



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.09.2021

Pronounced on : 22.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.405 of 2014

1. Chennai Petroleum Corporation Ltd.,
Rep. By its Managing Director,
56, Anna Salai, Teynampet,
Chennai-600 018.
2. The Chief Manager-Personnel
Chennai Petroleum Corporation Ltd.,
536, Anna Salai, Teynampet,
Chennai-600 018
3. The Director Operations,
Chennai Petroleum Corporation Ltd.,
536, Anna Salai, Teynampet,
Chennai-600 018. ... Appellants/ Defendants

Vs.

R.Prakash ... Plaintiff/ Respondent

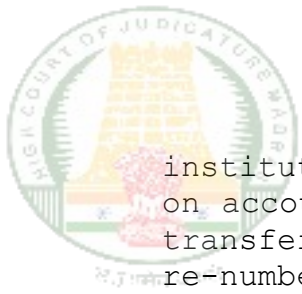
PRAYER: This appeal has been filed under Order 41 Rule 1 r/w. Section 96 of the Code of Civil procedure against the judgment and decree dated 10th January 2013 in O.S.No.11967 of 2010 on the file of the learned XVII Additional Judge, in charge of the XVIII Additional City Civil Court, Chennai.

For Appellant : Mr.Raghav for
M/s.Dua Associates

For Respondents: No appearance

J U D G M E N T

The defendants in the suit in O.S.No.11967 of 2010 on the file of XVIII Additional Judge, Fast Track Court, Chennai, are the appellants before this Court. The suit was originally



instituted on the file of this Court as C.S.No. 926 of 2007 and on account of the enhancement of pecuniary jurisdiction had been transferred to the file of the City Civil Court, Chennai, and re-numbered as above and posted before the said XVIII Additional Judge, Fast Track Court, Chennai. For ease of understanding, the parties are referred to in the same rank as before the Court below.

Plaintiff's case:

2. The plaintiff had instituted the suit for recovery of a sum of Rs.10,05,000/- together with interest at 24 % p.a. on the said sum from the date of the plaint till the date of realization. The basis of which the suit had been filed is as follows:

(a) The plaintiff had joined the services of the first defendant company in January 1987 and had put in 19 years of blemishless service. He had been working as a draftsman. The first defendant-company is a Member Company of Petroleum India International which comes under the control of the Ministry of Petroleum and Natural Gas, Government of India. He would state that he had been selected by the Petroleum India International as Mechanical Design Draftsman and deputed at Bahrain to work with the Bahrain Petroleum Company, BSC (C) (BAPCO) and Bahrain Refinery Bahrain.

(b) The plaintiff would submit that an agreement was entered into between himself and the first defendant on 22.05.2000 in and by which the first defendant had permitted the plaintiff to take up the assignment with the Petroleum India International to work with BAPCO, Bahrain for a period of one year. It is his contention that under the terms of deputation agreement, clause 14 therein provided that the employee shall not resign from the services of the company, unless he puts in a minimum period of 5 years from the date of his return from deputation of his assignment abroad. In case, he does not put in the minimum period, he would be liable to pay liquidated damages equivalent to a sum of Rs 5,00,000/- to the first defendant.

(c) After the period of one year was over, he was instructed by the first defendant through the Petroleum India International to continue with his assignment for a further period of two years. Therefore, he was on deputation for the period 25.05.2000 to 14.05.2003. The plaintiff had completed his assignment with accolades from the Petroleum India International. It appears that the first defendant had amended clause 14 of the deputation agreement in the year 2001 and once again, it was amended in the



WEB

year 2004. As per the first amendment, the minimum period of service after deputation was reduced to 3 years. However, the liquidated damages continued to be a sum of Rs.5,00,000/-. As per the second amendment, the minimum period of service was reduced to further period of 2 years. However, liquidated damages was enhanced to a sum of Rs.45,000/- p.m. of the deputation period or a maximum of Rs.15,00,000/-. The amendments however have not been brought to his notice. The plaintiff submits that he has resigned from the services of the first defendant after completing the three year bond period on 26.05.2006. After submitting the resignation, he had approached the second and third defendants for obtaining his relieving order, but they had however demanded the payment of a sum of Rs.5,00,000/- as liquidated damages for non-completion of the 5 year period as provided under the original agreement. The plaintiff attempted to convince the defendants by citing the example of two other employees. However, since he was in a hurry to obtain the relieving letter, he had paid up the said sum of Rs.5,00,000/- with a rider that the defendants would refund the same, if they were convinced that the plaintiff would come within the revised scheme. The plaintiff would further submit that under clause 4 of the agreement, he would be entitled to incentive/bonus for the deputation period. However, this payment has not been made to him. Therefore, the plaintiff had addressed several letters to the defendants calling upon them to make good the payments. However, the same had not been responded to either in the form of a reply or by complying with the demand. In fact, the plaintiff had addressed a letter dated 10.05.2006, stating that he was not liable to pay the bond amount in view of the amendments to clause 14 of the deputation agreement dated 22.05.2000. However, the defendants did not respond to the said letters. The plaintiff would therefore submit that he was entitled to a refund of a sum of Rs.5,00,000/- together with interest at 24 per cent from 26.05.2006 till the date of the plaint, Rs.1,25,000/- towards incentives and Rs.3,00,000/- towards damages for mental agony and stress and, therefore, had come forward with the above suit.

Defendants case:

3. The defendants had filed a written statement through the first defendant in which they had denied the claim of the plaintiff and also the averments contained in the plaint. The first defendant would submit that the plaintiff was not entitled to liquidated damages of Rs.5,00,000/- as he had resigned without completing the 5 year bond period, which ended on 15.05.2008, whereas, the plaintiff had resigned on 26.05.2006. Therefore, the withholding of liquidated damages was justified.



The defendants would further submit that as per the agreement, the bond period with the first defendant was 5 years and not 3 years. They would submit that the reference of two other employees would not apply to the plaintiff, since they had been deputed only in the year 2002 and their agreement stipulated a bond period of 3 years. Therefore, the retention of a sum of Rs.5,00,000/- is only as per the contract between the parties. The change in quantum of liquidated damages varied in the year 2004 would not be applicable to the plaintiff as he had rejoined services in the year 2003 and his deputation agreement had come to an end. That being so, the plaintiff was not entitled to any amount towards mental agony.

4. As regards the claim for incentives/bonus, the defendants would submit that the incentives which were payable had been paid to the plaintiff and a sum of Rs.51,060/- after deducting the tax of Rs.9,747/- was sent to the plaintiff constituting the incentive for the year 2002-03. The plaintiff had been paid the earlier incentives and therefore, the defendants had denied their liability to pay an incentive of Rs. 1,25,000/- as claimed by the plaintiff.

Plaintiff's reply:

5. A reply was filed by the plaintiff denying the contentions of the defendants. The plaintiff would also submit that as per the agreement, the payment of enhanced amount of performance linked incentives for the Financial Year 2000 to 2004 was not paid by the first defendant. The payment through cheque was also denied. He would submit that he had not received any amounts from the first defendant under the head of incentive. Therefore, he would submit that he was entitled to the decree as prayed for.

Trial Court:

6. The learned Additional Judge had, on perusing the pleadings on either side, framed the following issues for trial:

- 1) Whether the plaintiff is entitled to suit claim of Rs.10,05,000/- with interest at the rate of 24% p.a?
- 2) Whether the defendants are entitled to deduct Rs. 5,00,000/- as liquidated damages for breach of contract by resigning prior to the end of 5 years bond period?
- 3) Whether the plaintiff is entitled to a sum of Rs. 1,25,000/- towards incentive as claimed?
- 4) To what relief the plaintiff is entitled?



1) Whether the plaintiff is entitled to claim of Rs.5,00,000/- with held by the defendant company towards liquidated damages?

3) Whether the plaintiff is entitled for a sum of Rs.3,00,000/- towards the damages?

7. The plaintiff had examined himself as P.W.1 and marked Exs.A-1 to A-17. One Mr.Pradeep, had examined himself as D.W.1 and marked Exs. B-1 to B-6. The learned Additional Judge on perusing the records, had decreed the suit only with reference to the payment of a sum of Rs.1,25,000/- towards incentive. The claim of a sum of Rs.5,00,000/- towards liquidated damages and a sum of Rs.3,00,000/- towards mental agony and stress had been dismissed. Ultimately, the suit had been decreed directing the defendants to pay the plaintiff a sum of Rs.1,25,000/- with interest at 12% p.a. from the date of plaint i.e.28.06.2007, till the date of decree. Challenging clause 2 of the decree, the defendants are before this Court.

"Whether the plaintiff is entitled to an incentive of Rs.1,25,000/- without him proving his entitlement and setting out the basis on which the said claim is made?"

<https://hcservices.ecourts.gov.in/hcservices/>



effective 26.05.2006. He would draw the attention of the Court to the reasoning of the Court below for awarding the said sum which is contained in paragraph 24 of the judgment. He would submit that such a reasoning is not backed by any evidence either oral or documentary. In the absence of the same, the Court below has mis-directed itself into granting the said sum. He would therefore submit that the judgment in appeal requires to be set aside.

Discussion:

10. The claim of the plaintiff with reference to the incentive has been set out in paragraph-8 of the plaint which reads as follows:

"The plaintiff states that he is entitled to receive the incentive/bonus which was to be paid as per Clause 4 of the agreement during his deputation period. The plaintiff further states that the first defendant has also paid arrears of incentives due to its employees after he resigned from the services in May 2006. The plaintiff states that in spite of several requests and reminders, the defendants failed and neglected to pay any amount. "

11. Except for the above statement, the plaintiff has not given any details of the amounts that is payable to him and the period for which such amount is payable. Being the plaintiff, he has to approach the Court with a definite case. A reading of the above pleading does not bring out the basis on which a claim of Rs.1,25,000/- has been made. The plaintiff based the claim on clause 4 of the deputation agreement dated 27.04.2014. Clause 4 of the said agreement is extracted herein below:

"During the currency of this agreement the Employee continues to be in the service of the Company and he shall be eligible to Provident Fund Contribution, Gratuity/Superannuation, Incentive Bonus/Bonus, if any."

12. A reading of the above would indicate that the plaintiff is entitled to an incentive bonus during the currency of the agreement. Admittedly, the plaintiff had been sent on deputation on 25.05.2000 and he continued at Bahrain till 14.05.2003. Therefore, as per clause 4 of the agreement, the plaintiff is entitled to incentive for this period namely, from 25.05.2000 to 14.05.2003. From a reading of the plaint, the plaintiff has not given any details as to the period and the amount that he is entitled to under the head of 'incentive bonus'. The oral



WEB COPY

evidence of the plaintiff as P.W.1 does not also clarify the same. The plaintiff has vaguely made the following statements:

“ஆனால் எனக்கு 11 தடவைகள் வா.சா.ஆ.1ல் கூறப்பட்ட இன்சென்டிவ் மற்றும் போனஸ் தரப்படவில்லை. அந்த 1,25,000/- தொகை இன்சென்டிவ்க்காக பைனான்சியல் இயர் 2000-2001ல் இருந்து 2005-2006 வரை உள்ள தொகை ஆகும்.”

13. Therefore, a reading of the above statement would indicate that the plaintiff is claiming incentive for the period 2000-2001 and 2005-2006 till the date of his resignation. However, Clause 4 of the agreement in very clear term states that the incentive bonus is applicable only during the currency of the agreement. Admittedly, the agreement had come to an end in the year 2003, when the plaintiff had returned back to India. Therefore, from the language of clause 4 of the agreement, the plaintiff was entitled to the incentive bonus only till the year 2003. The defendants have gone on record to state that the plaintiff had been paid a sum of Rs.51,060/-. No doubt, they had not filed proof for the same. However, there is no categorical denial of the defendants' pleading in this regard by the plaintiff in his reply statement.

14. Therefore, I am persuaded to accept the contention of the defendants that a sum of Rs.51,060/- has been paid by them to the plaintiff. Further, on a reading of the plaint in its entirety, the main thrust of the plaintiff's claim was for the refund of the sum of Rs. 5,00,000/- which had been retained as liquidated damages by the first defendant. This claim has been negatived by the learned Additional Judge. However, the defendants have not chosen to appeal against its dismissal. The claim for incentive bonus has been made more in the lines of an afterthought and the same has not been substantiated by filing any documents or by letting any oral evidence. In fact, the pleading itself is rather vague. The learned Judge, while allowing the claim, has observed that the plaintiff has not produced any documents to arrive at the incentive payable to him. However, the learned Judge has proceeded to allow the claim on the basis of that the defendants have not proved their payment to a sum of Rs. 51,060/- to the plaintiff. It is needless to state that the plaintiff has to succeed on the strength of his case and not on the weakness of the defence. Therefore, the learned Judge has totally mis-directed himself/herself in allowing the claim. Therefore, the point is answered against the respondent.



15. In fine, the first appeal is allowed and the judgment and decree of the XVII additional Judge in-charge of the XVIII Additional City Civil Court, Chennai in O.S.No.11967 of 2010 is set aside. However, there shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kal/shr

To

The XVII Additional Judge,
(in charge of the XVIII Additional Judge)
City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arjun Suresh, Advocate Sr.48394

A.S.No.405 of 2014

bs[co]
srg 13/12/2021