

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present :

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Ajoy Kumar Mukherjee

FMAT 921 of 2013

Standard Chartered Grindlays Bank

Retired Employees Association & Ors.

Vs.

Standard Chartered Bank & Ors. For the Petitioner

For the Appellant : Mr. Soumya Majumdar, Adv.
Mr. Arijit Dey, Adv.

For the Defendant : Mr. Ranjay De, Adv.
Mr. Asit Dey, Adv.
Mr. Subir Banerjee, Adv.

Order Dated : 14th March, 2022

Soumen Sen, J.(oral):- By consent of the parties the appeal and the applications are take up together and disposed of by this common order.

The appeal is arising out of a judgment and order dated 21st June, 2013 in connection with an application filed by the respondent/defendant no.1 bank on 22nd June, 2012 under Order VII Rule 11(a) of the Code of Civil Procedure.

The learned Trial Judge allowed the said application on contest and dismissed the suit.

The appellants are aggrieved by the said order.

The plaintiff filed a suit on 26th August, 2009 praying inter alia for a declaration that the defendant no. 1 Bank is bound to act in terms of Bhave Award dated 26th September, 1994 and interim settlement made between the defendant no. 1 Bank and its employees on 24th September, 2001 as modified by the settlement dated 29th November, 2007 and the defendant no. 1 Bank is bound and obliged to give all benefits in terms of the said two settlements. The other prayers of the plaint are arising out of said two settlements.

The plaintiffs alleged that after the signing of the terms of settlement dated 24th September, 2001 the defendant no. 1 bank had failed and/or refused to implement the provisions of the Bhave Award in its true spirit by not extending the benefit of upward revision in pensionary benefits to the employees of the defendant no. 1 bank, who retired prior to 1st November, 2001. It is also alleged that the rights of the ex-employees of the respondent/defendant no.1 bank represented by the plaintiff no. 1 association and/or union have been denied by the respondent/ defendant no.1 bank.

The respondent/defendant no.1 bank entered appearance into the suit on 7th June, 2010 and thereafter on 22nd December, 2010 filed a written statement. The learned Trial Judge framed issues on 2nd December, 2012. The suit was fixed for peremptory hearing on 22nd June, 2012. On that very date the respondent/defendant no.1 bank filed an application under Order VII Rule 11(a) of the Code of Civil Procedure.

In order to appreciate the scope of the said application it is necessary to briefly indicate the case made out by the plaintiff in the suit.

The plaintiff claimed that the plaintiff's Union granted registration under the Trade Union Act, 1926 on 13th June, 2003. The plaintiff nos. 2 and 3 are retired employee of the respondent/defendant no.1 bank. Before the plaintiff union was granted the registration, the cause of the said retired employees used to be espoused by an Association registered under the Societies Registration Act, 1961 by the name of Standard Chartered Grindlays Bank Retired Employees' Welfare Association.

The employees Union of the Standard Chartered Bank raised *inter alia*, disputes under the 10 of the Industrial Disputes Act, 1947 in which Sri H.G. Bhavé on 26th September, 1994 passed an award regarding payment of pension by the respondent/defendant no.1 bank to its employees upon their retirement and providing for periodic revision in the quantum of pension admissible on the basis of rise in price index to all the retired employees of the respondent/defendant no.1 bank. Subsequently on 20th November, 1997 a Memorandum of Settlement (MOS) was executed between the respondent/defendant no.1 bank by its erstwhile management and the employees' association, represented by All India Grindlays Bank Employees Association, under Section 2(p) read with Section 18(1) of the said Act, 1947 and in furtherance of Rule 58 of the Industrial Disputes (Central) Rules, 1957 wherein an interim settlement on pension was arrived at whereby there was an ad hoc interim increase in the quantum of pension to all retired employees irrespective of their

date of retirement. The said interim agreement was valid till 31st December, 1998. The said interim agreement also provided that employees of the respondent/defendant no.1 bank who retired on or after 1st October, 1997 would receive a retiring allowance at the rate of Rs.1400 per month for clerical staff and Rs.700/- per month for subordinate staff. This would be in addition to the monthly pension entitlement under the Indian Staff Pension Scheme Rules.

A Section of the retired employees of the bank felt aggrieved by the said interim agreement dated 20th November, 1997. They filed a writ application before the Bombay High Court being WP no. 165 of 1998 which was disposed of on 30th March, 1998 granting liberty to the employees union to file proper application before the appropriate authority in case they were aggrieved by any final settlement arrived at in respect of their pensionary benefits.

On 10th March, 1999 a comprehensive Memorandum of Settlement was arrived at between the erstwhile management of the respondent/defendant no.1 bank and the All Indian Grindlays Bank Employees Association, representing employees of the said Bank. The said settlement provided for increase in quantum of monthly pension for various categories of retired employees and the future pensioners of the respondent/defendant no.1 bank with effect from 1st April, 1999. It was mutually agreed by the parties that the said settlement would be reviewed.

On 24th September, 2001 the respondent/defendant no.1 bank entered into a further MOS with the Employees' Association in pursuance of the Bhawe Award, judgment of the Hon'ble Bombay High Court and commitments made by the respondent/defendant no.1 bank in the interim settlement dated 20th November, 1997 and the comprehensive settlement dated 10th March, 1999 with regard to the upper limit of pension in respect of the employees retiring on or after 1st November, 2001. However, the defendant No.1 bank refused to extend such benefits to the employees retired prior to the said date. The plaintiff protected against such discrimination and wanted to raise disputes before the Regional Labour Commissioner (Central) (in short 'RLC') which was opposed by the respondent/defendant no.1 bank as a result whereof conciliation proceeding before the RLC (Central) had failed. The RLC on 21st March, 2003 advised association to approach Labour Court for appropriate relief under Section 33C (2) of the Industrial Disputes Act, 1947 for necessary relief. This has resulted in a writ application being filed by the plaintiff association being WP No.1998 of 2003, in which the association prayed *inter alia*, for the direction upon RLC (Central) to submit the report to the Central Government under Section 12 of the said Act of 1947 upon failure of conciliation of the Industrial disputes regarding denial of higher pensionary benefits to the employees of the respondent/defendant no.1 bank who retired from service before 1st November, 2001 along with a prayer for further direction upon the Central Government to make an order of reference of the Industrial Disputes under Section 10 of the said Act, 1947. The said writ application was

disposed of on 16th January, 2007 holding *inter alia*, that the retired employees cannot raise industrial dispute within the purview of the Industrial Dispute Act, 1947. The association preferred an appeal before the Hon'ble Division Bench of this Court wherein the Co-ordinate Bench for an order dated 8th July, 2009 disposed of the appeal recording that in the event, the appellants namely the plaintiffs herein approached the Civil Court for redressal of their grievance within six weeks from the date of the order they would have the benefit of section 14 of the Limitation Act as they were pursuing their remedy in the writ jurisdiction bona fide. It was on the basis of the said leave the suit has been filed in which it is contended that ever since the signing of the terms of settlement dated 24th September, 2001 the respondent/defendant no.1 bank has failed/refused/neglected to implement the pension of the Bhawe Award in its spirit by not extending the benefit of upward revision in pensionary benefits to the employees of the respondent/defendant no.1 bank who retired prior to 1st November, 2001. The plaint avers the subsequent events that had taken place following the settlement which were also stated in the writ petition. In the plaint, it is stated that the cause of action instituted the suit firstly arose on 30th October, 2002 when the respondent/defendant no.1 bank issued a letter denying the rights of the plaintiff as aforesaid and the same is continuing day to day. By reason of the order of the Hon'ble High Court at Calcutta in the aforesaid writ application and in the appeal against the order passed in the aforesaid writ application, the plaintiffs are entitled to obtain the reliefs under Section 14 of the Limitation Act.

The respondent/defendant no.1 bank after the issues were settled and on the date of the peremptory hearing of the suit filed an application for dismissal of the plaint on the ground that the plaintiff has no cause of action.

The learned Trial Judge decided the said application in favour of the respondent/defendant no.1 bank.

The issues arise for consideration in the appeal is whether the learned Trial Judge in exercises of the power under Order VII Rule 11 (a) could have dismissed the suit. On the ground that the plaintiff does not have any cause of action against the respondent/defendant no.1 bank.

The answer is a clear and simple 'No'.

The plaint is required to conform to Order 7 Rule 1 of the Code of Civil Procedure. It is essential that a plaint must disclose a cause of action and a statement to the effect that it is not barred by limitation. The cause of action is essentially a bundle of facts to be stated in the plaint which if proved at the trial would result in a decree being passed in favour of the plaintiff.

In *Read v. Brown* (1888) 22 QBD 128, Lord Esher M.R., defined "cause of action" to mean "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

Fry L. J., agreed and said :-

"Everything which, if not proved, gives the defendant an immediate right to judgment must be part of the cause of action."

There is a distinction between a plaint not disclosing a cause of action and the plaintiff has no cause of action to sue. A decision as to whether the plaint discloses no cause of action the Court is required to read the plaint in a meaningful manner and take the averments in the plaint to be correct. The plaintiff may have a cause of action which ultimately may not succeed that is not the consideration on which the plaint is to be rejected at the initial stage.

To put it in a concise form, the words "cause of action" means the whole bundle of material facts which are necessary for the plaintiff to prove, in order to entitle him to the reliefs claimed in the suit. Order 7 Rule 1 requires the plaintiff to incorporate in the plaint the facts constituting the cause of action. The plaintiff is required to plead all material facts upon which his right to relief is based and from which court can arrive at a conclusion in his favour. Such "cause of action" generally means a situation or state of facts that entitles a party to maintain an action in court, the material facts imperative for claimant to allege and prove, constitute cause of action that helps plaintiff to obtain decree. The phrase 'does not disclose cause of action' as used in Order 7 Rule 11(a) has to be narrowly construed. The distinction between non-existence of a cause of action and nondisclosure of cause of action has been discussed in *State of Orissa v. Kolckna Company Ltd.*, reported at MANU/SC/1460/1996 : (1996) 8 SCC 377.

Under Order 7 Rule 11(a), the plaint shall be rejected only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law. The plea that there is no cause of action for the suit is not same as to say the plaint does not disclose any cause of action, which is a ground for the rejection of the plaint. The correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Clause (a) of Order 7 Rule 11. (See *British Airways v. Art Works Export Ltd. & Anr.* reported at MANU/WB/0022/1986 : AIR 1986 Cal 120)

(See. **Lindsay International Pvt. Ltd. and Ors. vs. Laxmi Niwas Mittal and Ors.** reported at **MANU/WB/0743/2017, 2018(2) CHN (CAL) 464, (2018)1CALLT254(HC), (2018)2WBLR(Cal)259**)

In view of the judgment of the learned Single Judge in the writ proceeding and the leave granted by the Hon'ble Division Bench in the appeal preferred against the order of the learned Single Judge the suit was filed. It is elementary that for every wrong there must be a remedy as the Latin Maxim says *ubi jus ibi remedium*. The plaintiffs cannot be rendered remediless. On a clear and meaningful reading of the plaint there cannot be any doubt that the appellants have semblance of the cause of action against the respondent/defendant no.1 bank. Once it is established that the plaintiff has a cause of action against the defendant and more particularly the defendant no. 1 and the plaint disclose, a cause of action the court is not called upon at the stage assessing a demurrer to decide whether the case is likely to fail; the only consideration is whether the plaint disclose the cause of action against such defendant who asserts to the contrary. (See. **Laxmi Niwas Mittal vs. Lindsay International Private Limited and Ors.** reported at **MANU/WB/0015/2018; 2018(2) CHN (CAL) 42**).

In Special Leave Petition arising out of by the order dated 16th January, 2018 passed by the Hon'ble coordinate bench the Hon'ble Supreme Court dismissed the Special Leave Petition on 27th April, 2018.

In view of the aforesaid settled position of law we are of the opinion that the learned Trial Judge has passed the impugned order on a misconception of law and the said impugned order is liable to be set aside.

We accordingly set aside the impugned order.

In view of our order the suit revives. We request the learned Trial Judge to decide the suit on merits as expeditiously as possible. The trial Court shall decide the suit uninfluenced by any of the observation made by us in this appeal.

In view of the above, FMAT 921 of 2013 is disposed of.

There shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)