

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

ARBITRATION PETITION NO. 761 OF 2015

Sandhaya Nayak & Ors.

...Petitioners

vs

Larsen and Toubro Infotech Ltd.

...Respondent

Mr.B.S. Nayak for Petitioners.

CORAM : S.C.GUPTE, J.

DATE : 5 FEBRUARY 2019

P.C. :

Heard learned Counsel for the Petitioners. None appears for the Respondent. Even on the last occasion, i.e. on 13 December 2018, none had appeared for the Respondent. The matter is, accordingly, heard *ex parte*.

2 On 23 July 2012, Petitioner No.1 was appointed as a Graduate Engineer Trainee by the Respondent. On 30 July 2012, the Petitioner gave a letter of undertaking, with Petitioner No.2 and 3 as guarantors, offering to complete the period of training and serving the Respondent. The Petitioner's contract of employment was terminated by the Respondent on 25 September 2012. On 17 June 2013, the Respondent issued a notice invoking arbitration agreement contained in the letter of undertaking. The Respondent's case was that the Petitioner had committed to complete the training and serve the Respondent, but that due to her having shown lack of interest and under-performance in her examination during her classroom training programme, the Petitioner failed to carried out her duties and obligations and hence, the Respondent had justifiably terminated her

contract; according to the relevant clauses of the letter of undertaking (clauses 4(b) and (c)), the Petitioner was bound and liable to pay to the Respondent a sum of Rs.2 lakhs as liquidated damages for breach of contract. The Petitioner filed her reply in the arbitration proceeding disputing any breach of contract on her part or her liability to pay any amount towards liquidated damages or otherwise. The learned arbitrator, by his impugned award, awarded the Respondent's claim of Rs.2 lakhs with interest.

3 Leaving aside the question as to whether or not the Petitioner committed any breach of the contract of employment (since this was a case of termination by the employer and not voluntary resignation by the employee), it is a fundamental principle of Indian law that damages are awarded by courts only as a compensatory measure and never as a punitive measure. Under Section 74 of the Contract Act, whenever a contract names any sum as payable upon its breach or provides for any penalty, the party complaining of breach is entitled to receive from the party, who has broken the contract, only reasonable compensation not exceeding the sum so named, or as the case may be, the penalty so provided. As this court has explained in the case of **Punj Lloyd Ltd. vs. IOT Infrastructure and Energy Services Ltd.**¹, the party complaining of breach must prove actual loss or damage. If such actual loss or damage is either not capable of being proved or is difficult to prove, the aggrieved party must make out such case. Upon such case being made out, the court has to consider whether the sum named or penalty provided in the contract as compensation for its breach is a genuine pre-estimate of damages considered by the parties and

¹ Arbitration Petition No.1323/2012 decided on 14-12-2018

accepted by the court. Only after the court finds in favour of the party complaining of breach on these issues that the court can award in its discretion compensation upto but not exceeding the sum named or penalty provided as reasonable compensation. None of these legal principles appears to have followed by the learned arbitrator whilst making his award. The award, in the premises, is in breach of fundamental policy of Indian law and also contains a patent illegality appearing on the face of the award and cannot be sustained.

4 Accordingly, the petition is allowed by setting aside the impugned award dated 27 October 2014. No order as to costs.

(S.C. GUPTE, J.)