personality, therefore, imposition of such condition in the case in hand was the result of undue influence which was result of dominant

bargain and this is the only differentia which makes the case to be different than the one relied upon by the Courts below against the appellant. The agreement shows unconscionable terms and i.e. the theme of the issue.

[16]. Question arises whether defendant accepted the terms and conditions of her own free will or she was influenced by dominant character of the employer at the time of her appointment when she was unemployed?

[17]. In the instant case, the defendant was already a doctor and no special training schedule was imparted by the Management for any such improvement in over all personality of the defendant. Unconscionable bargain has been elaborately discussed in **Central Inland Water Transport Corporation Limited vs. Brojo Nath Ganguly, (1986) 3 SCC 156** and concluded that there can be unreasonableness in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Whether such type of contractual transactions can be judicially tested, the answer was in affirmative.

[18]. The Court can strike down an unfair and unreasonable contract or unfair and unreasonable clause in contract entered into between the parties who are not equal in bargaining power though it is very difficult to give an exhaustive list of bargains of this type, but the Court can certainly look into the situations where such a

proposition arises with reference to material on record. Inequality of bargaining power is the result of great disparity in the economic strength of the contracting parties. This will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which weaker party is in a position in which he/she can obtain goods or services or means of livelihood only upon terms imposed by the stronger party or go without them. This will also apply where a man has no choice except to give his consent to the contract or to sign on the dotted lines in a prescribed and standard form or to accept a set of rules and conditions as part of contract. Principle of unconscionable bargain does not apply where bargaining power of contracting parties is equal. This concept does not apply where both the parties are businessmen and contract is a commercial transaction.

[19]. Viewing the present situation, defendant was in need of service. Her conduct could have been motivated or channelised by the employer at the relevant time. *Prima facie* it happens in case of relationship of employer and employee. The condition of executing bond for a minimum period of three years with a further understanding that in case of violation she would be bound to deposit a sum of Rs.2 lacs with the Trust seems to be wholly unsustainable particularly in view of the fact that it is not a case of imparting training or incurring expenses for upliftment of the personality of the employee in order to make her suitable for job assignment. Normally such type of condition of execution of bond are

applicable where management used to incur expenses for the training of the employee in order to make him suitable or competent for the work assignment, but in case like the present one when the defendant was already a qualified doctor, no training was to be imparted to her. No other schedule was required for uplifting her personality being a doctor, incorporation of such condition of execution of bond for three years and violation therein deposit of Rs.2 lacs by the employee with the Trust is a condition which is the result of undue influence and is hit by concept of unconscionable bargain.

[20]. Learned counsel for the respondent on the other hand vehemently submitted that the case is not hit by undue influence as defined under Section 16 of the Indian Contract Act. Learned counsel has submitted that in terms of Order 6 Rule 4 CPC, the party pleading the fraud, breach of trust, undue influence should specifically plead the same and pleadings to that effect should be very categorical thereby giving full particulars of undue influence. The concept has been held to be mandatory by the Hon'ble Apex Court in **Ladli Prashad Jaiswal vs. The Karnal Distillery Co. Ltd., Karnal and others, AIR 1963 SC 1279.**

[21]. Learned counsel contended that ingredients of proving undue influence are missing altogether. Learned counsel further submitted that the view expressed in **Ladli Prashad Jaiswal's** case (supra) has been reiterated in subsequent judgment of **Subhas**

Chandra Das Mushib vs. Ganga Prasad Das Mushib, AIR 1967

878. The proposition held in the aforesaid context are based on interpretation of Order 6 Rule 4 CPC requiring a person to plead specifically in terms of basic particulars of undue influence.

[22]. Learned counsel further submitted that before Court is called upon to examine question of undue influence, it must be scrutinised in terms of pleadings to find out whether such a plea has been made with reference to full particulars of undue influence or not? The delay in raising objection will certainly go against the defendant.

[23]. Learned counsel for the respondent relied upon **Punjab State vs. Dr. B.S. Nanda, 2000(1) CivCC 535** to contend that once the bond is executed voluntarily and default occurs in relation to performance of public duty, Plaintiff is competent to realise the amount from the defendant in terms of condition of bond.

In the cited judgment, there was no such question of undue influence based on unconscionable bargain and inequality of bargaining powers between the parties. The present case is distinguishable inasmuch as that unconscionable bargain has been found as a matter of fact in view of pleading of the defendant and also in view of the fact that no specialised training was imparted to the Pathologist Doctor/defendant, therefore, it was only a condition which was imposed at the time of giving employment which is proved to be hit by the concept of unconscionable bargaining based on

dominant bargain of the employer at the time of providing job to the defendant.

[24]. The concept of undue influence with reference to pleadings in terms of Order 6 Rule 4 CPC has to be taken in the pleadings. Defendant has taken this defence in her pleadings, rather she worked for 2 years 5 months with the plaintiff-Trust and due to ill-health and matrimonial issue she was forced to leave the assignment. She was inclined to carry on with the job and precisely for that she even attempted to join the duties, but was not allowed to do so.

[25]. In a case of present scenario where out of 3 years of outer limit, the defendant had served for a period of 2 years 5 months and at the culmination of bond she was prevented from carry on that job on account of her own personal reasons, indulgence can be given by this Court particularly on the issue of unconscionable bargain and more particularly in view of the fact that no specialised training was imparted to the defendant, who was already a Pathologist in terms of her academic qualification.

[26]. In view of the facts and circumstances involved in the present case, the legal questions as formulated arise in the present case. The plea of undue influence raised by the appellant has to be answered in her favour in view of the fact that the case is fully covered with the concept of unconscionable bargain wherein dominant character of the employer has played pivotal role in

inflicting sufferance to the defendant even after completion of 2 year 5 months of service required for complying with the bond.

[27]. Question No.2 has to be answered in favour of the appellant in view of the fact that condition of three years of service is the result of unconscionable bargain and that is hit by Section 16 of the Indian Contract Act. This bargain is depending upon inequality in status at the time of joining the duty. Defendant was unemployed at the relevant time and was in need of job. She joined the post and had worked for 2 years 5 months and at the fag end she could not carry on with the assignment due to her personal reasons, rather she attempted to join, but failed therein. In view of aforesaid, the condition of bond is held to be the result of unconscionable bargain and hit by Section 16 of the Indian Contract Act.

[28]. Question No.3 has to be answered in affirmative. Concept of unconscionable bargain based on inequality of status of employer and employee and also dominant behavior of the employer at the time of initial appointment are the factors which makes judgments and decrees of the Courts below to be the result of misreading of evidence.

[29]. Question No.4 does not arise as the same is a question of fact.

[30]. Having considered the issue in detail, I am of the view that even though material with regard to undue influence are to be pleaded, but once the plea is taken, the entire case has to be

tested on the concept of unconscionable claim which is further based upon dominant position of the employer and dominant bargaining power of the employer at the time of giving employment to the defendant.

[31]. In view of the reasons as given above, impugned judgments and decrees passed by the Courts below are set aside. Appeal is allowed, dismissing the suit of the plaintiff, leaving the parties to bear their own costs.

October 20, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**