

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 19.04.2017

Orders delivered on 02.06.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH**

A.S.No.77 of 2012

Captain Bindu Kelunni
D/o.M.Kelunni,
No.C2, Parkland Place,
New No.58, Old No.7, Pulla Avenue,
Shenoy Nagar, Chennai-600 030. Appellant

Vs.

M/s.Blue dart Aviation Ltd.,
a company duly registered under the Companies Act, 1956,
having its registered Office at Blue Dart Centre,
Sahar Airport Road, Andheri (East),
Mumbai-400 099 and having its Head Office
at No.88-89, Old International Terminal,
Meenambakkam Airport,
Chennai-6000 027. Respondents

Prayer: Appeal Suit has been filed under Section XLI Rule 1 and read with
under Section 96 of CPC, against the decree and judgment dated 13.07.2011
in O.S.No.2498 of 2011 passed by the Additional District & Sessions Judge,
Fast Track Court No.IV, Chennai.

For Appellant : Mr.George Cherian
For Respondent : Mr.Rohan K.George

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

This appeal has been filed against the judgment and decree dated 13.07.2011 in O.S.No.2498 of 2011 passed by the learned Additional District & Sessions Judge, (FTC-IV), Chennai, decreeing the suit by directing the appellant/defendant to pay a sum of Rs.10 lakhs with interest @ 15% pa, from the date of filing the suit till the date of realization, for committing breach of the Bond dated 07.04.2004 executed by the defendant during her employment with the respondent/plaintiff.

2The appellant herein is the defendant and the respondent herein is the plaintiff before the Trial Court. For easy reference, hereinafter the parties will be referred to as per their rankings in the suit.

3.The brief facts of the case of the plaintiff are as follows__

3-1.The defendant has applied to the plaintiff for a job as a Trainee First Officer, during April 2004. The plaintiff offered the defendant the position of Trainee First Officer on the terms and conditions set out in their Offer Letter dated 03.04.2004. As per the terms and conditions of the Offer Letter dated 03.04.2004, the defendant's date of joining the plaintiff-Company was 04.04.2004. The Offer Letter dated 03.04.2004 provided that

on completion of the training, the defendant would be paid gross sum of Rs.25,000/- per month till release and on successful completion of specialized training to be imparted to the defendant at ComAir Johannesburg, South Africa and on being released as First Officer for B737 200 aircraft, the defendant would be paid a gross sum of Rs.61,000/- per month, which will include other benefits. The defendant was to be based in Chennai, subject to transfer. The defendant was on probation for six months from 04.04.2004 and she was required to execute a Bond for Rs.10 lakhs in favour of the plaintiff indemnifying for the indirect costs that would be incurred by the plaintiff for the defendant's training. The defendant was also informed that the cost of her training would be a sum of Rs.12 lakhs, which would be incurred upfront by the plaintiff and the defendant would in turn pay the plaintiff the sum of Rs.12 lakhs prior to her appointment.

3-2.The defendant duly agreed to the aforesaid terms and conditions and signed the Bond at Chennai on 07.04.2004. The Bond recorded that the plaintiff sponsored specialized training to enable the defendant to be released as First Officer for B737-200 aircraft, which training commenced from the date of the defendant's joining the services of the plaintiff ie., 04.04.2004, till she was released as a First Officer for B737-200 aircraft. The bond further recorded that the direct cost for training was Rs.12 lakhs which will be incurred upfront by the plaintiff (which would be repaid by the defendant) and the indirect costs would also be incurred by the plaintiff.

3-3.As per the Bond, the defendant *inter alia* shall work with the plaintiff for a minimum period of three years as a First Officer and in the event she left the services of the plaintiff, she shall pay to the plaintiff a sum of Rs.10 lakhs towards the indirect costs that would be incurred by the plaintiff. The bond further provided that during the remainder of the term of the Bond, in the event of the defendant leaving, abandoning or resigning from the services, the defendant would not directly or indirectly, engage in any business, profession or occupation on her own or in partnership which is directly or indirectly related to any activity which is the same as or similar to that carried on by the plaintiff and in respect of which the plaintiff has imparted to her specialized training.

3-4.Thereafter, the defendant successfully completed her specialized training at Comair, Johannesburg, South Africa and was released as First Officer. The defendant was informed about her confirmation through the plaintiff's letter dated 06.10.2004. By the appointment letter dated 01.11.2004, the plaintiff designated the defendant as First Officer and intimated to her the terms and conditions of her appointment. As per the terms and conditions agreed, the plaintiff by letter dated 17.10.2004, revised the defendant's remuneration to a sum of Rs.56,442/- pm. On 20.11.2004, a salary revision was effected by the plaintiff to the defendant and as per the revised structure, the defendant received a sum of Rs.90,442/- pm as salary and on 01.12.2004, her salary was again revised to Rs.1,29,192/-. The

defendant was also informed that her Loss of Flying Licence Insurance and Group Personal Accident were being enhanced to a sum of Rs.20 lakhs from 01.01.2005. From 01.05.2005, the defendant's salary together with the special allowance was increased to a gross sum of Rs.2,23,892/-. Apart from the above payments, the defendant was to be paid a lump sum amount of Rs.1 lakh on completion of one year of service, Rs.2 lakhs on completion of two years of service and Rs.3 lakhs on completion of three years of service; these payments will be effected in each month of June, first due being June,2006.

3-5.While so, on 11.08.2005, the defendant addressed a letter to the Chief Flights Operations Manager of the plaintiff-company informing that she does not wish to continue in the service of the plaintiff and without even giving a reasonable notice, wrongly, illegally and in breach of the terms of the Bond executed by her, abandoned the services of the plaintiff abruptly. The training imparted to the defendant is highly specialized and involves knowhow which is not freely available and required extensive training on aircraft of the relevant specifications. As such, the defendant had very limited opportunities of obtaining such specialized training. The defendant has committed a fraud on the plaintiff by obtaining the specialized training and then abandoning the services of the plaintiff.

3-6.It is further stated by the plaintiff that in view of the Central Government's new airline policy, many new airlines have started operations in the country, as a result of which there has been an increase in

employment opportunity for Pilots. In that process, the plaintiff has lost the services of the defendant after sponsoring specialized training to her. The plaintiff has spent enormous amount of time, money and human efforts in training the defendant. The defendant, despite being fully aware of the terms and conditions of her employment with the plaintiff, has abruptly abandoned the services, only with a view to join another company/airline/corporation. It is not possible for the plaintiff to employ another Pilot in the place of the defendant for several months, since the sourcing and employment of Pilots takes approximately about 3-4 months. Further, training needs to be imparted to such pilot before he/she can be qualified to fly the aircrafts of the plaintiff.

3-7. It is also averred by the plaintiff that presently the strength of Pilots in the plaintiff-company has gone below the total requirement of the plaintiff and therefore, even if one Pilot leaves the employment of the plaintiff without there being a replacement for them, it may result in disruption of the schedule services and eventually grounding of some of the aircrafts of the plaintiff. The plaintiff is engaged in the business of delivery of courier letters, parcels etc., which involves an element of essential public service, where on-time delivery is of cardinal importance. In the absence of Pilots to fly their aircraft, the plaintiff will not be able to deliver the goods on-time leading to a collapse of its entire business operation. Presently, the aviation industry is plagued by the menace of poaching of Pilots leading to flights being delayed and some of the flights being grounded on account of the loss of Pilots. With

a view to resolve the chaotic situation prevalent in the aviation industry, the Ministry of Civil Aviation in consultation with the representatives of all the airline companies, had come to a conclusion that no Pilot could leave the employment of its employer without serving a four months notice period. But, in the instant case, the defendant has not complied with the said condition and she did not give any notice before her resignation. Hence, the plaintiff is entitled to recover a sum of Rs.10 lakhs towards indirect cost incurred by the plaintiff, with interest @ 15% per annum from the date of filing of the suit till realisation from the defendant. Hence, the plaintiff has filed the present suit for recovery of the amount and also for permanent injunction restraining the defendant from taking up any employment as Pilot of any other company/organisation/corporation for a period of three years from 07.04.2004 to 07.04.2007 in breach of the Bond.

4. Denying the averments made in the plaint, the defendant has filed a written statement stating that the training referred to in the plaint was acquired by the defendant at her cost. The said training is freely available and the plaintiff has not imparted any specialized training to the defendant as alleged. The entire cost of training, which is freely available, was met by the defendant. There is no direct cost involved in the training and the claim of the plaintiff that they have incurred expenditure on the defendant for training is false. The bond obtained by the plaintiff from the defendant is an invalid document and it is hit by Sections 23 & 27 of the Indian Contract Act. As it

stipulates that the defendant cannot leave the plaintiff company even by giving notice, the defendant had no other option but to leave the service of the plaintiff. The suit claim is based upon the Bond, which is illegal and void. The plaintiff has not suffered any damage due to the defendant. Thus, the defendant sought for dismissal of the suit.

5. On the above pleading the Trial Court has framed the following issues_

1. Whether the plaintiff is entitled for declaration that the defendant is liable to pay the plaintiff a sum of Rs.10 lakhs with interest for committing breach of the Bond dated 07.04.2004?

2. Whether the Bond dated 07.04.2004 is not enforceable, null and void?

3. Whether the defendant had wrongfully abandoned the services of the plaintiff, making it difficult to find a suitable replacement, and is hence liable to honour the security bond dated 07.04.2004?

4. Whether the defendant failed, neglected and committed breach of her terms of employment as contained in the Offer Letter?

5. Whether the defendant had acted unreasonably thereby disrupting essential public service and causing public inconvenience?

6. Whether the plaintiff is entitled for permanent injunction as prayed for?

7. To what reliefs the parties are entitled to?

6. In order to prove their case before the Trial Court, on the side of the plaintiff, the Chief Human Resources Manager of the plaintiff-company viz., one Mr. Prem. K. Thomas was examined as P.W.1 and 14 documents were marked as Ex.A.1 to Ex.A.14. On the side of the defendant, the defendant examined herself as D.W.1, but no documentary evidence was produced on the side of the defendant.

7. After considering both oral and documentary evidence adduced on either side, the Trial Court has partly decreed the suit directing the defendant to pay a sum of Rs.10 lakhs with interest @ 15% from the date of filing the suit till the date of realisation, to the plaintiff and as regards the permanent injunction prayer, the Trial Court dismissed the suit. Aggrieved over the same, the present appeal has been filed by the defendant.

8. The learned counsel appearing for the appellant/defendant submitted that the appellant/defendant is a lady Pilot, who was employed with the respondent/plaintiff company. She was given a Letter of Offer dated 03.04.2004 and the same was accepted by her vide Acceptance Letter dated 07.04.2004. The Offer Letter, dated 03.04.2004, required the defendant to

work for the plaintiff for a period of atleast three years from being released as a First Officer and she was required to enclose along with her Acceptance Letter a Pay Order for Rs.12 lakhs towards the training fee. The defendant along with the Acceptance Letter enclosed a Pay Order No.182381 drawn on Punjab National Bank dated 07.04.2004 for a sum of Rs.1 lakh and paid the balance amount of Rs.11 lakhs before she proceeded for the training as undertaken by her in the Acceptance Letter. The Offer Letter dated 03.04.2004 further required the defendant to execute a Bond to indemnify the plaintiff upto a sum of Rs.10 lakhs, which she would be liable to pay in the event of her leaving the services of the plaintiff within three years of being released as First Officer for B 737-200 aircraft. Accordingly, the defendant has also executed a Bond dated 07.04.2004 in the printed format of the plaintiff. According to the defendant, the said Bond is unconscionable and was obtained by misrepresentation. As stated in the Offer Letter, the plaintiff had not imparted any specialized training to the defendant and the plaintiff is not capable of giving any specialized training. The training which the defendant underwent was freely available and was acquired by the defendant at her own cost. While it was stated in the Bond that the direct cost of training will be incurred upfront by the company, the entire amount towards the cost of training of the defendant was collected by the plaintiff even before the defendant proceeded for the training.

9.In this regard, the learned counsel appearing for the

appellant/defendant has invited the attention of this Court to Ex.A.2, dated 03.04.2004 (Offer Letter), and Ex.A.3, dated 07.04.2004 (Acceptance Letter) and Ex.A.4, dated 07.04.2004, (Bond) and submitted that the intent and purport of the execution of the Bond was limited to the defendant indemnifying the plaintiff **upto a sum of Rs.10 lakhs** towards the indirect cost that would be incurred by the plaintiff for the training of the defendant. But, the defendant underwent the training only on payment of cost.

10.The learned counsel for the appellant/defendant has also invited the attention of this Court to the proof affidavit filed by P.W.1 and submitted that in the proof affidavit, nowhere the plaintiff has stated that the plaintiff has actually incurred any indirect expenses towards the training of the defendant. In fact, during the cross-examination of P.W.1, he had admitted that the plaintiff has not filed the accounts, which will reflect the expenses incurred by the plaintiff on the defendant. Moreover, the plaintiff is not owning any training centre anywhere in the country or anywhere in the world for giving training to the Pilots. Since the defendant was not given any specialized training by the plaintiff, the plaintiff has not incurred any expenses for the training of the defendant; as such the plaintiff has not suffered any damage as alleged; absolutely, there is no cause of action for filing the suit to direct the appellant to pay a sum of Rs.10 laksh with interest @ 15% per annum.

11. It is submitted by the learned counsel for the appellant/defendant that the Trial Court has not adjudicated and assessed the cost, if at all that was allegedly suffered by the plaintiff. In this regard, the learned counsel appearing for the appellant/defendant has harped upon the words '**upto a sum of Rs.10 lakhs**' found in Offer Letter/Bond and submitted that even if any indirect loss is suffered by the plaintiff as alleged, it cannot be fixed as Rs.10 lakhs. In this regard, the learned counsel appearing for the appellant invited the attention of this Court to Ex.A.2 to 4 to show that the defendant has indemnified the plaintiff only "**upto**" a sum of Rs.10 lakhs. Under such circumstance, it is for the plaintiff to establish as to what was the cost towards training of the appellant that was defined by the plaintiff and what was the indirect cost spent by the plaintiff for the defendant's training. In fact, nowhere in the plaint/Offer Letter it was stated as to the nature of the training that would be imparted to the defendant for being released as First Officer. Since the Bond has been obtained by the plaintiff from the defendant by misrepresentation and fraud, the Bond itself is void for uncertainty under Section 23 of the Indian Contract Act. In the absence of the definition to direct cost and indirect cost, that would be incurred by the plaintiff on the training of the defendant and the break up thereof, the said sum of Rs.10 lakhs stated in the printed format of the Bond, cannot be a genuine pre-estimate by the parties of the indirect cost that would be incurred by the plaintiff on the training of the defendant, since the defendant was not even aware of the breakup of the direct cost and the indirect cost

that would be incurred on the training of the defendant at the time of signing of the bond.

12. The learned counsel for the appellant/defendant has also invited the attention of this Court to Section 74 of the Indian Contract Act and submitted that Section 74 provides that where a contract has been broken and if a sum is named in the contract or any other stipulation by way of penalty, the party complaining of the breach is entitled from the party who has broken the contract, only reasonable compensation, not exceeding the amount so named or as the case may be the penalty stipulated for. In this regard, the learned counsel for the appellant/defendant has also relied upon the decision of the Hon'ble Supreme Court reported in **AIR 1963 SC 1405** [**Fateh chand Vs. Balakrishna Das**], wherein it has been held as follows_

"The claim made by the plaintiff to forfeit the amount of Rs. 24,000/- may be adjudged in the light of Section 74 of the Indian Contract Act, which in its material part provides :-

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case maybe, the penalty stipulated for."

The section is clearly an attempt to eliminate the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties: a stipulation in a contract in terrores is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.

.....

..... Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties predetermined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court, is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression "to receive from the party who has broken the

contract" does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach."

The learned counsel for the appellant/defendant has also relied upon the decision reported in ***AIR 1970 SC 1955 (Maula Bux Vs. Union of India)***, ***wherein it has been held as follows_***

"But the expression "whether or not actual damage or loss is proved to have been caused thereby" is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him."

By relying upon the above decisions, the learned counsel for the appellant submitted that in the instant case, absolutely no iota of evidence has been produced to show the direct/indirect costs were alleged to have been incurred by the plaintiff towards the training of the defendant. Therefore, the

Bond executed by the defendant in the printed format of the plaintiff is unconscionable and it was obtained by misrepresentation; therefore, it is void under Sections 23 & 27 of the Indian Contract Act and as such, the sum mentioned in the bond cannot be considered as a reasonable compensation. Under such circumstances, the plaintiff ought to have proved the actual indirect costs incurred by them by producing documentary evidence. Further, admittedly, the plaintiff did not impart any specialized training to the defendant. The learned counsel for the appellant/defendant also submitted that there is no provision in the Bond for the defendant to resign during the period of 3 years even with giving notice and as such the case projected by the plaintiff that the defendant left the job abruptly without giving notice has no significance. The objective of the Bond is to force the defendant to work for a period of three years without providing her any exit clause and the stipulation in the Bond requiring the defendant to pay a sum of Rs.10 lakhs in the event of breach of the Bond is to act as a deterrent, irrespective of the fact that the plaintiff has not incurred a sum of Rs.10 lakhs towards the training of the defendant. Thus, the learned counsel for the appellant/defendant sought for setting aside the judgment and decree passed by the Trial Court.

13. Countering the submission made by the learned counsel for the appellant, it is submitted by the learned counsel for the respondent/plaintiff that the plaintiff at no point of time has ever declared/stated that they would impart the specialized training upon the defendant or that they had the

facilities to impart such a specialized training upon the defendant. By the Officer Letter dated 03.04.2004, the plaintiff had clearly stated that the defendant would be required to undergo ground school training at a recognized centre approved by the DGCA. By the Bond dated 07.04.2004 executed by the defendant in favour of the plaintiff, she had acknowledged that she would be imparted a specialized training which is an imperative step towards her release as First Officer of B737-200 aircraft with the plaintiff. Thus, the learned counsel for the respondent/plaintiff submitted that it is incorrect to state that the Bond was obtained by misrepresentation and fraud and it is void under Sections 23 & 27 of the Indian Contract Act.

14. With regard to the submission made by the learned counsel for the appellant that the amount indemnified under the Bond/Acceptance Letter has been specified as '**upto a sum of Rs.10 lakhs**', it is submitted by the learned counsel for the respondent/plaintiff that in the operative portion of the Bond (Ex.A.4) ie., Clause 3 of the Bond, it has been clearly specified that the amount of Rs.10 lakhs must be indemnified to the plaintiff by the defendant in the event of indirect losses caused to the plaintiff during training of the defendant, if she fails to complete her training within a span of 12 months or in the event of the defendant's sudden resignation from the plaintiff-company, before the expiry of the Bond period. In the instant case, the defendant has acknowledged the Offer Letter dated 03.04.2004 and also issued Acceptance Letter dated 07.04.2004. In the cross-examination, as D.W.1, the defendant had admitted that she had executed a Bond on

07.04.2004 on her own volition. She has also admitted in her cross-examination that she was well aware that the specialized training sponsored by the plaintiff would involve direct as well as indirect costs and her abrupt exit from the plaintiff-company without any notice would put the plaintiff's business operation in jeopardy, thereby disrupting essential public service. By executing the Bond, the defendant has also willingly undertaken to pay the plaintiff a sum of Rs.10 lakhs that was recognized as indirect cost for her specialized training or in the event of her leaving the plaintiff within three years from her appointment as First Officer. But, the defendant has abandoned the services of the plaintiff within 11 months from her appointment as First Officer, before the expiry of the bond, which is in clear breach of the terms of her employment. Therefore, according to the learned counsel for the respondent/plaintiff, the defendant is liable to pay the liquidated damages amounting to Rs.10 lakhs as stipulated under the Bond executed by the defendant.

15. With regard to the submission made by the learned counsel appearing for the appellant/defendant that the amount of Rs.10 lakhs is only in the nature of penalty and the plaintiff has to prove the loss/damages incurred by them and only then, a reasonable compensation can be awarded, it is replied by the learned counsel for the respondent/plaintiff that the operative portion of the Bond viz., Clause 3 of the Bond, clearly stipulated that the defendant had undertaken to pay the plaintiff a sum of Rs.10 lakhs

which is recognized as the indirect cost that would be incurred by the plaintiff for the defendant's training. The amount of Rs.10 lakhs specified therein is a genuine pre-estimate of the damages which would be incurred by the plaintiff in the event of her having completed the training, the appellant decides to leave the employment of the plaintiff within the first three years following her release as First Officer. Moreover, the abrupt resignation of the defendant from the services of the plaintiff-company had impeded the business operations and schedule of its flights, as a result of which there has been loss of business, revenue, reputation, goodwill etc to the plaintiff, which cannot be easily proved. It is not possible for the plaintiff to lead evidence to prove the loss/damages incurred by the plaintiff, when the defendant has abandoned the service of the plaintiff in violation of the terms of her employment. In this regard, the learned counsel for the respondent has also relied upon the decision in the case of ***Blue Dart Aviation Limited Vs. Puneet Shankta*** ***MANU/TN/2657/2005***.

16. With regard to the submission made by the learned counsel for the appellant/defendant that no evidence was adduced with regard to the actual loss suffered by the plaintiff, the learned counsel for the plaintiff by relying upon the decision reported in ***2015 SCC 19 (Kailash Nath Associates Vs. Delhi Development Authority)*** submitted that where damages or loss is difficult or impossible to prove, the liquidated amount named in the contract, if it is a genuine pre-estimate of damage or loss, the same can be awarded.

For the same proposition, the learned counsel for the respondent/plaintiff has also relied upon the judgment reported in ***AIR 2003 SC 2629 (ONGC Vs. Saw Pipes)***. Thus, the learned counsel for the respondent/plaintiff submitted that there is no infirmity in the judgment passed by the Trial Court warranting this Court to reverse the same and sought for dismissal of the appeal.

17. We have given out anxious consideration to the submissions made on either side and perused the materials available on record.

18. In view of the above submissions made on either side, the following points fall for consideration in this appeal_

(1) Whether the Bond (Ex.A.4) executed by the defendant is unconscionable and invalid?

2) Whether the Bond (Ex.A.4) was obtained by the plaintiff from the defendant by misrepresentation and fraud, therefore, it is hit under Section 27 of the Indian Contract Act?

3) Whether the defendant is liable to pay the liquidated damages amounting to Rs.10 lakhs to the plaintiff?

19. **Point Nos.1 & 2 :-** It is submitted by the learned counsel for the appellant/defendant that the Bond (Ex.A.4) was executed by her in a

printed format of the plaintiff on misrepresentation that she would be imparted a specialized training. But the plaintiff had not imparted any specialised training to the defendant as stated in the Bond or was capable of giving any specialised training. The training which the defendant underwent was freely available and was acquired by the appellant at her own cost. While it was stated in the Bond (Ex.A.4) that the direct cost of training will be incurred **upfront** by the Company, the entire amount towards the cost of training of the defendant was collected by the plaintiff even before the defendant proceeded for the training. Since the bond was obtained on misrepresentation, it is hit by Section 23 of the Indian Contract Act.

20. In view of the above said submission of the learned counsel for the appellant/defendant, it would be appropriate to extract the relevant portion in the Offer Letter dated 03.04.2004 (Ex.A.2), which reads as follows_

"You will be required to undergo ground school training at a recognised Centre approved by the DGCA.

On completion of the training you will be paid a remuneration of Rs.25,000/- per month till release.

As you are aware the direct cost for training you to become a First Officer to fly B 737-200 is Rs.12,00,000/- (Rupees Twelve Lakhs Only) which will be incurred upfront by us. You will pay a sum of Rs.12,00,000/- (Rupees Twelve Lakhs Only) towards this cost prior to your appointment. Under no circumstances will the amount of Rs.12,00,000/- (Rupees Twelve Lakhs Only) paid towards the cost of

training be refunded to you.

You will execute a Bond in the form annexed hereto indemnifying us upto a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) which you recognise is the indirect costs that will be incurred by us for your training, and in the event of your leaving our employment during the Bond period."

From a reading of the Offer Letter, it could be seen that the defendant was only required to undergo ground school training at a recognized centre approved by the DGCA. In the Offer Letter (Ex.A.2), it was not stated that the specialized training would be imparted to the defendant by the plaintiff. Offer letter (Ex.A.2) was acknowledged by the defendant by Acceptance Letter dated 07.04.2004 (Ex.A.3) and on the very same date i.e., on 07.04.2004, she has also executed a Bond (Ex.A.4). It is seen that the Bond was annexed along with the Offer Letter and given to the defendant on 03.04.2004. In the cross-examination, as D.W.1, the defendant has admitted that she took long time to prepare the Bond and get it stamped. The Bond (Ex.A.4) was signed by the defendant on 07.04.2004. Therefore, from the materials available on record, it is seen that the Offer Letter was given to the defendant on 03.04.2004 and the Bond was executed by her on 07.04.2004, which would show that the defendant had ample time to peruse the Offer Letter before she executed the Bond. Therefore, it is clear that the defendant by understanding the terms and conditions mentioned in the Offer Letter has signed the Bond. Therefore, We are of the opinion that the case

of the defendant that on misrepresentation made by the plaintiff, she had signed the Bond, is nothing but an afterthought. By fully understanding the terms and conditions of the Offer Letter and voluntarily on her own accord, she had executed the Bond. Under such circumstances, the submission made by the learned counsel for the appellant/defendant that the Bond was obtained on misrepresentation, as such it is void under Section 23 of the Indian Contract Act, cannot be accepted. The Points 1 & 2 are answered accordingly.

21.Point No.3:- It is the submission of the learned counsel for the appellant/defendant that in the Offer Letter(Ex.A.2), Acceptance Letter (Ex.A.3) and Bond (Ex.A.4), it has been stated that the defendant would indemnify the plaintiff-company "**upto** a sum of Rs.10 lakhs" towards indirect cost that would be incurred by the plaintiff for her training or in the event of her leaving the employment of the plaintiff during first three years following her release as First Officer. In the Acceptance Letter (Ex.A.3), it has been mentioned by the defendant that the Bond is executed by her indemnifying the plaintiff for a sum upto Rs.10 lakhs, which she is liable to pay in the event of her leaving the employment of the plaintiff within three years of being released as First Officer. The recitals in the Bond dated 07.04.2004 (Ex.A.4), refer to the Offer Letter and it states that in terms of the Offer Letter, it is a condition precedent in the Offer Letter that she executes a Bond in favour of the company at the time of accepting the company's offer,

indemnifying the company upto a sum of Rs.10 lakhs towards the indirect cost that would be incurred by the company for her training and in the event of her leaving the employment during the period of the first three years following her release as First Officer.

22.It is the contention of the learned counsel for the appellant/defendant that nowhere in the offer letter, it has been stated by the plaintiff as to the nature of the training that would be imparted to the defendant for being released as First Officer. Similarly, there are no pleadings in the plaint as to the indirect cost that was incurred by the plaintiff on the training of the defendant. Further, it is also submitted by the learned counsel for the appellant/defendant that the plaintiff has not filed any document to prove that they incurred such indirect costs. It is the assertive submission of the learned counsel for the appellant/defendant that from the word "**upto**" referred to in the Offer Letter/Bond, it could be presumed, even assuming for a moment without admitting, that even if any indirect cost has occurred to the plaintiff, it cannot be fixed as Rs.10 lakhs, since in the Offer Letter/Acceptance Letter/Bond, it has been stated only "**upto** a sum of Rs.10 lakhs." Further, as per Section 74 of the Indian Contract Act, a party complaining of the breach of contract is entitled from the person, who has broken the contract, only a reasonable compensation. Therefore, it is clear that purported indirect cost that would be incurred on the training of the defendant is quantifiable by the plaintiff's own admissions as stated in the

Offer Letter that the Bond is to be executed indemnifying the plaintiff "**upto** to a sum Rs.10 lakhs", which the defendant recognizes as the indirect costs that would be incurred by the plaintiff.

23. But, We are unable to accept the above submissions made by the learned counsel for the appellant/defendant, for the reasons that though in the Offer Letter as well as in the Bond/Acceptance Letter, it has been stated that "**upto** a sum of Rs.10 lakhs", which the defendant recognizes as the indirect costs that would be incurred by the plaintiff, the operative portion of the Bond (Ex.A.4) viz., Clause 3 of the Bond, states that the defendant undertakes to pay a sum of Rs.10 lakhs, which she recognizes as the indirect cost that would be incurred by the plaintiff on the training of the defendant.

The relevant portion in the bond is as follows_

"Clause 3 _ I hereby covenant and undertake to pay to the Company a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only), which I recognise is the indirect cost that will be incurred by the Company for my training, if I do not successfully complete the training and get released as a First Officer B 737-200 within 12 (Twelve) months of my being employed as Trainee First Officer by the Company, or if I leave the services of the Company, or my services are terminated by the Company in the circumstances set out below, within 3 years of my

release as a First Officer B 737-200."

The Clause 3 referred to above may be understood in the context of para B of the recitals in the Bond dated 07.04.2004, which states as follows_

"It is a condition precedent in the aforesaid offer letter that I execute a Bond in favour of the Company at the time of accepting the Company's said offer, indemnifying the Company upto a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) towards the indirect cost that will be incurred by the Company for my training and in the event of my leaving the employment of the Company during the period of the first 3 years following my release as First Officer."

From the above Clause 3 of the Bond, it could be seen that the amount of Rs.10 lakhs specified therein is a genuine pre-estimate of the damages which would be incurred by the plaintiff, in the event of having completed her training, the appellant decides to leave the employment of the plaintiff within the first three years following her release as First Officer. The defendant was also aware that in the event she committed a breach, the sum of Rs.10 lakhs stipulated in the Bond and Offer Letter was a genuine pre-estimate of minimum damages that would be suffered by the plaintiff.

24. In the instant case, the appellant had abruptly resigned the employment of the plaintiff by submitting the resignation letter within a period of 11 months from the date of joining the services of the plaintiff. Therefore, definitely there should be a loss of revenue to the plaintiff-company as contended by the learned counsel for the respondent/plaintiff, which cannot be proved in the form of evidence. Whereas the defendant had executed the Bond wilfully with full knowledge and complete understanding of the terms and conditions of the Bond, by indemnifying to pay a sum of Rs.10 lakhs, which amount she recognises as indirect cost that would be incurred by the company for her training, if she did not successfully complete the training and get released as a First Officer or if she leaves the services of the respondent or if her services are terminated by the respondent in certain circumstances as provided under Bond, within a period of three years of her release as First Officer. Therefore, by acknowledging the said clause, the defendant undertook to pay a sum of Rs.10 lakhs in the event of her leaving the services of the plaintiff within three years. Therefore, it is not possible to the plaintiff to lead evidence to prove loss and damages, when the appellant abruptly resigns the services of the plaintiff in violation of the terms of her employment. The losses incurred by the plaintiff, as a result of the defendant's abandonment of the services of the plaintiff, without any reasonable notice, cannot be computed for the reason that there were several variables of the plaintiff's business operations that were disturbed.

25. In this regard, a reference could be placed in the decision of a Division Bench of this Court in the case of ***Blue Dart Aviation Limited Vs. Puneet Vs. Puneet Shankta (Manu/TN/2657/2005)***, wherein it has been held as follows_

"15. There is no two opinion regarding the fact that a Pilot is a highly specialised skilled person having particular training and it is always difficult for any Airline to immediately replace a Pilot. If a Pilot is allowed to leave a particular Airline even without waiting for the notice period to expire, it would be indeed very difficult for the original employer Airline to make the alternate arrangement, which would inevitably cause certain operations to be suspended thereby causing untold mystery and inconvenience to the primary customers, namely, the passengers or the cargo operators. Such eventuality, in turn, would tar the image of the Airline and mar its reputation. Apart from the fact that it is not easy to weigh such aspects in a golden scale for the purpose of ascertaining the compensation payable, in inconvenience caused to the ultimate consumers, namely, the passengers or the cargo operators, must be minimised. Therefore, in such matters, the Courts should lean in favour of granting injunction for a reasonable period or notice period. In such context, a period between 3 and 6 months may be *prima facie* said to be reasonable. At such state, the Court should not be bogged down by any consideration relating to applicability of Section 27 of the Contract Act as applicability of such provision should be left to be decided at the time of final decision in the suit."

In this regard, reference could be placed in one more Judgment reported in ***AIR 2003 SC 2629 (ONGC Vs. Saw Pipes)***, wherein it has been held as follows_

"Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This Section is to be read with Section 74, which deals with penalty stipulated in the contract, *inter alia* [relevant for the present case] provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach.

Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre- estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach. Take for illustration: if the parties have agreed to purchase cotton bales and the same were only to be kept as a stock-in-trade. Such bales are not delivered on the due date and thereafter the bales are delivered beyond the stipulated time, hence there is breach of the contract. Question which would arise for consideration is - whether by such breach party has suffered any loss. If the price of cotton bales fluctuated during that time, loss or gain could easily be proved. But if cotton bales are to be purchased for

manufacturing yarn, consideration would be different"

The dictum laid down in the above decisions would clearly show that if a compensation named in the Bond for a party's breach was a genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, it is not necessary for the parties to prove such a loss and the parties are not required to prove the loss suffered by them by leading evidence. The above said judgment clearly encapsulate the inconveniences, losses and damages that were faced by the plaintiff as a result of the abrupt departure of the defendant from the services of the plaintiff, without providing any reasonable notice period. Therefore, it is clear that the defendant is guilty of breach of the Bond and causing inconvenience to the plaintiff because of her abrupt exit from the services of the plaintiff.

26. But, it is the reply of the learned counsel for the appellant/defendant that in the Bond there is no provision that she could resign even with giving notice during the three years Bond period under any circumstances whatsoever, without committing breach of the terms of the Bond. To the said submission of the learned counsel for the appellant/defendant, the judgment reported in **(2006) 4 MLJ 289 [Indian Commercial Pilots Association rep. by its President Vs. Union of India and others)** gives a fitting answer. In the said judgment it has been held by this Court as follows_

"12. Gone are the days when the civil aviation in the country was under the monopoly of the Government of India and the skies over India and abroad were commercially exploited by the fleets of the aircraft owned and operated by Air India, Indian Airlines, Vayudooth and Pawan Hans, which are statutory corporations owned and managed by the Government of India. The situation has now underwent a complete sea-change. The liberalisation of economic and industrial policies and the privatisation policy of the Government paved way for the private entrepreneurs to enter into almost all the major industrial and commercial fields, including the civil aviation sector, which were hitherto under the monopoly of the Government. There is phenomenal increase in the entry of private airlines in the civil aviation sector, leading to acquisition of more number of aircrafts with state of the art technology. As a natural corollary, currently there is a great demand in the civil aviation sector for the aircraft crews, more particularly the Commercial Pilots having rich and vast experience with more number of flying hours to their credit. Attracted and lured by the pay packages and perks offered by the private airlines, the Commercial Pilots, more particularly those gained rich experience while under the employment of the State-owned airline undertakings, started migrating to private airlines. Such abrupt resignation of the Commercial Pilots paralysed the business operations of the State-owned airline undertakings. This is the present state of affairs in the civil aviation industry. The Government, therefore, felt

the compelling necessity of introducing certain regulatory measures to protect the interests of the travelling public. The result was the issuance of the impugned circular by the Director General of Civil Aviation vide Civil Aviation Requirement, Series X Part II, dated 1-9-2005, requiring the Pilots to give a 'Notice Period' of at least six months to their employer indicating their intention to leave the job.

.....

15..... It is stated in Clause 3.1 of the impugned circular that it takes about four months to train a pilot to operate an aircraft used for airline operations, as he has to pass technical and performance examinations of the aircraft, undergo simulator and flying training and has to undertake 'Skill Test' to satisfy licence requirements and that even after this training, he can operate only as a co-pilot and to operate an aircraft as Pilot-in-Command (PIC), he needs to gain experience and undertake 'Skill Test' to fly as PIC of an aircraft, which may take another four months or so. Therefore, it would take more than four months for an airline to replace a trained Pilot-in-Command. Further, there is no universal formula for fixing the notice period. The duration of the notice period may vary depending upon the exigencies, needs or necessities and the essentiality of the service concerned. What is required is a reasonable notice period. Considering the nature of service of the pilots, the training process and the period involved and the number of trained and experienced pilots available in the market, etc., the notice period of six months cannot by stretch of

any imagination be termed as unreasonable."

From a perusal of the above said judgment, We find that this Court has also adjudged the constitutionality of the Civil Aviation Requirement (CAR) dated 01.09.2005 issued by the Director General of Civil Aviation, in view of the menace caused to the aircraft industry caused by the rampant poaching of commercial pilots. It states that all Commercial Pilots have to give a notice period to their employer indicating their intention to leave the job. But, in the instant case, the defendant had abandoned the services of the plaintiff without any prior intimation or reasonable notice. Hence, in the backdrop of the above cited decisions, We are not inclined to accept the submission made by the learned counsel for the appellant/defendant that since no provision was made in the Bond for the defendant to resign during the period of three years even with giving notice, the Bond is not binding on the defendant .

27.Further, from a reading of the evidence of D.W.1, We find that at the time of defendant abruptly abandoning the services of the plaintiff, she was earning a sum of rs.2,23,892/- per month. Apart from that, she was to be paid a lump sum amount of Rs.1 laksh on completion of one year service and Rs.2 lakhs on completion of two yeas service and Rs.3 laksh on completion of three years of service. Due the abrupt resigning of the defendant from the services, the plaintiff has to appoint another person as First Officer. It is not possible to employ another Pilot in place of the defendant for several months since the sourcing and employment of Pilots

takes approximately about 3-4 months and training needs to be imparted to such Pilot before he/she can be qualified to fly the aircrafts of the plaintiff. Due to the abrupt exit of the appellant from the services, the plaintiff has suffered revenue loss. Moreover, in the evidence of D.W.1, she had admitted that the training involves direct as well as indirect costs. She has also stated that suddenly abandoning the service of the plaintiff, will put the whole schedule of the plaintiff in jeopardy thereby disrupting essential public service.

28. Under such circumstances, We are of the opinion that the amount of Rs.10 lakhs mentioned in the Bond is a genuine pre-estimate of the damages which would be incurred by the plaintiff in the event of abrupt leaving the services. Therefore, We do not find any infirmity in the judgment and decree passed by the Court below. There is no compelling circumstance to reverse the judgment and decree of the Trial Court. There is no merit in the present appeal and the appeal is liable to be dismissed.

In fine, the appeal fails and the same is dismissed. No costs.

(R.P.S.J.,) (M.S.R.J.,)
02.06.2017

Internet : Yes / No
Index : Yes / No
SSV

To,
1.The Additional District & Sessions Judge,
Fast Track Court No.IV, Chennai.

**R.SUBBIAH, J.
AND
M.S.RAMESH, J.**

(ssv)

Pre-delivery judgment
in

A.S.No.77 of 2012

02.06.2017

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