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

Date of Decision: September 16, 2016

+ **RFA 396/2005**

P.C.JOSHUA Appellant

Through: Dr. M.P. Raju and Mr. Prasanth
Kulanbil, Advocates

versus

M/S D.S.CONSTRUCTIONS P. LTD. Respondent

Through: Mr. Vaibhav Kalra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Appellant is the plaintiff whose suit for declaration and damages for breach of contract of employment stands dismissed by trial court vide impugned order of 24th February, 2005. The facts, which are not in dispute, are that appellant was employed as a Store-keeper by respondent on their project at Libya in pursuance to the *Contract of Employment (Ex.PW-1/D1)* of 4th July, 1995 and he was put on probation for a period of three months, which he had completed on 20th November, 1995. Respondent-defendant chose to dispense with the services of appellant vide notice of 31st July, 1996. The declaration sought by appellant was that termination of his service was contrary to the provisions of the *Indian*

Contract Act, 1872. The six issues on which appellant's suit was contested, as reproduced in impugned order, are as under:-

“1. Whether this court has no jurisdiction to try this suit under the Libyan Law or Indian Law? OPD

2. Whether the employment/contract dated 4.7.1995 between the parties is contrary to the provisions of Indian Contract Act, 1872 and if so its effect? OPD

3. Whether the plaintiff can challenge the terms of the contract which is a draft finalised by the Ministry of Labour, Immigration Department, Government of India in consultation with the Embassy of India, if so its effect? OPD

4. Whether the suit is barred by Arbitration clause in the contract between the parties? OPD

5. Whether the termination of the services of the plaintiff by the defendant is illegal or in violation of law or null and void? OPD

6. To what amount and interest, if any, the plaintiff is entitled for damages and compensation? OPD”

After considering the evidence led by the parties, trial court vide impugned order has returned the findings on all the six issues, except issue No.4, against appellant-plaintiff and in favour of respondent-defendant.

At the hearing, learned counsel for appellant has drawn the attention of this Court to Articles 12, 13 and 21 of the *Contract of Employment (Ex.PW-1/D1)* to submit that these articles are contrary to the provisions of the *Indian Contract Act, 1872*. It is submitted that Article 13 of the *Contract of Employment (Ex.PW-1/D1)* cannot oust the jurisdiction of this Court as Article 13 of the *Contract of Employment*

(Ex.PW-1/D1) is void in view of Section 28 of the *Indian Contract Act, 1872*. Regarding Article 21 of the *Contract of Employment (Ex.PW-1/D1)*, it is submitted that it is unconstitutional as the notice period to quit for an employee is three months, whereas for an employer to dispense with the services of an employee, it is one month. It is pointed out that pay for the notice period given to appellant was 149 Dinars whereas his salary as per the respondent's document Ex.PW1/D3, was 175 Dinars. Thus, it is submitted that the termination of appellant's service is rendered illegal on this account also.

It is asserted by learned counsel for appellant that although the termination letter depicts simplicitor termination of service, but infact on misconduct, the services of appellant have been dispensed with and this has come in the cross-examination of respondent's witness. It is also asserted that an inquiry was conducted regarding alleged misconduct, which was *ex parte*, and the order of termination was passed without any opportunity of hearing to appellant. Lastly, it is submitted that Article 12 of the *Contract of Employment (Ex.PW-1/D1)* cannot be construed to exclude the application of Indian laws because cause of action arose in Delhi as the *Contract of Employment (Ex.PW-1/D1)* was signed in Delhi and the Headquarter of the respondent is also in Delhi. Thus, it is submitted that impugned order deserves to be set aside and appellant's suit ought to be decreed.

To the contrary is the submission of learned counsel for respondent, who supports impugned order and submits that the various Articles of the *Contract of Employment (Ex.PW-1/D1)* referred to by learned counsel for appellant, are not at all contrary to the provisions of

the Indian Contract Act, 1872 because resort to legal proceedings has not been restrained as it is simply provided that the disputes between the parties can be resolved through arbitration.

It is submitted by respondent's counsel that appellant is an educated and qualified person and he was already working in Libya prior to his employment with respondent and so he was very well aware of the local labour and other Libyan laws and had voluntarily signed the *Contract of Employment (Ex.PW-1/D1)* and now he cannot turn around and allege that various articles of the *Contract of Employment (Ex.PW-1/D1)* are contrary to Sections 19-A, 23 and 28 of *the Indian Contract Act*. It is submitted that there is no violation of principles of natural justice because there is no stigma attached to termination of appellant's service as it is a case of simplicitor termination of service.

It is pointed out by learned counsel for respondent that 175 Dinars was the gross pay of appellant and his net salary for a month was 149 Dinars, which he had voluntarily accepted and had also signed the '*No Dues Certificate*' (Ex. PW-1/D4) wherein it was specifically declared that nothing was due to him and so, he cannot now contend that he was not paid full salary for the notice period. Attention of this Court is drawn to page 141 of the trial court record to show that appellant in his cross-examination has categorically admitted that before he left Libya, all the payments, which were due to him under the *Contract of Employment (Ex.PW-1/D1)*, were made to him and he had signed the receipt for the same. Articles 12, 13 and 21 of *the Contract of Employment (Ex.PW-1/D1)* are reproduced hereunder for ready reference: -

“Article 12. That the employee shall abide by all local labour and other laws of the country of employment i.e. Libya.

Article 13. That if any difference or dispute shall arise as to the true intent of this agreement or any part thereof, or in any way connected with or arising out of the same, the matter shall be submitted for arbitration to the appropriate authorities in the country of employment (i.e. Libya) which shall comprise of a representatives of the Indian Embassy. The decision of the Arbitration shall be final binding on both the parties.

Article 21. The employer may terminate the contract giving one month's notice or salary in lieu of the same, for reasons other than those under Article 10, above mentioned when the return journey fare will be borne by the company. That in case the employee wishes to terminate his contract period of twenty four (24) months, he can do so at any time by giving three (3) month's notice or salary in lieu thereof during the accurance of the agreement to cater for the time-lag in arranging/mobilising replacements from India/abroad.

Furthermore, if any employee puts up his resignation without completing even fifty (50%) percent of the contract period i.e. twelve (12) months, he will have to make good the passage fare from India to Libya spent by the company in addition to the return passage. If any employee completes more than fifty (50%) percent of the contract period but puts up his resignation before the completion of the whole period of contract, he will have to pay the return passage only from Tripoli, Libya to New Delhi, India.”

The provisions of the Indian Contract Act, 1872 relied upon are required to be adverted to. Section 19A reads as under: -

“19A. Power to set aside contract induced by undue influence

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.”

Section 23 reads as under: -

“23. What consideration and objects are lawful, and what not

The consideration or object of an agreement is lawful, unless -

it is forbidden by law; or

is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

Section 28 reads as under: -

“28. Agreements in restraint of legal proceedings, void

Every agreement,-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so

as to restrict any party from enforcing his rights, is void to that extent.

Exception 1 : Saving of contract to refer to arbitration dispute that may arise: This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred .

Exception 2: Saving of contract to refer questions that have already arisen : Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3. Saving of a guarantee agreement of a bank or a financial institutions.- This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee of extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or no-occurring of a specified event for extinguishment or discharge of such party from the said liability.”

Upon considering the submissions advanced by both the sides and on perusal of impugned order and the evidence on record, I find that jurisdictional issue No.1 is not appropriately worded. Be that as it may. The crux of issue No.1 is that Delhi Courts have no jurisdiction to try the suit in view of Article 12 of the *Contract of Employment (Ex.PW-1/D1)*. Aforesaid Article 12 plainly states as under: -

“That the employee shall abide by all local labour and other laws of the country of employment i.e. Libya”

It has come in the evidence that appellant was already residing in Libya when he had taken employment with respondent and so, he had voluntarily signed the *Contract of Employment (Ex.PW-1/D1)*. Though it is the contention of appellant’s counsel that Articles of the *Contract of Employment (Ex.PW-1/D1)* is hit by Section 23 of the *Indian Contract Act, 1872*, but I find that the object of this Article cannot be said to be unlawful nor it can be said that it is opposed to public policy. So the challenge to Article 12 of the *Contract of Employment (Ex.PW-1/D1)* has been rightly repelled by the trial court and finding on issue No.1 of Delhi courts having no jurisdiction to try this suit suffers from no infirmity and is hereby affirmed.

Article 13 of the *Contract of Employment (Ex.PW-1/D1)* provides for reference of the disputes to arbitration. Appellant’s counsel cannot be heard to say that this article, which provides for arbitration, is hit by Section 28 of the *Contract of Employment (Ex.PW-1/D1)*. This article puts no embargo or restriction upon appellant to resort to legal proceedings. In any case, it cannot be said that resort to arbitration would amount to restraint to legal proceedings. Article 13 of the *Contract of Employment (Ex.PW-1/D1)* simply provides a speedy forum for resolving the disputes between the parties, which cannot be faulted with. So, finding on issue No.2 by the trial court of the *Contract of Employment (Ex.PW-1/D1)* being not contrary to the provisions of the *Indian Contract Act, 1872* deserves to be upheld and is accordingly affirmed. Such a view

is being taken because terms of contract have been incorporated in the *Contract of Employment (Ex.PW-1/D1)* on the basis of draft finalized by the Ministry of Labour, Immigration Department, Government of India in consultation with the Embassy of India. No doubt, appellant's suit is not barred by the arbitration clause provided in the *Contract of Employment (Ex.PW-1/D1)*, but resort to arbitration has to be made in the first instance and thereafter only, remedies under the applicable Arbitration Act can be resorted to.

Instant case is of simplicitor termination of service. The termination letter does not disclose that it is on account of appellant's misconduct that his services have been dispensed with. Merely because some preliminary inquiry was held would not justify inclusion of appellant in the preliminary inquiry. So, appellant cannot be heard to say that there was any violation of principles of natural justice. So far as reliance upon Section 19-A of *the Indian Contract Act, 1872* by appellant's counsel is concerned, I find that the reliance upon the aforesaid provision is totally misplaced because consent obtained becomes voidable when it is induced by undue influence. A bare perusal of the evidence of appellant does not reveal that any undue influence was exercised upon appellant. Variation in the notice period as pointed out by appellant's counsel would not be of any consequence in the instant case as it is not shown as that what prejudice appellant has suffered on account of giving one months' notice period or that what difference it would have made if appellant was given three months' notice period.

Rather, the cross-examination of appellant reveals that he had voluntarily signed the *Contract of Employment (Ex.PW-1/D1)*, the receipt

of full and final payment as well as document (Ex. PW-1/D3), which does reveal that although the gross salary of appellant was 175 Dinars, but his net pay was 149 Dinars and as per this documents, one month's notice period pay of 149 Dinars was paid to him. This stands corroborated from the receipt/declaration (Ex. PW-1/D4) which reveals that on 20th August, 1996 after the termination of his services, appellant had received the full and final dues and he had declared that nothing was due to him from the respondent. In face of the aforesaid document, appellant has no case. Trial court has rightly dismissed appellant's suit and it is being so conclusively said after going through the evidence on record in the light of the submissions advanced.

Finding no substance in this appeal, it is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

SEPTEMBER 16, 2016

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