

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 433 OF 2016

Janet Serrao Agarwal

.. Petitioner

Vs.

Junobo Hotels Private Limited

.. Respondent

Mr.Rajeev Ravi a/w. Ms.Neha Nagpal i/b Prudentia Advisory LLP for petitioner.

Mr.Sharan Jagtiani a/w. Mr.Aditya Pimple and Ms.Neelkamal Chaudhary i/b Universal Legal for respondent.

Mr. Mohit Modi, Authorized representative of respondent-company present.

CORAM : K.R.SHRIRAM, J.

DATE : 10TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company-Junobo Hotels Private Limited (the company) on the ground that the company is unable to discharge its debts.

2. The petitioner is an individual who had, pursuant to an appointment letter dated 18th May 2011, joined the company as General Manager, Finance at annual pay of Rs.25 lakhs per annum exclusive of discretionary bonus. Both the parties could terminate the agreement by giving 60 days notice. The company's leave policy provided for employees to be entitled to 21 working days of privilege leave, 10 days of casual leave, 5 days of sick leave, and for women, 90 days of paid maternity leave in case of child's birth or adoption of child (maximum up to 2 children) and 30 days of paid

leave in case of miscarriage up to second child.

3. Petitioner continued in the employment and in the petition, there are various allegations made which are not very relevant to the petition at all. Some time in February 2014, it is stated in the petition that petitioner decided to adopt a child and therefore requested the company, by an email dated 11th February 2014, to grant a sabbatical. Of course, sabbatical was not immediately granted but came to be granted after having continued discussions. By an email dated 29th March 2014, petitioner informed the company as to why she need a sabbatical and also made inquiries regarding bonus. Petitioner also communicated that petitioner will need atleast six months to settle the adoption issues related to child to be adopted and that she would be on sabbatical for atleast six months. Petitioner also mentioned that she would extend her working day from 31st March to 4th April to ensure March end things are done. The sabbatical effectively started on 7th April 2014. Admittedly, the company policy also does not prescribe for any sabbatical. It is the case of petitioner that towards the end of sabbatical period, petitioner contacted the company to resume her duties. Emails were exchanged, meetings were held and finally company, it is the case of petitioner, did not permit petitioner to resume her duties. It is also alleged that as per the terms of petitioner's employment letter dated 18th May 2011, company was at liberty to terminate petitioner's

employment by giving notice of 60 days in writing or being paid in lieu of notice to petitioner.

4. Petitioner states that petitioner got another job with effect from 7th September 2015 and therefore petitioner was in the employment of the company till 6th September 2015 and hence is entitled to, not only the salary upto 6th September 2015 but also the other benefits like bonus. The counsel also stated that petitioner went on sabbatical to take care of the child that she was thinking to adopt and she has adopted a child. At least for three months she is entitled to avail 3 months maternity leave and for those 3 months, the company is not paying the salary.

5. It is the company's case that sabbatical was granted to petitioner but with a clear understanding that the same would be 'unpaid' basis and that during this sabbatical period, petitioner would not be entitled to any employee benefits as the company had no policy of sabbatical. It is also the company's case that it was mutually agreed that parties would evaluate the circumstances and after sabbatical would decide whether petitioner could resume employment and the fresh terms and conditions of such an employment. It is also submitted that the adoption itself took place sometime in September-2014, so question of petitioner going on prolonged leave from 7th April 2014 itself does not arise. In any event, it was also

submitted that though petitioner is claiming for unpaid salary upto 8th September 2015, petitioner by an email dated 15th January 2015, had informed the company that she has started working as “Janet Serrao and Associates”. Shri Jagtiani submitted that in such a case, how petitioner can claim of salary upto January 2015.

6. The main issue is whether petitioner is entitled to any salary during the period of sabbatical and what would happen if petitioner is not absorbed back in the company. Admittedly there is no sabbatical policy in the company. What was agreed and what was discussed does not indicate anywhere that a company agreed to pay any salary for the period during the sabbatical, i.e., 7th April 2014 to 15th November 2014 etc. and whether the company did not allow petitioner to join the company back. These are issues for which evidence has to be led. The defences raised by the company also cannot be brushed aside as moonshine or ingenious just to avoid paying legitimate dues.

7. It should also be noted that in any event, petitioner has also filed a long cause suit in City Civil Court against the company claiming unpaid dues and allowances from July 2014 to August 2015. Shri Jagtiani, on instructions from representative of the company, submitted that petitioner has filed a counterclaim. By not filing summary suit in the City Civil Court itself shows petitioner's confession that petitioner was conscious of the fact

that unconditional leave to defend would be granted according to the facts and circumstance of the case. Shri Ravi, clarifies that petitioner is also claiming damages and hence could not file a summary suit.

9. In the circumstances, I cannot gather myself to come to a conclusion that there is a debt and the company is unable to discharge its debts. Petition, therefore, requires to be dismissed.

10. Petition accordingly dismissed. No order as to costs.

11. At the same time, Shri Jagtiani, on instructions, from Shri Mohit Modi, authorized representative of the company, states that as per the company's records, a sum of Rs.3,48,333/- is payable towards declared but unpaid dues to petitioner for the year 2013-14 and the company is ready and willing to pay that amount. The counsel states that the company will hand over a cheque for Rs.3,48,333/- within one week from today and this cheque will be handed over to the advocates for petitioner. Statement accepted as an undertaking by Shri Mohit Modi for himself and on behalf of the company and all its directors.

(K.R. SHRIRAM, J.)