

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1692 of 2006

Batliboi Limited,
408/409 Dr.Nanjappa Road,
Coimbatore – 641 018.

.. Petitioner

Vs.

1.K.S.Srinivasan
2.K.S.Subbian

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Decree and Judgment dated 28.01.2004 made by the Principal District Judge, Coimbatore, in A.S.No.181 of 2003, reversing the decree and Judgment dated 22.07.2003 passed in O.S.No.2059 of 1997 by the II Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.M.Ganesan

For Respondents :Mr.Mukunth
for M/s.Sarvabhauman Associates

ORDER

The plaintiffs in O.S.No.2059 of 1997 is the Civil Revision Petitioner before this Court, challenging the judgment and decree in O.S.No.2059 of 1997, dated 22.07.2003, on the file of the learned IInd Additional District Munsif Court, Coimbatore, reversing the judgment in A.S.No.181 of 2003, on the file of the learned Principal District Judge, Coimbatore, dated 28.01.2004.

2.The claim of the amount in the suit in O.S.No.2059 of 1997 is only Rs.20,000/-, since the suit was decreed. The defendant has filed an appeal in A.S.No.181 of 2003, on the file of the learned Principal District Judge, Coimbatore, had reversed the judgment in O.S.No.2059 of 1997 by allowing A.S.No.181 of 2003 on 28.01.2004, by setting aside the judgment and decree in O.S.No.2059 of 1997, since the claim is only Rs.20,000/-, there is no second appeal lie before this Court. Therefore, the present Civil Revision Petition in CRP(NPD)No.1692 of 2006 has been filed by invoking under Section 115 of C.P.C.

3.The case of the plaintiff is that the plaintiff's company is manufacturing various types of machineries intended for engineering

industries and also sales the same. In connection with their business, the plaintiff used to recruit trainees and the first defendant was one such trainee recruited by the plaintiffs by their appointment letter dated 08.08.1996. Prior to recruitment, the plaintiff considered the application of the 1st defendant dated 03.07.1986 and based on the bio-data, interview was conducted and thereafter the plaintiff offered to give intensive training to the 1st defendant. During the interview the first defendant agreed to obey all the conditions imposed by the plaintiff's company from time to time and also agreed to sign various terms and conditions imposed in their appointment order as trainee including executing of Indemnity Bond. As per the appointment order, the 1st defendant has joined the plaintiff's company on 21.08.1996 at their Coimbatore Branch as Graduate Engineering Trainee. The training period was one year. During the course of training, the 1st defendant was given extensive training and he was also sent to other reputed institutions for gaining practical knowledge. Therefore, the 1st defendant gain the practical and theoretical knowledge and experience based on the huge expenses of the plaintiff. During the training period, the plaintiffs called upon the 1st defendant to execute an Indemnity Bond as agreed by him both during interview and also as per the appointment order on 08.08.1996. The purpose of getting such an

indemnity bond is that while the plaintiffs are rendering all assistance for training the 1st defendant in all aspects while giving monetary benefits to him, it is obligatory on the part of the 1st defendant also to keep his word that he would continue to work in the plaintiffs company till the completion of the training period. It was only in this background and upon being convinced, the 1st defendant was sought to executed an Indemnity Bond and Surety contract to the effect that he would serve the plaintiffs company not only as per the appointment letter and also as per undertaking even prior to the acceptance of the letter of appointment dated 08.08.1996.

4.The further case of the petitioner is that as per the indemnity bond, the 1st defendant undertook to pay the plaintiffs company the liquidated damages of Rs.20,000/- if he leaves the service of the company within one year after joining the training (or) Rs.40,000/- if he leaves the services of the company after one year before completion of his service contract period of 4 years, as compensation or cost and expenses incurred by the company towards the training to the 1st defendant. But, however the 1st defendant without giving any prior intimation to the plaintiffs company abruptly on 03.06.1997 write a letter of resignation on 03.06.1997. This undertaking given by the

1st defendant as per the infirmity bond, since after joining in the plaintiffs company, the 1st defendant was given extensive training in their office and was also given training for few weeks in one of the reputed Mills at Salem, since the 1st defendant also submitted his report regarding the training, he underwent at the Mill at Salem. Therefore, it made clear that it was not fair on the part of the 1st defendant to leave the job abruptly, thus causing loss to the plaintiff. Followed by the letter of resignation dated 03.05.1997, the 1st defendant also applied for leave on medical grounds.

5. Pursuant to the resignation letter given by the 1st defendant, he has also made an application for leave on medical grounds, on the enquiry made by the company, he came to know that since the 1st defendant was not in possession of the training on the reason that he was look out for another job. Though it is stated that he may have his own rights to seek alternative employment, but, he has no right to rescind the contract and should have continued in the employment. If he justifies his resignation, it amounts to breach of contract, the consequence being the payment of liquidated damages of Rs.20,000/-, since he resigned on 03.05.1997, with effect from 02.06.1997. When

the 1st defendant committed breach contract, he must pay the amount for liquidated damages and undertaking given through the indemnity bond. Therefore, being the father of the 1st defendant, the 2nd defendant stood as a guarantor for the 1st defendant and therefore, the plaintiff has filed the suit against both the defendants in O.S.No.2059 of 1997 before the learned District Munsif Court, Coimbatore.

6. On receipt of the summon, the 1st defendant has filed a written statement by denying the entire allegations set out in the plaint. The 2nd defendant has not filed separate written statement but he adopted the 1st defendant's written statement.

7. The 1st defendant states that the plaintiff has agreed that they had offered to give intensive training to the 1st defendant and that during the interview, the 1st defendant has agreed to abide by all the conditions imposed by the plaintiff's company from time to time and also agreed to sign various terms and conditions imposed in their appointment order as Trainee including the execution of the indemnity bond, are all incorrect and untenable.

8. The 1st defendant also states that either during in the interview or in the appointment order there was nothing to show that the plaintiff had intended to have an indemnity bond executed by the 1st defendant. The 1st defendant also states that the appointment order does not speak or mention anything about the indemnity bond nor the plaintiff informed the 1st defendant about the same at the time of interview. The plaintiff has also informed the 1st defendant about the requirement of the execution of indemnity bond either at the time of interview or at the time of issuance of the appointment order, he would not have joined in the plaintiffs company and the plaintiffs obtained the indemnity bond from the 1st defendant only after four months from the date of joining in the company.

9. Therefore, the indemnity has been obtained after four months of joining, speaks in volume of the mala fide intention on the part of the plaintiffs company and the said indemnity bond was obtained by the plaintiff from the 1st defendant only after they were impressed with the scintillating performance of the 1st defendant and in order to retain the 1st defendant for a lesser salary and apart from that the 1st defendant has not been given any training at any point of time during the stint with the plaintiffs company.

10.The 1st defendant also states that the 1st defendant being a shrewd person was put on the job straight away and no formal training as agreed was imparted to him at any time during his continuance with the plaintiffs company. The 1st defendant also states that the plaintiff has not explained or demonstrated before the Court about the nature of training given by them and the special expenditures if any, incurred by them. The 1st defendant also states that there is no special or privileged training or favour or concession has been given or shown to have been given to him so as to presume legal injury automatically resulting from the alleged breach of commitment specified in the indemnity bond. The plaintiff made it impossible for the 1st defendant to continue in the services of the plaintiffs company. The clause providing for payment of damages in the indemnity bond is more in the nature of a condition in torrorem and consequently the same is not enforceable under law. सत्यमेव जयते

11.The 1st defendant also further states that though he has applied for the post of Engineer in Air-Conditioning Business Division only, even though the plaintiffs company promised the 1st defendant to put him in Textile Air Engineering Department (Humidification) which is

confined only to Textile Industry. The plaintiff being fully aware of the desire of the 1st defendant that he is interested to have exposure in Air-conditioning business department, promised to send him to their factory at Udhana, but they never done so. The 1st defendant submits that even though the plaintiff has promised to him finer aspects of Air-conditioning in Coimbatore itself, they have not done so. But, in spite of that the plaintiffs company was directly sent to the 1st defendant to the field mainly for data collections and not for any exposure on technical side as claimed by the plaintiff. Though the 1st defendant is a qualified engineer, he was asked to do various clerical work, but, he was not given any exposure for Engineering job like designing, costing, planning, co-ordination. The 1st defendant also stated that the allegations set out in the plaint that since the plaintiff lacks bonafide by obtaining the indemnity bond from the 1st defendant by coercing them, by creating insecurity in the mind about his employment, consequently the alleged indemnity bond is not valid nor binding on enforceable in law. The alleged indemnity bond is not obtained out of the free consent of the 1st defendant. Though the plaintiff sent a notice dated 17.09.1997, the 1st defendant has sent a reply to the plaintiff through his counsel. Therefore, the 1st defendant prays for dismissal of the suit.

12.The learned IInd Additional District Munsif Court, Coimbatore has framed the following issues:

- (1)whether the plaintiff is entitled for the suit amount?
- (2)What is the other relief?

13.During the trial, the plaintiffs have marked 14 documents in Ex.A1 to Ex.A14 and no one was examined as witnesses on behalf of the plaintiff. The learned IInd Additional District Munsif himself has stated that there was no one examined as plaintiffs' side evidence, whereas the documents were marked and on behalf of the defendants, the 1st defendant Mr.K.S.Srinivasan was examined as RW1 and one document was marked as Ex.B1. The learned IInd Additional District Munsif also stated that the evidence given by the RW1 and considered his evidence, the learned Judge passed order based on the documents marked by the plaintiffs but without giving any evidence.

14.The learned District Munsif was decreed the suit with 12% interest in O.S.No.2059 of 1997 on 22.07.2003. The learned Judge in his Judgment has stated that based on the undertakings proved by way of indemnity bond, the 1st defendant is liable to pay the amount to the plaintiffs company.

15.Challenging the said judgment and decree dated 22.07.2003 in O.S.No.2059 of 1997, the defendants were filed an appeal in A.S.No.181 of 2003, before the learned Principal District Judge, Coimbatore.

16.The learned District Judge, Coimbatore allowed the appeal on 28.01.2004 by setting aside the judgment and decree in O.S.No.2059 of 1997. The learned Appellate Judge namely the Principal District Judge, Coimbatore, stated that it is the specific case of the plaintiff's company that the indemnity bond has been obtained only from the 1st defendant at the time of interview and appointment order in Ex.A1, the 1st defendant has given such promise at the time of interview that would have been incorporated in Ex.A1 dated 08.08.1996 namely in the appointment order. The learned Judge also states that there are many provisions relating to the medical expenditure and stipend, etc. are incorporated the vital condition of the indemnity bond is not at all incorporated specifically in the appointment order dated 08.08.1996 in Ex.A1. If really the execution of the indemnity bond was promised by the 1st defendant at the time of interview, definitely it would have been mentioned as a condition, specifically in the appointment order in

Ex.A1, but such a condition has not been incorporated specifically in the appointment order dated 08.08.1996 in Ex.A1. The terms of the indemnity bond dated 10.01.1997 in Ex.A2 is quite contrary to the terms of appointment order dated 08.08.1996 in Ex.A1.

17.The learned Judge also states that the plaintiff company has failed to prove that the 1st defendant has committed breach of contract as per the terms and conditions of the appointment order dated 08.08.1996 in Ex.A1 in question and it is made clear that the indemnity bond dated 10.01.1997 in Ex.A2 does form part of the terms and conditions of the appointment order dated 08.08.1996 in Ex.A1. Therefore, the 1st appellate Judge in A.S.No.181 of 2003 has stated that the plaintiff company has failed to place any credible documentary evidence showing the breach of contract on the part of the 1st defendant as to the terms and conditions of appointment order dated 08.08.1996 in Ex.A1. In such circumstances, no sanctity could be attached over the so-called indemnity bond dated 10.01.1997 in Ex.A2. When the plaintiff is not proved the claim made in O.S.No.2059 of 1997, the learned first Appellate Judge says that the order of appointment made by the learned IInd Additional District Munsif, Coimbatore, is not properly correct one and he set aside the judgment

and decree and allowed the First Appeal. Challenging the appeal in A.S.No.181 of 2003, dated 28.01.2004, the plaintiff has filed the present Civil Revision Petition before this Court.

18.It is the case of the plaintiff company M/s.Batliboi Company Limited, Coimbatore is the manufacturer of machineries intended for engineering industry and used to recruit trainees for the purpose stated above. Prior to the appointment of the requirement, the plaintiff company considered the application of the 1st defendant Mr.K.S.Srinivasan on 03.07.1996 along with his bio-data and after interview and after due consideration, the 1st defendant was appointed as a trainee as per letter dated 08.08.1996. Thereafter, the 1st defendant has joined in the plaintiff company as Graduate Engineering Trainee on 21.08.1996 and he was given training.

19.The plaintiff company also states that the 1st defendant gained practical and the critical knowledge and experience at the huge expenses of the plaintiff and thereafter the plaintiff has called upon the 1st defendant to execute the indemnity bond, as agreed by him during the interview and also as per the appointment order dated 08.08.1986. Therefore, it is obligatory on the part of the 1st defendant

to keep his word that he would continue as trainee, till he completes the training period.

20.The plaintiff also states that thereafter the 1st defendant has given undertaking to pay the plaintiff company as liquidated damages of Rs.20,000/-, if he leaves the services of the company within a year or Rs.40,000/-, if he leaves the services of the company after one year before completion of service contract, on the date of joining as per the indemnity bond. In the meantime, the 1st defendant has sent a resignation letter dated 03.05.1997 to the plaintiff company without prior intimation, therefore, the plaintiff says that the 1st defendant has no right to receive the contract and committed breach of contract and he liable to pay liquidated damages of Rs.20,000/- in the suit as per the indemnity bond. Therefore, the plaintiff company has issued a notice dated 17.09.1997 demanding them to pay a sum of Rs.20,000/- as damages with subsequent interest from the defendants in the suit. Therefore, he filed the suit in O.S.No.2059 of 1997.

21.It is the case of the defendants are that the 1st defendant was never provided any intensive training after appointment as a trainee engineer in the plaintiff company. It is further case of the

defendants that in the said appointment order does not speak about the indemnity bond and his alleged promise in the interview in question. The said indemnity bond was obtained from the 1st defendant by the plaintiff company only for creating in security of job in his mind and there was a malafide on the part of the plaintiff in this regard. The plaintiff company never incurred any expenditure for the alleged training of the 1st defendant in the plaintiff's company.

22.The 1st defendant further states that he was a qualified engineer, but he was directed to do various clerical work, he has not assigned any Engineering work for which he was fully qualified, the 1st defendant has not liable to pay the plaintiff company in any manner in the suit. There was no bonafide on the part of the said plaintiff's company for seeking damage from the 1st defendant and hence he prayed for dismissal of the suit.

23.The learned IInd Additional District Munsif states that as per the indemnity bond dated 10.01.1997, the 1st defendant has agreed to pay the liquidated damages of Rs.20,000/- if he leaves the services of the company before the training of one year period or aggrieved to pay Rs.40,000/- if he leaves the services of the company after one

year before completion of service contract. Considering the nature of the case, the learned II Additional District Munsif is directed the 1st defendant to pay the amount of Rs.20,000/- as claimed by the plaintiff company with interest at the rate of 12%.

24.The 1st appellate Judge namely the Principal District Judge, Coimbatore, reversed the judgment on the grounds that as per Ex.A2 the indemnity bond was not incorporated in the appointment order dated 08.08.1996 in the Ex.A1. Therefore, the learned Appellate Judge has set aside the judgment and decree in O.S.No.2059 of 1997 dated 22.07.2003.

25.When the plaintiff company has issued appointment order on 08.08.1996 as Ex.A1, but after four years of the service entered by the 1st defendant from the date of appointment order dated 08.08.1996, if the plaintiff company obtained the indemnity bond on 10.01.1997 as Ex.A1 and when the plaintiff company conducted interview, while considering the 1st defendant application and the appointment order was issued thereafter on 08.08.1996 the plaintiff company has incorporated the indemnity bond in the appointment order dated 08.08.1996.

26. In this regard, there was no evidence on behalf of the plaintiff's company and no document was marked in respect of undertaking given by the plaintiff/1st defendant, during the course of interview as fixed by the plaintiff company, if the plaintiff company to pay a sum of Rs.20,000/- as liquidated damages. The plaintiff company himself incorporated the appointment order dated 08.08.1996, on perusal of the records, no documents were shown or no evidence or no witness, it is stated that when the plaintiff company in O.S.No.2059 of 1997 has not given intimation and no one examined as witnesses on behalf of the plaintiff company, even the plaintiff was not examined, then how the learned IIInd Additional District Munsif, Coimbatore, has decreed the suit.

27. As per the Civil Procedure Code under Order 38 made clear that the hearing of the suit and the examination of the witnesses under Order 38 Rule 1 and 2 CPC that recording of evidence under Order 38 Rule 1 and 2 CPC says as follows:

"1. Where defendant may be called upon to furnish security for appearance.-Where at any stage of a suit, other than a suit of the nature referred to in Section 16 clauses (a) to (d), the Court is satisfied, by affidavit or

otherwise,-

(a)that the defendant with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,-

(i)has absconded or left the local limits of the jurisdiction of the Court, or

(ii)is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii)has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b)that the defendant is about to leave [India] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,
the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until further order of the Court.

2.Security.-(1)Where the defendant fails to show such cause the Court shall order him either to deposit in

Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit."

28. When the Civil Procedure Code has pointed out that the examination of the witnesses is must, since opportunity to be given to the other party to cross examine the witness, but in the case on hand, there is no evidence on behalf of the plaintiff side. If any evidence has been given by way of examination of the witnesses, the 1st defendant have the right to cross examine the witnesses. Therefore, when no evidence was given by the plaintiff side, how the plaintiff's company has make out the case. Therefore, the very decree of the learned District Munsif passed on 22.07.2003, is not at all maintainable. Therefore, on this ground also this Civil Revision Petition is liable to be dismissed.

29. In the Civil Suit, unless the parties are let in evidence by marking documents, the suit should not be marked. It is very shock to this Court, that how the learned IInd Additional District Munsif Court has decreed the suit in O.S.No.2059 of 1997 when there was no evidence by way of examining the witnesses and marking the documents. It is great shock to the Judiciary that the learned IInd Additional District Munsif Court, Coimbatore merely based on the plaint has decreed the suit.

30. The learned First Appellate Judge has clearly gone into the case and pointed out that the 1st defendant has committed breach of contract as per the terms and conditions of the appointment order dated 08.08.1996 in Ex.A1. Thus being the position, the plaintiff's company failed to place any credible documentary evidence showing the breach of contract on the part of the 1st defendant. Apart from this, it is made clear on behalf of the plaintiff's company, how the documents Ex.A1 to Ex.A14 were marked. Therefore, there is no necessity arosed to this Court for the interference of the well considered Judgment and Decree in A.S.No.181 of 2003, dated 28.01.2004, on the file of the learned Principal District Judge, Coimbatore.

31.In the result, this Civil Revision Petition is dismissed by confirming the judgment and decree passed in A.S.No.181 of 2003, dated 28.01.2004, on the file of the learned Principal District Judge, Coimbatore, reversing the decree and Judgment in O.S.No.2059 of 1997, dated 22.07.2003, on the file of the II Additional District Munsif Court, Coimbatore. No costs.

17.08.2017

Note:Issue order copy on 22.09.2017

Index:Yes
Speaking Order

vs

To

1.The Principal District Judge,
Coimbatore.

2.The II Additional District Munsif Court,
Coimbatore.

WEB COPY

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.1692 of 2006**

WEB COPY

17.08.2017