

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Civil Application No. 2873 / 2021
in
Writ Petition No. 15354 / 2019

Abdul Moiz Mohammad S/o Abdul Sattar,
Age : 36 years, Occu.: Service,
R/o : Nagreshwar Mandir Road,
Sayyadan Mohalla, Hatai,
Dist. Nanded – 431 604.

.. Applicant
(Original Respondent)

Versus.

HDFC Bank Ltd.
Having Registered Office At HDFC Bank House,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400013 and
Branch Office at Amber Plaza,
Wing-A, Rly Station Road, Old Bus Stand,
Ahmednagar, Through its
Authorized Representative.

.. Respondent
(Original Petitioner)

Mr. S.P. Salgar h/f Mr. N.V. Gaware, Advocate for the Applicant.
Senior Adv. Mr. Rajendra S. Deshmukh i/by Mr. M.D. Narwadkar,
Advocate for the Respondent.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 3rd JULY, 2021.
PRONOUNCED ON : 14th JULY, 2021.

ORDER : -

1. In the Regular Civil Suit No. 248 / 2018 instituted by the Applicant herein, the 3rd Joint Civil Judge, Senior Division, Ahmednagar vide order dated 24th October, 2019, directed the Respondent to reinstate the Applicant-Plaintiff in service and further stayed the order of operation of termination dated 18th March, 2013 till the decision of the suit. Feeling aggrieved by this order, Respondent herein had filed the Writ Petition No. 15354 / 2019. This Writ Petition was partly allowed by this Court, by issuing the following directions;

A) The impugned order dated 24.10.2019 passed by the trial Court in Regular Civil Suit No. 248/2018 vide which, application Exhibit 14 was allowed and the plaintiff was granted re-instatement in service, shall stand set aside.

B) The respondent-plaintiff shall treated as being in employment notionally with effect from 01.12.2019 and shall be paid salary from the month of December, 2019 payable in January 2020, at par with similarly situated/comparable employees presuming that he is in employment as on date.

C) The petitioner shall pay the above salary on each pay date to the respondent till July, 2020.

D) As the petitioner-management has taken a stand that they have no vacancy to deploy the plaintiff, in the event the petitioner-management desires to utilise the services of the respondent, they may deploy him in a nearby place from Ahmednagar since he would be contesting the suit in the Court at Ahmednagar.

E) Regular Civil Suit No. 248/2018 (Earlier Regular Civil Suit No. 207/2013) shall be decided by the trial Court as expeditiously as possible and in any case, on or before 31st July, 2020.

F) All contentions of the litigating sides are kept open including the objection of the petitioner that the plaintiff has been gainfully employed during the pendency of the suit.

G) In the event the plaintiff suffers an adverse order in the suit, that would not call for recovery of the monthly salary paid to him for the months from December, 2019 till July, 2020.

H) Considering the affidavit 'X-1', copy of which will also be placed on record before the trial Court, the plaintiff shall henceforth be restrained from entering into any correspondence which would amount to maligning the majesty of law and the Courts or any dignitary.

I) Considering that the petitioner-management would be

paying monthly salary to the plaintiff, he shall be restrained from taking up any job, profession, calling, business, trade or gainful employment during this period as it would result in double employment and he would then be dis-entitled for such monthly payment.

J) This order is by way of an adjustment between the parties and shall not influence the trial Court while deciding the suit, inasmuch as, this order shall not be construed to mean that equities or any right has been created in favour of the plaintiff.

2. In the subject Civil Application, Applicant contends that on account of pandemic, the Court at Ahmednagar could not taken up matter for hearing and consequently trial could not be concluded before 31st July, 2020, as was directed by this Court. In Paragraph No.7 of the Application, Applicant contends that he did not seek adjournment before the trial Court and was always ready and willing to proceed with the trial by extending full cooperation. Applicant therefore contends and claims that order dated 19th December, 2019 passed by this Court, may be suitably modified to the extend of clause no. 'C' or 'E' by extending the deadline for conclusion of trial in Regular Civil Suit No. 248/2018, pending before the 3rd Joint Civil Judge, Senior Division, Ahmednagar. Applicant also contends that Respondent-Bank be directed to pay salary till the conclusion of the

trial or the Applicant be accommodated in service at Ahmednagar or Nanded.

3. Respondent-Bank filed its reply and opposed the application.

4. Heard. learned Counsel for the parties.

5. Respondent-Bank has filed Roznama in the R.C.S. No. 248/2018. Bank pointed out, although, the suit was adjourned on account of lockdown due to pandemic situation from June to November, 2020, however functioning of the trial Court was resumed from 15th January, 2021 and the trial Court was functional till 7th April, 2021. It appears during this period, the Applicant chose to remain absent or sought adjournments. Be that as it may, Roznama shows either Applicant-Plaintiff or his Advocate was absent on 27th January, 2020; 19th August, 2020; 23rd February, 2021; 15th March, 2021; 20th March, 2021; 26th March, 2021; 7th April, 2021; 6th May, 2021; 7th June, 2021; 24th June, 2021 and 5th July, 2021. In view of this fact, the averments in the Paragraph No.7 of the application that, Applicant did not seek adjournment and was always ready and willing to proceed with the trial, by extending full cooperation, was a false statement. On this ground, itself Applicants' Application needs to be rejected and accordingly rejected.

6. Be that as it may, it appears the Applicant is not in service of the Bank since 2013. However, by way of adjustment between the parties, Respondent-Bank paid salary to the Applicant from December, 2019 to July, 2020. Obviously, during this period, the Applicant had not worked for the Bank.

7. In consideration of the facts of the case, I am not inclined to grant the Application, however the trial Court shall make an endeavor to conclude the trial as expeditiously as possible and in any case before 31st October, 2021.

8. Civil Application stands rejected.

(SANDEEP K. SHINDE, J.)

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