

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

+ **FAO No. 134/2017**

% **4th May, 2017**

SDU TRAVELS PVT. LTD. Appellant

Through: Mr. Amitesh Mishra and Mr.
A.H. Amanullah, Advocates.

versus

VIPIN SHARMA Respondent

Through: Mr. Sumant De and Mr. Rohit
Singh, Advocates with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Order XLIII Rule (1)(r) of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit against the impugned order dated 14.3.2017 by which the trial court has allowed the application under Order XXXIX Rule 1 and 2 CPC filed by the respondent/plaintiff. By allowing the application, effectively, the trial court has directed continuation of service in private employment of the respondent/plaintiff with the appellant/defendant. The operative portion of the impugned order

dated 14.3.2017 is not happily worded, however, the effect of the impugned order is not only to continue contract of private employment inspite of the same being terminable by a three months notice period, the impugned order also results in granting of the final relief by way of impugned interim order:-

“In consideration of above, the defendant is directed to conduct proper inquiry as per clause 22 of the appointment letter. It is also to be noted that subsequent to e-mail dated 17.02.2017 by the defendant, there is another e-mail dated 04.03.2017 intending to terminate the employment henceforth on payment of salary for three months. Both the e-mails above, which would cast misconduct on the plaintiff cannot be made operative without following clause 22 of the appointment letter as rights of the plaintiff would be prejudiced. A prima-facie case is made out in favour of the plaintiff, therefore, the operation of the notices are stayed and the defendant is directed to follow the procedure as per the terms and clauses of the appointment letter.

In view of above discussion, application under Order XXXIX Rule 1 & 2 CPC disposed off and nothing herein shall tantamount to my expression of opinion on merits of the case.

In consideration of above, written statement be filed within three weeks with copies exchange. Put up for filing of replication, original documents, admission-denial of documents and framing of issues on 27.04.2017.

(Ms. Vineeta Goyal)

ADJ-03(South)/Saket/New Delhi

14.03.2017”

2. The subject suit was filed by the respondent/plaintiff for declaration, mandatory injunction and permanent injunction seeking continuation of the respondent's/plaintiff's services as a Grade M2 Manager. The issue in the suit was a challenge by the respondent/plaintiff to the termination of services of the respondent/plaintiff by the appellant's/defendant's e-mail dated

17.2.2017 as also by another e-mail dated 4.3.2017. The relief clauses of the suit filed by the respondent/plaintiff read as under:-

- “(a) Pass a decree of declaration, in favour of the Plaintiff and against the Defendant thereby declaring the notice dated 17.02.2017 and notice dated 04.03.2017 to be illegal, Null and Void, non-est and having no sanctity in law and not binding on the Plaintiff;
- (b) Pass a decree of Mandatory injunction in favour of the Plaintiff and against the Defendant terminating the services of the Plaintiff from the defendant company and reinstate the Plaintiff to the post enjoyed by the Plaintiff before the notice dated 17.02.2017 and 04.03.2017 was send to the Plaintiff.
- (c) Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant terminating the services of the Plaintiff from the defendant company and reinstate the Plaintiff to the post enjoyed by the Plaintiff before the notice dated 17.02.2017 and 04.03.2017 was send to the Plaintiff.
- (d) Cost of litigation to be paid to the plaintiff
- (e) Pass any other or further relief, in favour of the Plaintiff and against the defendants, which this Court deem fit and proper, in the facts and circumstances of the case.”

3. There is no dispute that the contract between the parties is a contract of private employment i.e a contract is not a contract of public employment i.e a contract of the respondent/plaintiff offering any services to an entity which is a State under Article 12 of the Constitution of India. With respect to private contracts of personal service it is settled law that contracts of personal service are not enforceable. This conclusion is derived from a reading of Section 14 of the Specific Relief Act, 1963. Once there cannot be a decree for specific performance of a contract of personal service no injunction can be granted which has the effect of continuing the personal service

vide Section 41(e) of the Specific Relief Act. Therefore, in contracts of personal service which fall under the realm of private contracts and not public contracts, even if there is a breach of contract the maximum entitlement of an employee is for damages i.e not for specific performance of continuation of the contract of service.

4. The aforesaid position of law is examined by this Court in detail in the judgment in the case of *Shri L.M. Khosla Vs. Thai Airways International Public Company Limited and Anr*, 2012 SCC Online Delhi 4019. In fact, more or less similar judgments have been passed by this Court in three other cases, namely, *Satya Narain Garg, through his Legal heirs Vs. DCM Limited and Ors*. 187 (2012) DLT 25, *GE Capital Transportation Financial Services Limited Vs. Shri Tarun Bhargava*, 190 (2012) DLT 185 and *Shri Naresh Kumar Vs. Shri Hiroshi Maniwa and Ors.*, 224 (2015) DLT 586. In order to avoid repetition I would only refer to the relevant paras of the recent judgment in the case of *Shri Naresh Kumar (supra)* and which paras reproduce the paras of the earlier cases, and the same read as under:-

“2. A reading of the aforesaid order shows that employment of the plaintiff was a private employment and was not a public employment which is protected like an employment with a State or an arm of a State as per Article 12 of the Constitution of India. The employment letter of the plaintiff by the defendant no.7/employer dated 15.10.2007 contains Clause 17(a) entitling termination of the employment of the plaintiff by a notice period of three months or salary of three months. This Clause 17(a) reads as under:-

“17. Termination:

Your employment hereunder may be terminated as per Company Policy:

- (a) by either party hereto giving the other three (3) months' notice in writing of termination, or by paying to the other party three (3) months' salary in lieu of such notice; or
- (b) by the Company without notice or payment in lieu of notice in the event of serious misconduct or persistent unpunctuality, neglect of duty or breach of any rules or regulations of the Company on your part or if you commit any material breach of any of your duties or obligations hereunder

On the termination of your employment hereunder you shall forthwith deliver to the Company all books, documents, papers, materials and other property of or relating to the business of the Company which may then be in your possession or under your power or control.

Termination of your employment hereunder shall be without prejudice to any rights, which have accrued prior to termination.”

3. In view of ratio of the judgment of the Supreme Court in the case of *S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12* it is clear that even if there is an illegal termination of an employee by a private employer, at best the employee is entitled to the salary for the notice period. I have had an occasion to deal with the ratio in the judgment in the case of *S.S. Shetty (supra)* in various cases and the last of such cases is the case of *L.M. Khosla Vs. Thai Airways International Public Company Limited & Anr., CS(OS) No.673/1997*, decided on 01.08.2012. The relevant paras, i.e paras 2 to 8, of *L.M. Khosla's case (supra)* read as under:-

“2. The plaintiff was an employee of the defendant No.1-company and he was terminated from the services of the defendant No.1-company by giving a one month's pay in lieu of one month's notice for termination of services. The plaintiff has filed the suit challenging his termination and has claimed various reliefs which are as under:-

“(A) To pass a decree for money awarding compensation to plaintiff and against defendants liable jointly and severally in the sum of Rs. 71,81,306/- as claimed in para 26 above (detailed and digested in Annexure 'H' (COLLY) or such other amount as adjudged by Hon'ble Court together with interest pendent lite and future at a rate of 24% per annum or such rate as allowed by Hon'ble Court.

(B) To award such further amount of compensation ordered/evaluated in terms of enquiry ordered by Hon'ble Court relating to plaintiff's entitlement for salary level as prayed for in para 25 above.

IN ALTERNATIVE TO ABOVE:

To declare that plaintiff's employment as Manager Liaison and Customer Services with defendant company was not validly terminated by defendants under defendant No.2's letter dated 12.9.1995 (annexed as part of ANNEXURE 'G') and the same is illegal, invalid, void and a nullity along with declaring that the plaintiff's employment with defendant company is determinable only

upon plaintiff attaining the age of superannuation viz. 58 years i.e. on the ending of 30.4.2004 with all benefits/entitlements in tact/attached thereto.

(C) To award costs of the suit in favour of plaintiff and against the defendants 1 and 2 liable jointly and severally.

(D) To pass such other or further orders as deemed just, fit and proper in the circumstances of the case.”

3. The issues with respect to whether an employee under a private employment can file a suit seeking continuation of services with consequential benefits of pay etc and disentitlement of the employer to terminate the services have been decided by me in three judgments as under:-

(i) ***Shri Satya Narain Garg through his legal heirs Vs. DCM Limited and Ors.*** in RFA No. 556/2002 decided on 5.12.2011.

(ii) ***GE Capital Transportation Financial Services Ltd. Vs. Shri Tarun Bhargava*** in RFA No. 294/2004 decided on 20.3.2012. An S.L.P. against this judgment has been dismissed by the Supreme Court on 3.8.2012 in S.L.P. No. 21723/2012.

(iii) ***Pawan Kumar Dalmia Vs. M/s. HCL Infosystems Ltd. and Ors.*** in RFA Nos. 180/2004, 235/2004 and 239/2004 decided on 13.3.2012.

4. In the judgment in the case of ***Shri Satya Narain Garg (supra)***, I have referred to the recent judgment of the Supreme Court in the case of ***Binny Ltd. & Anr. Vs. V. Sadasivan & Ors. (2005) 6 SCC 657*** and which holds that public policy principles or administrative law principles do not apply to private employment. The relevant paras in the judgment in ***Shri Satya Narain Garg (supra)*** read as under:-

"7. Merely because two views are possible, this Court will not interfere with the conclusion arrived at by the Trial Court, unless the conclusion is illegal or perverse or causes grave injustice. In case of private employment, the employers are fully justified in taking steps for termination of services, if it finds that the employee is not upto the mark. Principles applicable in public law domain do not apply with respect to employees in private employment. Employment in private sector is governed by the terms and conditions of employment, and unless the termination is shown to be violation of the terms and conditions of employment, it cannot be said that the termination is illegal. In the present case, in my opinion, since there was no fixed period of employment so far as the deceased plaintiff is concerned, the deceased plaintiff could have been terminated from services even by a simplicitor notice, assuming even if the services of the deceased plaintiff were upto the mark. Further, even if there is illegal termination of services, it is not possible to grant damages as claimed inasmuch as the principle of mitigation of damages squarely applies. As per this principle of mitigation of damages enshrined in Section 73 of the Contract Act, 1872 even if an employee is illegally terminated from services, he cannot sit at home and he must take sufficient steps to procure alternative employment. The law in this

regard is contained in the judgment of the Supreme Court reported as *S.S. Shetty v. Bharat Nidhi Ltd.*, AIR 1958 SC 12. Paras 12 and 13 of this judgment are relevant and the same read as under:

12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained.

"They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages.... No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages."

(Chitty on Contracts, 21st Edition, Vol (2), p. 559 para. 1040).

13. If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide *Collier v. Sunday Referee Publishing Co. Ltd.*, 1940-4 ALL. E.R. 234 at p.237 (A). The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment."

XXXX

XXXX

XXXX

9. Surely, these types of self-serving averments cannot be held as discharge of onus of proof of mitigation of damages. The statement made by the deceased plaintiff is bereft of any details as to which companies or firms or persons he applied to, and on which dates, and for what position, and for what salary and also the details as to why he could not obtain the alternative employment. I am, therefore, of the opinion that the deceased plaintiff, even assuming he was wrongly terminated from services, failed to prove that he had taken sufficient steps for mitigation of damages."

5. In the case of *GE Capital Transportation Financial (supra)*, I have referred to the earlier judgment in the case of *Shri Satya Narain Garg (supra)*, and also the fact that contracts which are determinable in nature cannot be specifically enforced as per Section 14(1)(c) of the Specific Relief Act, 1963. I have also referred to the fact that if the contract of employment provides for one month's notice, then, the maximum entitlement of damages of an employee who alleges illegal

termination is one month's pay. Paras 10 to 12 of the judgment in the case of *GE Capital Transportation Financial (supra)* are relevant and the same read as under:-

“10. In fact, the subject suit was also barred by Section 14(1)(c) of the Specific Relief Act, 1963 which provides that the contract which is in its nature determinable, cannot be specifically enforced. I have referred to the fact that the contract was determinable by a one month's notice as per clause 7 of the terms and conditions of the letter dated 21.4.1998 and therefore the contract which was determinable by one month's notice cannot be specifically enforced. What cannot be done directly cannot be done indirectly i.e. if there cannot be specific performance of the contract, there cannot be declaration and injunction to continue such a service contract. Section 41(e) of the Specific Relief Act, 1963 provides that injunction will not be granted to prevent breach of the contract, performance of which could not be specifically enforced.

11. Therefore, looking at the matter from the point of view of the contract of personal service not being enforceable under Section 14(1)(b) of the Specific Relief Act, 1963, the contract being determinable in nature and hence cannot be enforced as per Section 14(1)(c) of the Specific Relief Act, 1963 or that injunction could not be granted to prevent breach of a contract which cannot be specifically enforced, the suit was clearly barred and not maintainable. The judgment of the trial Court does not refer to the binding provisions of Sections 14(1)(b), (c) and 41(e) of the Specific Relief Act, 1963. To complete the discussion on this aspect, I would once again refer to the recent judgment of the Supreme Court in the case of *Binny Ltd. (supra)* and which specifically provides that in private contracts i.e. in strict contractual matters, there does not arise the issue of applicability of Administrative Law principles.

12. I have already stated above that even presuming there was breach of contract, at best reasonable damages can be granted and once there is a clause for termination of services by one month's notice, it can only be one month's notice which can be treated as reasonable damages inasmuch as parties understood the period for obtaining of an alternative employment as a one month's notice period-vide *SS shetty's case (supra)*”

As already stated above, an S.L.P. filed against this judgment has been dismissed.

6. In the present case, the plaintiff himself relies upon the terms and conditions of employment issued by the original employer and then reconfirmed by the defendant No.1, in the letters dated 27.7.1970 and 30.9.1974. Defendant No.1 is the company which subsequently took over the original/erstwhile employer of the plaintiff. It could not be disputed that in terms of these letters the services after the probation period of the plaintiff can be terminated by giving one month's notice or one month's pay in lieu of notice. Since the letters containing the terms

of employment are small letters and the terms are relevant, I seeks to reproduce the same in entirety. These letters read as under:-

“Mr. L.M. Khosla,
B-5/14, Model Town,
Delhi-9

JS/IG 27th July, 1970.

Dear Sir,

With reference to your application dated the 2nd June, 1970, and your subsequent interview, we have pleasure in confirming your employment with Scandinavian Airlines System, New Delhi in the capacity of the Documentation Assistant-cum-Reservation Clerk. Your employment will commence 1st August, 1970, subject to a three month probation period and medical examination.

Your salary during the probation period is fixed at Rs. 650/- (Rupees six hundred and fifty only) per month. On confirmation your salary will be Rs. 700/- (Rupees seven hundred only) per month.

The above salary is inclusive of all allowance and dearness except for fixed Housing Assistance Allowance which is in your case Rs. 45/- (Rupees forty-five only) per month.

If for any reason your services are terminated or you decide to terminate your employment during the probation period, either side will be entitled to give 24 hours notice and salary calculated on daily basis will be paid up to date of termination. After confirmation one month's notice from either side.

You will be entitled to eighteen working days leave per year. The time to be accepted by the Company, taking into consideration the convenience of work. You will also be entitled to join the Local Employees Provident Fund after completion of one year's continuation service.

Kindly confirm the above terms by signing and returning to us the copy hereof.

Yours faithfully,
SCANDINAVIAN AIRLINES
J. Svane-Christensen
District Manager.

XXXX

XXXX

XXXX

Your ref. Your letter

Our ref.

Calcutta

SP/IP 30 September 1974

Dear Mr. Khosla,

This is to confirm that Thai International will take over from SAS the administrative responsibilities of this office as of October 01, 1974.

As of same date you are thus in the employ of Thai International under the very same terms and conditions-including acquired seniority-as those now enjoyed by you during your employment with SAS.

Best regards,
Sven Palm

Area Manager”

It is not disputed before me that the defendant No.1 has given one month's pay to the plaintiff in lieu of the notice period of one month. Therefore, the plaintiff is not entitled to any other compensation or damages or moneys from the defendant No.1.

7. In the case of **Pawan Kumar Dalmia (supra)** observations similar to those made by me in the case of **Shri Satya Narain Garg (supra)** were made. Paras 15 and 16 of the judgment in the case of **Pawan Kumar Dalmia (supra)** are relevant and the same read as under:-

“15. Finally, I must add that even at best if the termination of services of Sh. Pawan Kumar Dalmia was a breach of contract, parties admittedly being governed by contractual relations, the maximum effect of the so called illegal termination would have been an entitlement to salary of two months and admittedly the appellant-Sh. Pawan Kumar Dalmia on his own showing has received salary till May, 1999. In any case, the complete statement of account with respect to full and final settlement was given vide Ex.DW1/4 dated 15.7.1999. I cannot agree with the arguments as raised on behalf of the appellant that this letter dated 15.7.1999 was not served on the appellant/plaintiff inasmuch as this letter is accompanied by the AD card which shows receipt of the postal article by a person one “Sarita”. It is not disputed that the letter dated 15.7.1999 has been sent to the correct address by the postal department, and therefore, defendant No.1/respondent No.1 discharged the onus of proof by filing the AD card. If the appellant wanted to dispute the receipt of the letter dated 15.7.1999, onus of proof was upon him to summon the record from the post office to show that there was no delivery of article at the stated address, however, the appellant did not do so, and would not have done so inasmuch as the stand that the registered letter dated 15.7.1999 was not received was a stand which was false to his knowledge inasmuch as the letter dated 15.7.1999 has been sent to the admitted address of the appellant, and which is also the address being the self-leased premises. In view of the aforesaid, the judgments in the case of **Green View Radio Service (supra)** and **Dinanath Shantaram (supra)** therefore do not have application to the facts of the present case. Merely denying by the appellant/plaintiff that he has no family member of the name of ‘Sarita’ is neither here nor there as such a person ‘Sarita’ could have been a servant or any other person found or otherwise living at the address which is admittedly the address of the appellant/plaintiff.

16. The judgments cited on behalf of the appellant in the cases of **Jyotsna Raina (supra)** and **Municipal Corporation of Delhi (supra)** will not apply inasmuch as the employment in this case is a contractual employment and is not a statutory appointment or an employment under a statutory corporation or a company which is “state” under Article 12 of Constitution of India. The issue of a person being terminated by an authority inferior to the person who appointed such person is relevant in proceedings under Services Law

or where there is an issue of violation of Article 14 of the Constitution, but definitely not in employments which are contractual employments and governed by contractual terms and conditions. In any case, Board of Directors is a superior authority than a Chairman of a company and hence in the present facts it is not that termination can be said to be by an inferior authority to the appointing authority. The judgment in the case of ***Haryana Seeds Development Corporation (supra)*** also has no application to the facts of the present case inasmuch as in the said case, the Court was concerned with termination of services of a Company Secretary by a Managing Director and not by the Board of Directors as has been done in the present case. In fact, a reference to the judgment in the case of ***Haryana Seeds Development Corporation (supra)*** shows that Board of Directors of a company can surely terminate the services of a Company Secretary. Trial Court has also referred to and rightly distinguished this judgment in para 26 of the impugned judgment reproduced above. The judgment relied upon in the case of ***Amal Kumar Mukherjee (supra)*** with respect to the argument that the minute book of a company ought to be bound and written in hand, is to be read in the context of the facts of the said case wherein there were disputes inter se shareholders of a company and in such circumstances, the issue had arisen with respect to manipulation of the minute book of the company. In the present case, there is no dispute inter se shareholders or inter se Directors of the Board of the company and therefore the judgment in the case of ***Amal Kumar Mukherjee (supra)*** will have no application to the facts of the present case, especially for the reasons stated above that there is no subsequent resolution of the Board of Directors or any resolution in the General Body meeting of defendant No.1/respondent No.1-company questioning or rescinding the termination of services of the appellant-Sh. Pawan Kumar Dalmia.”

8. In view of the aforesaid judgments, the following conclusions in law emerge:-

(i) A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability of the principles of administrative law/public law.

(ii) A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with consequential benefits for alleged remaining period of services till the date of his superannuation.

(iii) As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be specifically enforced. Since the service contract in the present case is determinable by one month's notice there does not arise the question of giving of any reliefs which tantamount to enforcement of a determinable contract. As per Section 14(1)(b), a contract of

personal service cannot be enforced when the employer is not the Government or “State” as per Article 12 of the Constitution of India.

Plaintiff has in fact received one month’s pay and therefore his claim will stand satisfied in law and he is not entitled to any reliefs as prayed for in prayer clauses in the suit.” (emphasis is mine)

4. It is therefore clear that the plaintiff cannot claim illegality of termination of his employment either for continuing the employment or for claiming any monetary amount as if he had continued in employment with the defendant no.7.”

5. (i) Most surprisingly the court below inspite of noticing the categorical ratio of the judgment of the Supreme Court in the case of ***S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12*** and as applied in the four cases decided by this Court referred to above including the judgment in the case of ***L.M. Khosla (supra)*** yet the court below even after noticing the ratio of the judgment in the case of ***L.M. Khosla (supra)*** has for some reason completely misread the ratio in the case of ***L.M. Khosla (supra)***.

(ii) The court below has held that the ratio of ***L.M. Khosla (supra)*** does not apply in view of the language of termination of service e-mail dated 17.2.2017 and which in addition to giving three months notice of termination as per the contract of employment refers to unsatisfactory service performance of the respondent/plaintiff, and therefore the court below holds that since the e-mail dated 17.2.2017 refers to the unsatisfactory performance hence termination of service is under

Clause 22 of the service contract dated 17.1.2010. By holding so the court has overlooked the fact that the e-mail terminating the services also terminated the services by the three month period of notice.

6. Let me at this stage reproduce the Clauses 4, 5 and 22 of the service contract entered into between the parties as also the e-mail dated 17.2.2017 and the same read as under:-

“Clause 4. The initial period of probation is six months from your date of joining as stated above, which may be extended by 3 (three months) by the management at its sole discretion. However, if the management is not satisfied with your work, conduct or discipline etc. your services shall be liable to termination by the Company with immediate effect after serving a prior notice of 7 days without assigning any reason thereof during the probationary period. Similarly, you shall be required to give 7 days notice to the Company for disassociating yourself from the company during the probation period.

Clause 5. After confirmation, in the event of your desiring to leave the company or the company wanting to dispense with our services either side will have to give three months notice.

XXXX

XXXX

XXXX

Clause 22. In case you are found to be involved in any misconduct, then you shall be subject to disciplinary action as per the law and standing orders applicable to you during the disciplinary proceedings, you will be entitled to salary or allowances as per law till the proceedings are concluded.

After the termination of your employment for any reason whatsoever you shall not, at any stage following termination, represent yourself or commit yourself to be held out as being in any way connected with or interested in the business of the company. Upon the termination of your employment for any reason whatsoever, your identity card (if any) shall be cancelled with immediate effect. You will also immediately return to the company all company's properties including all books, files, documents, papers, materials, computer equipment, official data (in hard or soft form), company mobile-phone and SIM card, pen drive, medi-claim card, business cards, and any other property which relates in any way to the business or affairs of the company together with any copies made thereof. Company is authorized to access all the emails, data from the email account created by the company for you all the time.”

E-mail dated 17.2.2017

Dear Vipin San,

As per your meeting, we have already offered you the amount and you have to come back. Once we mutually decided the amount we will sign the agreement in the presence of both the parties.

With respect to your employment with SDU Travels Pvt. Ltd. ("the company"), please note that, as you are aware, you have been under-performing in your duties (in terms of your employment with the Company) for the last two years.

In this regard, we had communicated with you on various occasions, however there was absolutely no improvement from your end. In fact, instead of improving, you have chosen to go in the opposite direction; a prime example in this regards would be unnecessary, ill-tempered and vicious e-mail to one of our primary agents i.e. Hankyu which has resulted in heavy business losses to the Company losses solely attributable to your actions.

Thus, on account of various reasons including your continuous under-performance and, at times, non-performance, the Company is unable to continue with your employment and is constrained to discontinue your employment and dispense with your services.

As such, and as per the terms of your employment, please take note that your three month notice period commences from 13th Feb' 2017 and as on 12th May 2017, your employment with the Company shall be terminated. From this date of termination, you shall cease to be an employee with the Company and shall cease to be associated with the Company in any manner. Please note that this decision by the Company (qua your termination) has been duly communicated to MIKI, Japan office and in furtherance of the same your MIKI email ID and TWX email ID have both been blocked as we are no longer desirous of you issuing any communications on behalf of the Company and MIKI henceforth.

You are directed not to communicate with any of our agents henceforth and during your entire notice period. You are also required to kindly and peacefully handover charge of your office to Mr. Surinder Sodhi within the period of notice.

We wish you the best in your future endeavours.

With best regards,

Gunjan Narula Vig

Senior Manager-HR/ADMN"

7. I am afraid that the trial court has completely gone on an off-tangent and has wrongly ignored the ratio of the judgment of the Supreme Court in *S.S. Shetty (supra)* as also the ratio in *L.M. Khosla (supra)* which in so many terms holds that the contract for private

service even if illegally terminated results only in an entitlement of damages and does not entitle continuation of contract of private service by the employee by remaining in service. Also, the Supreme Court was categorical in its ratio in the case of *S.S. Shetty (supra)* that once there is a notice period provided for termination of contract, the maximum entitlement of damages is the notice period wages/remuneration. No doubt, the e-mail dated 17.2.2017 refers to unsatisfactory service by respondent/plaintiff, however, the termination is also by a three months notice period, and which therefore has necessarily to be in accordance with Clause 5 of the service contract referred to herein above. Therefore, it is not understood that as to how the court below has ignored the direct ratio of the judgment of the Supreme Court in the case of *S.S. Shetty (supra)* and also the ratio of the judgment of this Court in *L.M. Khosla (supra)*.

8. I may also note that the subsequent e-mail dated 4.3.2017 issued by the appellant/defendant reiterates and gives the three month salary for termination of service of the respondent/plaintiff and which is clear from para 4 of the said e-mail dated 4.3.2017. This e-mail dated 4.3.2017 reads as under:-

“Dear Mr. Vipin Sharma,

Subject: Termination of employment with SDU Private Limited (“the Company”) with immediate effect.

Reference: Our email dated 17.02.2017 & your Reply dated 24.02.2017.

At the very outset, we deny all allegations made by you against SDU vide your email dated 24.02.2017, in totality. Our email dated 17.02.2017 may be read as a part and parcel of the present email which is being issued in continuation of the previous email.

With respect to your employment with the Company, please note that, as you are aware, you have been under-performing in your duties for the last two years which has in turn negatively affected the brand image and finances of the Company. Despite several communications, there has been no progress or improvement in your work.

Thus, on account of various reasons including your continuous under-performance and, at times, non-performance, the Company is unable to continue with your employment and is constrained to discontinue your employment and dispense with your service with immediate effect. Henceforth, you shall cease to be an employee with the Company and shall cease to be associated with the Company in any manner whatsoever. You are directed not to communicate or interact with any of the clients/agents/associates of the Company henceforth, in capacity of being an erstwhile employee of the Company or otherwise.

In addition, the Company undertakes to pay three month salary to you i.e. salary till the month of May, 2017 as per the terms of your Appointment Letter, subject to peaceful handover of the Company's documents and relevant data including but not limited to the laptop which was provided to you during the course of your employment and the same being still in your possession.

You are also requested to peacefully hand over charge of your office along with the relevant details and requisite documents to Mr. Surinder Sodhi within a period of one week from the date of this email and accordingly all exit formalities can be formalized at the Company's office situated at 28-32, Ground Floor, Rectangle-I, District Centre, Saket, New Delhi -110017. It is clarified that all exit formalities shall be conducted as per the Agreement between the Company and your goodself and you are expected to adhere to the terms of your Appointment Letter and Employee Confidentiality Agreement dated 17.01.2011 in the course of all interactions with respect to or in relation to the Company.

The present email is being issued without prejudice to the rights and remedies available to the Company under the laws of India.

We wish you the best in your future endeavours.

With best regards,

Gunjan Narula Vig

Senior Manager – HR/Admn.”

9. It is also important to note that Courts do not grant injunctions to direct continuation of a contract which by its terms is determinable vide Sections 14(1)(c) and 41(e) of the Specific Relief Act. For this additional reason also the court below could not have passed the impugned order granting injunction of continuation of services inasmuch as by Clause 5 the contract of services was determinable by a three months notice.

10. Clearly, therefore, the trial court has committed a complete illegality, to say the least, in allowing the interim injunction application under Order XXXIX Rule 1 and 2 CPC filed by the respondent/plaintiff by staying the termination of services and which has the effect of continuation of service of the respondent/plaintiff in a private contract and against the categorical ratios of the judgment of the Supreme Court in *S.S. Shetty (supra)* and further the ratio of the judgment of this Court in the case of *L.M. Khosla (supra)* and Sections 14(1)(c) and 41(e) of the Specific Relief Act.

11. Also, the court below has committed a complete illegality in granting the final relief of the suit by way of an interim order, that too by continuing a private contract of personal service, although, the issue of alleged illegal termination pleaded by the respondent/plaintiff was

strongly contested by the appellant/defendant in terms of the provisions of the service contract itself as also the ratio of the judgments of the Supreme court as also this Court. In such a case the court below should not have granted the final relief prayed in the suit by way of the impugned interim order.

12. In view of the above discussion, this appeal is allowed. The impugned order dated 14.3.2017 is set aside. Interim injunction application under Order XXXIX Rule 1 and 2 CPC filed by the respondent/plaintiff will stand dismissed. Parties are left to bear their own costs.

MAY 04, 2017

AK.

VALMIKI J. MEHTA, J