IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.839 OF 2020
IN
WRIT PETITION NO.5520 OF 2018

Gitam Singh Solanki ...**Applicant**
In the matter of
M/s. Oceaneering International GmBH **...Petitioner**
Vs.
Gitam Singh Solanki ...**Respondent**

Mr. Niranjan Kandade i/b. Mr. Nandu Pawar for Applicant/Org. Respondent.
Mr. Hasit Seth with Mr. Nihal Shaikh i/b. Mustafa Motiwala for Respondent/Org. Petitioner.

CORAM : G. S. KULKARNI, J.
DATE : DECEMBER 23, 2021

PC :

1. This is an interim application filed by the terminated employee namely the respondent in original writ petition praying for withdrawal of an amount of Rs.5,00,000/- (Rupees Five Lakhs only) which was ordered to be deposited by the original employer (writ petitioner) by an order dated 26 June, 2018 while admitting the employer's writ petition. Such deposit was ordered to be invested by the Registry in Fixed Deposit/s of Nationalised Bank/s initially for a period of thirteen months and to be renewed thereafter from time to time and to abide by further orders to be passed by this Court in the present petition.

2. At the outset, it needs to be observed that by such order, the Court had not directed that the applicant/employee is not permitted to move an application for withdrawal of such amount. It was the applicant's case that contrary to the terms and conditions of the appointment order dated 12 March, 2008 which was issued to the applicant by the employer, he was asked to furnish a bank guarantee of Rs.10,00,000/- (Rs. Ten Lakhs only) purportedly under the garb of a training which would be given to the applicant. The applicant has pointed out the terms and conditions of the appointment order dated 12 March, 2008 in which in clause (2) the following condition was incorporated in regard to the training:-

> "2. **Training**:
> You will be initially trained within India or sent to our AWS workshop in Batam Island, Indonesia for an approximate period of 12 weeks. This period may be shortened or extended depending on your performance.
> Your services may be terminated if your performance is found unsatisfactory during the above training."

3. Another condition, which is relevant in the context of the present application, is a condition of Service Bond which reads thus:-

> "You will be required to execute a bond to be in the employment of Oceaneering for continuous service of 7 years."

4. The applicant has stated that he had completed 5 years and 9 months of service when a notice of termination was issued on 30 December, 2013 with effect from 17 December, 2013. What is notable is that without any

such condition in the appointment order, the applicant after his appointment was called upon to furnish a bank guarantee in March 2008 despite the fact that a bond of 7 years was already taken from the applicant. Such bank guarantee was purportedly demanded against any loss or damage which would be caused or suffered by the employer by any breach by the employee (applicant) of any terms and conditions of the purported agreement, which is admittedly an employment letter, which does not make any reference to any bank guarantee. The applicant certainly in this situation accepted the employment with the employer by furnishing a bank guarantee dated 5 March, 2008. Relevant part of the bank guarantee is required to be noted which reads thus:-

> "We the Bank hereby irrevocably and unconditionally undertake to pay the COMPANY against any loss or damage caused to or suffered or would be caused to or suffered by the COMPANY by reason of any breach by the EMPLOYEE of any of the terms and conditions of the AGREEMENT and we undertake to make payment without any demur, merely on a written demand for payment from the COMPANY. Any such written demand on the BANK shall be conclusive evidence that the sums claimed are due to the COMPANY under this Bank Guarantee."

5. After furnishing of such bank guarantee, the petitioner continued in the service of the employer till his termination which was by a letter dated 30 December, 2013 and the termination was to be effective from 17 December, 2013. A substantial period of 5 years and 9 months was spent by the petitioner in the services of the employer.

6. It is quite significant to note that immediately on the termination of the applicant's services, the employer encashed the bank guarantee furnished by the applicant. The invocation appears to be also brazenly contrary to the terms and conditions as there was no material in regard to any loss which was caused to the employer by any act of the applicant. Not only this, but also there was no inquiry or any show cause notice in regard to the specific amount of loss which was caused to the employer, so that a need would arise to encash the bank guarantee. Such a consideration was relevant having noted the basic reason for which such bank guarantee was issued and such term being incorporated in the bank guarantee as noted above. It is not in dispute that the bank guarantee was called upon to be furnished by the applicant during the course of the employment. Once any action between the employer and employee can be attributed to the employment contract, in my opinion, unless there is material to show that such a bank guarantee was furnished for reasons/considerations which are out side the employment or under an independent contract, necessarily the bank guarantee, would be required to be attributed only to the terms and conditions of the employment contract which was brought about by the appointment letter in the present case. There cannot be any other reading of these circumstances when employees are called upon to furnish the bank guarantee and certainly where the employers are in a dominating position.

Be that as it may, as the bank guarantee was encashed and despite demand of the legitimate amounts by the applicant, the employer refused to refund the amount, the applicant in a helpless situation was required to invoke the jurisdiction of the Labour Court by making an application under Section 33(C)(2) of the Industrial Disputes Act, 1947. The learned Judge of the Labour Court adjudicated such application and by an order dated 11 April, 2018 allowed the applicant's application in the following terms:-

> " **ORDER**
> 1) The Application is partly allowed.
> 2) The opponent is directed to pay Rs.10,75,000/- (Rupees Ten Lakh and Seventy Five Thousand Only) to the applicant within four weeks from the passing of this order.
> 3) Parties should bear their own costs."

7. The learned Labour Judge did not find favour on the employer's case that such a bank guarantee was required as training was required to be given by the employer to the applicant. In fact, such an argument as advanced was completely contrary to the terms of the appointment letter, which itself had an independent clause in regard to the training and without any condition of the bank guarantee to be furnished by the employer, when already a bond of service was taken. In fact, the legal course of action was to enforce the conditions of the bond against the employee if there was to be a breach in the conditions of the bond. However, it appears to be quite surprising and not a happy situation that the

employer called upon the applicant to furnish a bank guarantee.

8. Having succeeded before the learned Labour Judge, the petitioner awaited the compliance of the order, however, the employer filed the petition in question assailing the orders passed by the learned Labour Judge directing payment of the bank guarantee amount. As noted above, while admitting the petition, the employer was put to terms to deposit an amount of Rs.5 Lakhs and which came to be deposited. The application is for withdrawal of such amount on the grounds which are set out in the memo of the application that the applicant is suffering from financial crisis and also is in need of money for his daughter's higher education. He has suffered huge financial loss as the employer had encashed the bank guarantee. It is, therefore, prayed by him that he may be permitted to withdraw the amount of Rs.5 Lakhs.

9. There is a strong opposition by the employer to grant such reliefs as prayed in this application and affidavit in reply to that effect has been filed. Learned counsel for the employer has submitted that such an interim mandatory order ought not to have been passed in the facts of the case. He submits that the law in that regard is well settled. In support of his contention, he has placed reliance on the case of **Samir Narain Bhojwani**

Versus Aurora Properties and Investments & Anr.[1].

10. The next contention as urged on behalf of the employer is that the bank guarantee was furnished in regard to the expenditure which was to be incurred by the employer on the training of the applicant and hence once the employment of the applicant was terminated, it was employer's right that the bank guarantee be encashed by the employer. The next contention as agitated on behalf of the employer is that there are several other employees and any order passed directing the applicant to withdraw such amount would prejudicially affect the rights of the employer in other cases. These are the principal submissions.

11. Having perused the record as also the interim order passed by this Court while admitting the petition, in my opinion, none of the submissions as urged on behalf of the employer are worthy of acceptance in denying the grant of reliefs of withdrawal of the amount as prayed for by the applicant.

12. At the outset, it needs to be observed that the applicant had served the employer for majority of the bond service, having worked for 5 years and 9 months. The bank guarantee was furnished in March, 2008. The amount of the bank guarantee was Rs.10 Lakhs. It is not the case that the

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applicant availed training and immediately left the employment which would have positioned the case in a different perspective. In my opinion, it was unfair for the employer to encash the bank guarantee which the applicant was under compulsion to furnish even assuming it was for a purported training. It is not the employer’s case that the employer did not get the benefit of the training as availed by the applicant in discharging the services with the employer. Having become the beneficiary of such training and that too for large part of employment of 5 years and 9 months, ex-facie, it was unfair for the employer to encash the bank guarantee. This was nothing short of exercising the mighty rights of an employer against an employee who is in a situation of economic duress. Such action on the part of the employer was certainly unfair and rightly recognized and echoed by the learned Labour Judge.

13. The submission as urged on behalf of the employer is that it would cause prejudice to the employer considering the other employees. Such an argument cannot be considered to be any justification to deny the benefit of the withdrawal of the amount to the applicant in as much as it is not the full award amount, which is being received by the applicant and it is merely half of the amount for which the employer by no standard can have any defence to object such partial withdrawal. In any case, there is no material

to support such contention.

14. In so far as the legal contention that such an interim mandatory order ought not to be passed and relying on the decision of the Supreme Court in **Samir Narain Bhojwani** (supra), in my opinion, the reliance on such decision in the facts and circumstances is not well founded. The principles of law in regard to grant mandatory injunctions are well settled as set out in paragraph 24 of the said decision. However, the law is also well settled that the Court would certainly have a discretion to make such orders, if the justice of the case and facts so warrant. This is a fit case where such discretion is required to be exercised by the Court and more particularly when a case of the applicant being of a financial crisis and requiring an amount for education of his children, is placed before the Court. There is no denial to such plea as urged on behalf of the applicant by any contrary material as placed on record by the employer. For an employer, such paltry amount would hardly matter, however for the applicant, it would certainly make a big difference. The balance of convenience is overwhelmingly in favour of the applicant in the facts of the present case, having not only suffered economic hardship at the hands of the employer, in requiring to furnish such bank guarantee, but having suffered to knock the doors of the Court to receive such amount and having succeeded, before the Labour

Court in proceedings which the applicant had filed on 30 June, 2015 which is almost 6 years, that the applicant is before the Court.

15. In the above circumstances, in my opinion, the application would be required to be allowed. It is accordingly allowed in terms of the prayer clause (a).

16. The office is directed to permit the applicant to withdraw the amount of Rs.5 Lakhs which stands deposited in a Fixed Deposit along with the accrued interest. The withdrawal is permitted subject to an undertaking of the applicant to be placed on record of this petition that in the event the employer succeeds, the applicant shall return the amount so withdrawn, as and when directed by the Court. Such undertaking be placed on record on or before 10 January, 2022. Let the amount be released in favour of the applicant on furnishing of such undertaking.

17. The application is allowed in the above terms. No costs.

18. Needless to observe that the observations made in this order are contained in the context of deciding the interim application and the rights and contentions of the parties on the petition are expressly kept open.

19. Interim Application is disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)