

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

**APPEAL (L) NO.38843 OF 2022
WITH
INTERIM APPLICATION NO.5283 OF 2022
IN
APPEAL (L) NO.38843 OF 2022**

Chanda Kochhar)
an Indian inhabitant, residing at 45, CCI)
Chambers, Dinshaw Vachha Road, Churchgate,)
Mumbai – 400 020)Appellant

V/s.

ICICI Bank Limited)
a company having its office at ICICI Bank)
Towers, Bandra Kurla Complex, Bandra (East),)
Mumbai – 400 051)Respondent

**WITH
APPEAL (L) NO.38844 OF 2022
WITH
INTERIM APPLICATION NO.5286 OF 2022
IN
APPEAL (L) NO.38844 OF 2022**

Chanda Kochhar)
an Indian inhabitant, residing at 45, CCI)
Chambers, Dinshaw Vachha Road, Churchgate,)
Mumbai – 400 020)Appellant

V/s.

ICICI Bank Limited)
a company having its office at ICICI Bank)
Towers, Bandra Kurla Complex, Bandra (East),)
Mumbai – 400 051)Respondent

Mr. Aspi Chinoy, Senior Advocate a/w. Mr. Rohaan Cama, Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Deepa Shetty, Mr. Kyrus Modi and Mr. Pranav Narsaria i/b. Rashmikant and Partners for appellant.

Mr. Darius Khambata, Senior Advocate a/w. Mr. Mustafa Doctor, Senior Advocate, Mr. Aditya Mehta, Mr. Ali Antulay, Mr. Abhijit Joshi, Mr. Rahul Dwarkadas, Ms. Silpa Nair, Ms. Juhi Bahirwani and Ms. Sanaya Contractor i/b. Veritas Legal for respondent.

CORAM : K. R. SHRIRAM & RAJESH S. PATIL, JJ.
RESERVED ON : 19th APRIL 2023
PRONOUNCED ON : 3rd MAY 2023

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 These appeals impugn a common order and judgment pronounced on 10th November 2022 by a learned Single Judge of this Court who dismissed appellant's Interim Application No.1014 of 2022 but granted reliefs in Interim Application No.307 of 2020 filed by respondent.

The main issue raised by appellant in these proceedings is - Whether respondent, having accepted appellant's request for early retirement, could subsequently terminate appellant's services for cause with effect from the date of acceptance of early retirement?

2 Appellant, in a suit filed by her, viz., Suit No.114 of 2022, is primarily seeking relief with respect to specific performance of the letter dated 4th October 2018 by which respondent accepted appellant's early retirement and the benefits referred therein under the early retirement scheme. Appellant is, *inter alia*, seeking reinstatement of her Employee Stock Options ("ESOPs") under the Employee Stock Option Scheme ("ESOS").

3 As against appellant's claim, respondent in its Suit No.313 of 2020 has sought clawback of bonuses and revocation of retirement benefits, including vested and unvested ESOPs. It is respondent's case that the services of appellant was treated as "termination for cause" with effect from

4th October 2018 for breach of good conduct during the course of her employment.

4 As these appeals have been filed against an interim order, we are giving only skeleton facts relevant for the purpose of present appeals.

Appellant joined respondent way back in 1984 as a Trainee Officer. Appellant grew up in ranks over the years and on 1st May 2009 was appointed and from time to time re-appointed as Managing Director and Chief Executive Officer of respondent. The term of last appointment was to end on 31st March 2019.

5 During her employment with respondent, appellant accepted/agreed to various policies of respondent which included Code of Conduct, framework for dealing with conflict of interest, Deeds for Covenants and clawback agreement. Appellant was also required to make various disclosures in compliance with the provisions of the Companies Act, 1956, the Companies Act, 2013, the Banking Regulation Act, 1949, the SEBI (Listing Obligation and Disclosure) Regulations, 2015, RBI Master Circular on Loans and Advances and RBI Guidelines on Compensation of Whole Time Directors/CEO.

6 It is appellant's case that during the period April 2007 to March 2017 appellant was granted ESOPs. These ESOPs are granted considering various factors that included appraisal of performance, good conduct, etc. In July 2016, there was a news article that contained allegations against

appellant with regard to loans granted to Videocon Group companies. There were allegations that these loans were granted as a quid pro quo for investments by Mr. Venugopal Dhoot of Videocon Group or his affiliates in NuPower Renewables Pvt. Ltd. ("NRPL"). NRPL is a company promoted by Mr. Deepak Kochhar, husband of appellant.

7 In view of these allegations, respondent, on 26th December 2016, appointed a reputed law firm to conduct independent enquiry into the allegations appearing in these news articles. Appellant and her husband participated in the enquiry and provided information and documents indicating that there were no investments made by Mr. Venugopal Dhoot and his affiliates in NRPL. Relying on the information provided by appellant and her husband, the law firm submitted its report to respondent stating that there was no merit in the allegations.

8 Thereafter, in April 2018, respondent received a whistleblower letter primarily alleging abuse of position by appellant and the business dealings between Videocon Group and Mr. Deepak Kochhar. Appellant by a letter dated 20th April 2018 informed respondent that she made inquiries with her husband and ascertained that he had business dealings with Mr. Venugopal Dhoot/Videocon Group over many years. This was in contradiction to what was stated to the law firm in December 2016. Appellant of course stated that in her disclosures to respondent she has disclosed the Directorships of her husband and there was no information

available with her that either placed her in a position where she ought to have even considered whether there was any scope for a potential conflict of interest or that placed her in any difficulty in carrying out her functions. The correspondence was exchanged between appellant and respondent regarding disclosures of Mr. Deepak Kochhar of his business dealings with Mr. Venugopal Dhoot/Videocon Group.

9 On 29th May 2018, the Board of Directors of respondent decided to conduct an enquiry into the allegations against appellant. Disclosures were also made to the Stock Exchange. The law firm, that was appointed earlier in December 2016, was also informed that in the light of new disclosures made by appellant, their earlier report will no longer be valid. The Stock Exchange was also informed by respondent by a letter dated 30th May 2018 that it has decided to conduct enquiry into the allegations made in whistleblower's complaint. Mr. Justice B.N. Srikrishna (retired) was appointed on 6th June 2018 by the Audit Committee of respondent to conduct an independent enquiry into the allegations against appellant. At a Board meeting of respondent held on 18th June 2018 appellant communicated her decision to go on leave until the enquiry was completed. This was accepted by respondent and necessary disclosures were also made to the Stock Exchange.

10 While the enquiry was still pending, appellant addressed a letter requesting the Board of Directors of respondent to grant her early

retirement. Respondent, by its letter dated 4th October 2018, intimated the Board's approval and also referred to benefits under the Early Retirement Scheme ("ERS"). An undertaking dated 19th July 2016 that was signed by appellant was also enclosed. It is relevant to note that in the said undertaking, appellant has stated that she has recognized and acknowledged that all the above undertakings and commitments are reasonable and part of her fiduciary duties and obligations to respondent as its senior officer and that was in the interest of transparency and good governance. It also noted that in the event of any breach, respondent shall be entitled to seek such legal remedies including forfeiture of any benefits appellant may be entitled to as adjudged in the sole and exclusive discretion of respondent. There is reference to certain ESOPs not yet granted to appellant in respondent's letter dated 4th October 2018, which are pending approval of RBI. It is also stated that grant of such ESOPs would be decided by the Board only upon the conclusion of the enquiry.

11 Between the period October 2018 to January 2019, pending the completion of the enquiry, appellant exercised 6,90,000 ESOPs and received other benefits in accordance with the letter dated 4th October 2018. Appellant participated in the enquiry conducted by Mr. Justice B.N. Srikrishna (retired) and in December 2018 also submitted oral and written submissions.

12 Mr. Justice B.N. Srikrishna (retired) submitted report of his enquiry dated 27th January 2019 to respondent. The report highlighted the conduct of appellant. In the enquiry report there are findings that appellant had committed gross/serious violations of the Code of Conduct for extended periods of time. The Board of Directors of respondent at their meeting considered the findings of the enquiry report and the conclusions arrived therein. In the light of the findings in the report on serious violations by appellant, the Board unanimously resolved to treat the separation of appellant from respondent as “termination for cause” under respondent’s internal policies, schemes and the Code of Conduct with all attendant consequences (including revocation of all her existing and future entitlements such as any unpaid amounts, unpaid bonuses or increments, vested and unvested and unexercised stock options and medical benefits) and clawback all bonuses paid from April 2009 until March 2018 and to take further actions as warranted (including notifying or securing regulatory approvals as required). Disclosures to the Stock Exchanges was also made by respondent in this regard and the RBI was also immediately informed about the findings.

13 Respondent addressed an email dated 30th January 2019 to appellant informing about the decision taken by the Board of Directors of respondent on 30th January 2019. Appellant was informed that the communication as regards to early retirement benefits dated 4th October

2018 stands revoked. Appellant was also informed that the vested and unvested ESOPs, which were earlier allotted to appellant, were revoked and returned to the common pool of ESOPs in accordance with various policies of respondent. Respondent by a letter dated 1st February 2019 addressed by Group Chief Human Resources Officer of respondent to appellant reiterated that appellant's separation from respondent was treated as "termination for cause". The bonuses paid by respondent to appellant during the period April 2009 to March 2018 was quantified at Rs.7,41,36,777/- and which was to be clawed back from appellant on account of such termination for cause. Appellant, by a letter dated 4th February 2019, responded to the email dated 30th January 2019 and the letter dated 1st February 2019 from respondent contending that once the Board of respondent having accepted appellant's early retirement in October 2018, the relationship of employer and employee between respondent and appellant ended.

14 Respondent addressed a letter dated 5th February 2019 to RBI seeking approval of RBI in terms of provisions of the Banking Regulation Act, 1949 to treat the separation of appellant from respondent as "termination for cause" with effect from 30th January 2019. On 13th March 2019, RBI approved the request but directed that the termination would be as on 4th October 2018, which was the last working day of appellant as MD and CEO of respondent. RBI also advised respondent to follow its policies and all applicable laws while dealing with termination of appointment.

In the meanwhile, respondent also provided appellant with relevant excerpts of the enquiry report issued by Mr. Justice B.N. Srikrishna (retired) and appellant was advised that these were privileged and confidential and were not meant for circulation.

Correspondences were exchanged between appellant and respondent wherein respondent called upon appellant to pay back bonuses paid to her during the period April 2009 until March 2018 and appellant responded to these letters reiterating her stand seeking restoration of all benefits allegedly granted to her under respondent's letter dated 4th October, 2018.

15 In November 2019, appellant filed a writ petition against respondent in this Court, being Writ Petition No.33151 of 2019, for a declaration that the communication dated 4th October 2018 issued by respondent was valid, subsisting and binding on respondent and the email dated 30th January, 2019 and the letter dated 1st February 2019 from respondent was illegal, *non-est*, *void ab initio* etc. The declaration was also sought to declare the communication dated 13th March 2019 issued by RBI as *non-est*, illegal and *void ab initio*. Various consequential reliefs were also sought in the writ petition.

This writ petition came to be dismissed by this Court on 5th March 2020 on the ground that the dispute raised was a contractual dispute and not amenable to writ jurisdiction. The SLP challenging this

order also came to be dismissed on 1st December 2020 for the reason that the only controversy in the proceedings is whether the resignation of appellant having been earlier accepted, the later termination could take place or not and that would fall within realm of contractual relationship between appellant and respondent, a private Bank.

16 In February 2020, the Enforcement Directorate had filed a complaint against appellant and her husband under the provisions of the Prevention of Money Laundering Act. Those proceedings are still pending.

17 During the pendency of the writ petition, respondent filed Suit No.313 of 2020 against appellant.

18 Appellant thereafter filed Suit No.114 of 2022 and also took out Interim Application No.1014 of 2022. The plaint, it appears, came to be lodged sometime on or about 28th January 2022, just two days before the suit being barred by limitation. It is averred in the plaint that the cause of action arose on 30th January 2019 when respondent addressed an email to appellant terminating the services of appellant and revoking all her entitlements/benefits.

19 The reliefs sought by appellant in Interim Application No.1014 of 2022 are as under :

(a) stay the operation and effect of the Defendant Bank's email dated 30th January 2019 and letter dated 1st February 2019;

(b) injunct the Defendant Bank from acting upon and acting in furtherance of its email dated 30th January 2019 and letter

dated 1st February 2019 addressed to the Plaintiff and from any manner treating the Plaintiff as having been terminated for cause.

(c) direct the Defendant Bank by an interim order and injunction of this Hon'ble Court to forthwith treat all the 16,63,750 unvested stock options as per para (e) of the said acceptance letter of the defendant bank dated 4th October 2018 as having duly vested.

(d) order and direct the Defendant Bank to earmark the 1,42,06,500 stock options (i.e. 1,25,42,750 unexercised stock options in terms of para (c) and the said 16,63,750 stock options as per para (e) of the Bank's acceptance letter dated 4th October 2018) for the entitlement of the Plaintiff in terms of the said letter dated 4th October 2018 and to be further restrained by an order of injunction from assigning or transferring or treating as lapsed any of the said 1,42,06,500 stock options.

(e) appoint a Court Receiver under XL Rule 1 of the Code of Civil Procedure, 1908 and direct the Defendant Bank to place 1,42,06,500 shares (equivalent to the said 1,42,06,500 stock options) in the custody of the Court Receiver by opening a demat account, and the said shares be purchased by the Plaintiff on disposal of the Suit at prices equivalent to the respective specified exercise price for the said stock options as detailed in Exhibit RR hereto.

(f) restrain the Defendant Bank by an order and injunction from withholding or denying to the Plaintiff any of the rights and benefits to which the Plaintiff is entitled under the Bank's said acceptance letter dated 4th October 2018 including in particular the said 1,32,32,750 vested stock options and 16,63,750 unvested stock options (as per para (c) and (e) respectively thereof) and medical insurance as per para (d) thereof.

(g) pass an order of temporary injunction restraining the Defendant Bank, its employees/ servants/ agents or any other persons from dealing with and/or alienating in any manner whatsoever and/ or allowing to lapse the said 1,25,42,750 unexercised vested stock options in terms of para (c) and the said 16,63,750 stock options as per para (e) of the Bank's acceptance letter dated 4th October 2018; totaling to 1,42,06,500 stock options that were granted to the Plaintiff by the Defendant Bank's said acceptance letter dated 4th October 2018.

20 The prayers in Suit No.114 of 2022 filed by appellant are as
under :

(A) This Hon'ble Court be pleased to declare that :

(i) the Plaintiff retired from the Bank on 4th October 2018 and is entitled to the rights, benefits and entitlements set out at paras (a) to (e) in the Bank's letter of acceptance of Plaintiff's retirement dated 4th October 2018, and

(ii) the Defendant Bank's purported subsequent termination for cause of the Plaintiff's "Employment" on 30th January 2019 four months after her retirement as communicated by its email dated 30th January 2019 and the letter dated 1st February 2019 is null and void and of no legal and binding effect and in breach of contractual obligations/commitments flowing from the Bank's acceptance letter dated 4th October 2018.

(B) that the Defendant Bank be restrained by a permanent injunction from acting in breach of its contractual obligations flowing from its acceptance of the Plaintiff's request/offer for early retirement as detailed in its acceptance letter dated 4th October 2018, or from acting on the basis that the Plaintiff's employment was terminated for cause on 30th January 2019.

(C) the Defendant be ordered and decreed to specifically perform its contractual obligations under its said acceptance letter dated 4th October 2018 accepting the Plaintiff's request for early retirement and stipulating the rights, benefits and entitlements to which the Plaintiff is entitled pursuant to such early retirement and for that purpose do all such acts, deeds and things as may be necessary.

(D) the Defendant Bank be ordered, directed and decreed to forthwith treat all the said 16,63,750 unvested stock options as per para (e) of the Bank's acceptance letter dated 4th October 2018 as having duly vested as per the original vesting schedule;

(E) the Defendant be ordered and directed to restore the Plaintiff to the same position as on 29th January 2019 with the same right, entitlements, benefits and equivalent time period to exercise the said stock options as would have been available to the Plaintiff on that day for the exercise of the 1,25,42,750 stock options in terms of para (c) of the said letter dated 4th October 2018 (ie. 1,32,32,750 vested stock options as on 4.10.2018 less 6,90,000 stock options exercised between October to December 2018) and the said 16,63,750 stock options as per para (e), both totalling to 1,42,06,500 stock options at the given exercise price in Exhibit RR; and in furtherance thereof, this Hon'ble Court be pleased to declare that the period from 30th January 2019 till the date of decree/disposal of this Suit be excluded in computing the equivalent time period permissible for exercising the said 1,42,06,500 stock options.

(F) In the alternative to Prayer E, if for any reason this Hon'ble Court decides that specific performance of the letter dated 4th October 2018 ought not to be granted, the Defendant be ordered and directed to compensate the Plaintiff for damages pertaining to the said stock options in the sum of Rs.1732,48,60,755/- as set out in Exhibit SS;

(G) pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to stay the operation and effect of the Defendant Bank's email dated 30th January 2019 and, letter dated 1st February 2019;

(H) pending hearing and final disposal of the Suit, this Hon'ble Court be pleased to injunct the Defendant Bank from acting upon and acting in furtherance of its email dated 30th January 2019 and letter dated 1st February 2019 addressed to the Plaintiff and from any manner treating the Plaintiff as having been terminated for cause.

(I) pending the hearing and final disposal of the suit the Defendant Bank be directed by an interim order and injunction of this Hon'ble Court to forthwith treat all the 16,63,750 unvested stock options as per para (e) of the said acceptance letter of the defendant bank dated 4th October 2018 as having duly vested;

(J) pending the hearing and final disposal of the present Suit, the Defendant Bank be ordered and directed to earmark the 1,42,06,500 stock options (i.e. 1,25,42,750 unexercised stock options in terms of para (c) and the said 16,63,750 stock options as per para (e) of the Bank's acceptance letter dated 4th October 2018) for the entitlement of the Plaintiff in terms of the said letter dated 4th October 2018 and to be further restrained by an order of injunction from assigning or transferring or treating as lapsed any of the said 1,42,06,500 stock options;

(K) pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint a Court Receiver under XL Rule 1 of the Code of Civil Procedure, 1908 and the Defendant Bank be directed by this Hon'ble Court to place 1,42,06,500 shares (equivalent to the said 1,42,06,500 stock options) in the custody of the Court Receiver by opening a demat account, and the said shares to be purchased by the Plaintiff on disposal of the Suit at prices equivalent to the respective specified exercise price for the said stock options as detailed in Exhibit RR.

(L) that pending the hearing and disposal of the Suit the Defendant Bank be restrained by an order and injunction from withholding or denying to the Plaintiff any of the rights and benefits to which the Plaintiff is entitled under the Bank's said acceptance letter dated 4th October 2018 including in particular the said 1,32,32,750 vested stock options and 16,63,750 unvested stock options (as per para (c) and (e)

respectively thereof) and medical insurance as per para (d) thereof.

(M) Pending the hearing and disposal of the present Suit, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Defendant Bank, its employees/ servants/ agents or any other persons from dealing with and/or alienating in any manner whatsoever and/or allowing to lapse the said 1,25,42,750 unexercised vested stock options in terms of para (c) and the said 16,63,750 stock options as per para (e) of the Bank's acceptance letter dated 4th October 2018; totaling to 1,42,06,500 stock options that were granted to the Plaintiff by the Defendant Bank's said acceptance letter dated 4th October 2018.

The interim application, if granted basically would decree the suit.

21 Elaborate submissions were made by Mr. Chinoy and Mr. Khambata.

Mr. Chinoy submitted :

(a) appellant's offer of early retirement on 3rd October 2018 and respondent's acceptance thereof by its letter dated 4th October 2018 resulted in a contract/agreement for retirement on the terms mentioned in the said letter of acceptance. This contract of retirement resulted in cessation of the employer - employee relationship of appellant with respondent;

(b) upon the cessation of the employer - employee relationship (under the Retirement Agreement of 4th October 2018), respondent could thereafter not take any disciplinary procedure or action against appellant, nor purport in January 2019 to terminate appellant's employment, non existent, for cause;

(c) reliance by respondent on the preliminary enquiry report to justify its decision to treat appellant's retirement as "termination for cause" and reliance upon the findings of the enquiry report is misplaced, wrongful and unwarranted. Respondent could not have relied upon the preliminary enquiry report to prejudice any right or entitlement of appellant;

(d) the preliminary enquiry, which was a fact finding exercise/internal investigation, could not have been continued after appellant's retirement from service under the Retirement Agreement dated 4th October 2018 and the consequent cessation of the employer - employee relationship could not have resulted in the initiation of a disciplinary proceeding;

(e) the enquiry conducted by Mr. Justice B.N. Srikrishna (retired) was only a fact finding exercise/internal investigation provided for in respondent's Code of Conduct and the report of such an enquiry was only to enable respondent to decide whether to start disciplinary proceedings. Appellant's solitary meeting with Mr. Justice B.N. Srikrishna (retired) in December 2018 was not as part of an adjudicatory/disciplinary procedure but was only an one-on-one discussion with the concerned employee contemplated as part of such initial fact finding exercise/internal investigation under respondent's Code of Conduct;

(f) therefore, even if there had been no early retirement under the Code of Conduct of respondent, the only action that could have been taken by respondent on receipt of the preliminary fact finding/internal

investigation report was to initiate/commence a disciplinary procedure. Such a fact finding exercise/internal investigation report could not by itself be used to affect any right or benefit of appellant and could never justify or be the basis for respondent terminating appellant's services/employment for cause or revoking any retirement benefits;

(g) since the enquiry report itself says it was a privileged and confidential document and was protected by attorney client privilege, the enquiry report was made only for respondent in order to enable respondent to take a decision re-initiation of disciplinary proceedings;

(h) the learned Single Judge's findings that there was no merit in the submission that the enquiry was a preliminary enquiry or it could not result in disciplinary procedure or action taken against appellant etc. is erroneous;

(i) Respondent by accepting/agreeing to appellant's early retirement during the pendency of the fact finding enquiry, resulting in a cesser of the jural relationship of employer and employee, precluded itself in law from thereafter initiating any disciplinary proceedings against appellant on the basis of the enquiry report;

(j) respondent's reference to or reliance on the conclusions in the internal/confidential, untested enquiry report as "findings" against appellant is contrary to law, unfair and malafide;

(k) merely because appellant was the MD and CEO and MD and CEO was the Appellate Authority under the Code of Conduct disciplinary procedure stipulated in the Code of Conduct could not enable respondent to depart from the procedures and safeguards provided in the Code of Conduct for taking any disciplinary action. Though modification in the stipulated procedure/authorities would be required having regard to appellant's status as CEO and MD and as being the Appellate Authority under the Code of Conduct, this could not result in the basic procedural safeguards and processes being jettisoned/departed from;

(l) the contention of respondent that even assuming that the termination for cause dated 30th January 2018 was not valid in law, even on an early retirement, respondent was entitled to revoke the retirement benefits and in particular, the ESOPs on the ground of appellant's non compliance with good conduct is baseless in fact and also incorrect. This is because respondent by its letter dated 30th January 2019 and 1st February 2019 purported to revoke the retirement benefits including the ESOPs only as an attendant consequence of its purported decision of termination for cause of appellant's employment, which was by then non existent. Respondent has not purported to revoke the benefits and ESOPs de hors or independent of its purported termination for cause. Respondent has not purported to revoke the ESOPs on any ground of non compliance with good conduct;

(m) moreover, the ESOS does not enable respondent to revoke appellant's retirement benefits/ESOPs on any ground of general non compliance with good conduct during the period when appellant was in employment;

(n) the reference to compliance with the undertaking of good conduct is evidently a reference only to the undertaking for good conduct dated 19th July 2016 which was annexed to the Retirement Agreement dated 4th October 2018 which placed certain limited obligations/restrictions on appellant's post retirement;

(o) the finding of the learned Single Judge that compliance with the Code of Conduct, i.e., good conduct, was mandatory and non compliance thereof would result in the review by respondent of the vesting and exercise of options is *ex-facie* and demonstrably incorrect;

(p) records indicate that respondent has not even purported to revoke/rescind appellant's Retirement Agreement under the contract because respondent's email dated 30th January 2019 and letter dated 1st February 2019 merely state that the Board of Directors has decided to treat appellant's separation from respondent as "termination for cause" under the respondent's internal policies, schemes and the Code of Conduct with all attendant consequences (including revocation of all her existing and future entitlements such as any unpaid amounts, unpaid bonuses or increments, vested and unvested and unexercised stock options and medical

benefits) and accordingly communication as regards early retirement benefits to appellant dated 4th October, 2018 stands revoked with immediate effect;

(q) in short, what appellant says is by virtue of appellant's offer of early retirement dated 3rd October 2018 and respondent's acceptance thereof by its letter dated 4th October 2018 resulted in a contract/agreement for retirement on the terms mentioned in the said letter of acceptance and resulted in cessation of the employer - employee relationship, respondent cannot rely on the enquiry report of Mr. Justice B.N. Srikrishna (retired) or any other Code of Conduct and appellant should be granted a summary decree.

22 Mr. Khambata submitted :

(a) the reliefs sought by appellant are in the nature of final reliefs and any grant of such reliefs would amount to decreeing appellant's suit at the interim stage;

(b) in any event, the ESOPs claimed by appellant have already been cancelled in 2019 and subsequently, added to the common pool from which they have been distributed to other eligible employees of respondent. The relief sought by appellant in effect is a mandatory order directing a fresh issue of ESOPs at this interlocutory stage;

(c) any grant of the interim reliefs would cause irreparable injury and prejudice to respondent in as much as even if appellant's suit is

ultimately dismissed, respondent would then be required to seek recovery of the shares acquired by appellant and/or monetary equivalent of the same;

(d) the balance of convenience is completely in favour of respondent since it is a public listed company;

(e) the appeals seek re-appreciation of material considered in the impugned order;

(f) it is well settled that the Court should not hold a mini-trial at the stage of grant of temporary injunction;

(g) ESOPs contract and the contract of employment are two separate contracts. Contract of employment is governed by appellant's appointment letter, Board approvals and RBI approvals for her appointment as MD and CEO, Deeds of Covenants and ICICI Bank's policies, whereas ESOPs are governed by a separate and independent contract, the terms of which are contained in the ESOS of respondent and the various award confirmations and vesting confirmations issued to appellant from time to time;

(h) appellant had an obligation to ensure good conduct under both the contract of employment and ESOPs contract;

(i) the letter dated 4th October 2018 is not a new contract and cannot and does not put to an end to the rights and obligations of the parties under the subsisting contracts;

(j) reference to good conduct in the contracts is not a reference to the undertaking dated 19th July 2016 signed by appellant;

(k) the benefits listed in the letter dated 4th October 2018 were not unconditionally granted;

(l) revocation of the letter of 4th October 2018 was made only after concrete findings against appellant came to the knowledge of respondent from the enquiry report;

(m) even assuming appellant's contract of employment was not validly terminated for cause, ESOPs can be withdrawn/denied;

(n) appellant was given adequate opportunity to be heard by Mr. Justice B.N. Srikrishna (retired) and appellant and her husband has made oral as well as written submissions running into 66 pages which in fact have been extensively referred to and relied upon in the enquiry report. Appellant never asked for any further hearing and instead only stated that she would be available for any further discussions/clarifications that Mr. Justice B.N. Srikrishna (retired) may want. Appellant has not pleaded or contended as to what additional material, facts or submission she would have made in the event she was given any further hearings and any such prejudice ought to be pleaded and proved;

(o) upon respondent coming to know after receipt of the enquiry report that appellant had, for extended periods of time, failed to make various disclosures to respondent as required under the Code of

Conduct and the applicable laws and suppressed various facts from respondent, the Board revoked the letter dated 4th October 2018 and treated the separation of appellant as termination for cause. It is immaterial whether respondent has suffered any loss. It is settled law that when an employee has acted in violation of the rules of conduct, then the fact that it has resulted in no loss to the employer does not make the action of the employee any less illegal. The Bank's employee holds a position of trust where honesty and integrity are the *sine qua non* and it would never be advisable to deal with such matters leniently;

(p) the interim reliefs granted in favour of respondent by the learned Single Judge pertaining to 6,90,000 shares were correctly granted and were in accordance with the RBI's directions dated 13th March 2019. RBI, by its letter dated 13th March 2019, has specifically directed respondent to make the termination effective from appellant's last working day, i.e., from 4th October 2018. Since appellant exercised the 6,90,000 ESOPs only after 4th October 2018, such ESOPs were vested but unexercised as on 4th October 2018. Therefore, there is nothing wrong in the interim relief being granted;

(q) appellant has not approached the Court with clean hands and false statement with respect to ERS Scheme and vesting confirmation have been made in the suit and the affidavits filed;

(r) appellant has not challenged the enquiry or the enquiry report by Mr. Justice B.N. Srikrishna (retired). Though appellant has sought leave under Order II Rule 2 of the Code of Civil Procedure, 1908 to omit to sue and that it would file a separate leave application under Order II Rule 2 to sue for reliefs other than those claimed in the plaint, no such application has been filed.

23 The learned Single Judge, after hearing the parties extensively, by a detailed judgment pronounced on 10th November 2022, dismissed the Interim Application No.1014 of 2022 filed by appellant and allowed respondent's Interim Application No.307 of 2020 by passing the following order :

(i) Mrs. Kochhar is restrained by an order of injunction from dealing with any of the 690,000 ESOPs already exercised by her during the period from 4th October, 2018 to 30th January, 2019.

(ii) Mrs. Kochhar shall disclose if she has sold or dealt with any of such shares as well as disclose her gain from such sale which shall be by way of Affidavit of Disclosure to be filed by her within six weeks from uploading of this Order.

Our View :

24 Though both Mr. Chinoy and Mr. Khambata made extensive submissions, what is to be noted is that the reliefs sought by appellant are in the nature of final reliefs and grant of such reliefs would amount to decreeing appellant's suit at the interim stage. Infact appellant has indicated during the oral arguments as well as in the pleadings that she seeks interim

reliefs for exercising the ESOPs in order to be able to sell the share during the pendency of her suit. In paragraph 7 of the Interim Application No.5286 of 2022 in Appeal (lodging) No.38844 of 2022, appellant herself has pleaded that on the exercise of the stock options, appellant would be entitled to receive shares of respondent, a listed company, at the specified exercise prices, which appellant would thereafter be able to sell at a time when the price of the shares is most favourable. Any grant of the interim reliefs as sought by appellant would cause irreparable injury and prejudice to respondent, in as much as if respondent were to succeed in its suit and appellant was to lose in her suit, respondent would then be required to seek recovery of the shares acquired by appellant and/or monetary equivalent of the same. Appellant is an individual and respondent is a Bank whose shares are listed in the Stock Exchange.

25 Whether appellant's offer of early retirement on 3rd October 2018 and respondent's acceptance thereof by its letter dated 4th October 2018 resulted in a contract/agreement for retirement on the terms mentioned in the said letter of acceptance or it resulted in cessation of the employer - employee relationship that would preclude respondent from taking any disciplinary procedure or action against appellant or terminate appellant's employment for cause in January 2019 are all matters of trial which cannot be decided at the interim stage. Whether the letter of 4th October 2018 puts an end to the rights and obligations of the parties

under the subsisting contracts or whether the letter dated 4th October 2018 constitutes a new contract thereby putting an end to the rights and obligations of the parties under the subsisting contract or whether benefits listed in the letter dated 4th October 2018 were unconditionally granted are also matters of trial. Whether reference to good conduct in the contracts is not a reference to the undertaking dated 19th July 2016 signed by appellant is also a matter for trial. Whether respondent, in view of the serious findings in the enquiry report by Mr. Justice B.N. Srikrishna (retired), could clawback the benefits that appellant derived during her employment between 2009 and 2018 is also a matter of trial. Whether ESOPs can be revoked or whether ESOP is a separate contract are also matters for trial.

26 Appellant is seeking a summary decree. The impugned order is a detailed order passed by the learned Single Judge in exercise of his discretionary powers and after hearing the parties at length. It is well settled, as held in ***Wander Limited and Anr. V/s. Antox India P Ltd.***¹, that an Appellate Court ought not interfere with such exercise of discretion except where such exercise has been shown to be arbitrary, capricious or perverse. Further, the Appellate Court ought not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material. It is also settled law that the Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground

1. 1990 (Supp) SCC 727

that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner, the fact that the Appellate Court would have taken a different view may not justify interference with the Trial Court's exercise of discretion. Paragraph 14 of *Wander* (Supra) reads as under :

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :

... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.

27 There is nothing to indicate that the discretion exercised by the learned Single Judge is arbitrary or capricious or perverse or unjustified in law. The Trial Court has exercised its discretion reasonably and in a judicial manner. The observations made by the learned Single Judge on the conduct of appellant, though not conclusive, are very serious in nature. If the interim reliefs sought by appellant is granted, that would cause irreparable injury and prejudice to respondent. The balance of convenience is completely in favour of respondent, since it is a public listed company, and if appellant succeeds in her suit, respondent can at that stage be directed to purchase shares from the stock market or to pay an amount equal to their value to appellant. Per contra if appellant's suit is ultimately dismissed, respondent would then be required to seek recovery of the shares acquired by appellant and/or monetary equivalent of the same. Appellant is an individual, whereas respondent is a public listed company. It is also well settled that it is not appropriate for a Court to hold a mini-trial at the stage of grant of temporary injunction as held in *Zenit Mataplast Private Limited V/s. State of Maharashtra & Ors.*²

28 We should also note that appellant has approached this Court just two days before the expiry of the three year limitation period from the date of cause of action. The delay in approaching the Court would itself disentitle respondent from seeking any interim relief as prayed for. Considering the prayers, the suit is for specific performance and appellant is

2. 2009 (10) SCC 388

seeking specific performance at the interim stage, which cannot be granted particularly in view of the reasons recorded above.

29 Therefore, in our view, no interference is called for. Both appeals are required to be dismissed and are hereby dismissed. Costs to be cost in the suit. All interim applications also stand disposed.

30 All rights and contentions of the parties are kept open. Any findings made in this judgment or by the learned Single Judge against appellant are only *prima facie* findings and not conclusive.

31 Counsel state that writ of summons have been served in both suits. Written statement to be filed and copy served on or before 30th June 2023.

32 Parties to file their respective affidavits of documents by 15th July 2023 and complete discovery and inspection and also exchange statements of admission and denial with reasons for denial by 31st July 2023.

33 Suit be listed on 4th August 2023 for issues, subject to the convenience of the learned Single Judge, at which time parties shall go with agreed draft issues and a separate list of issues on which they are unable to agree.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)