



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 150 OF 2022

WITH CIVIL APPLICATION NO. 3993 OF 2022

WITH

SECOND APPEAL NO. 151 OF 2022

WITH CIVIL APPLICATION NO. 3994 OF 2022

Supreme Industries Ltd.
D-101, 102, MIDC Area,
Jalgaon.

Appellant
(original defendant)

Versus

Girish Prabhakar Mahajan
Age : 55 yrs, occ : Nil
R/o Plot No.18, Prabhat Colony,
Jalgaon

Respondents
(original plaintiff)

...

Mr. Sanket Kulkarni, Advocate holding for holding for
Mr. Y.R. Marlappale, Advocate for the appellant.
Mr. Sandesh R. Patil, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 22 AUGUST 2022

Order :

1. The appellant/Company, who is the original defendant in Regular Civil Suit No.743/2012, has challenged the common judgment and order dated 13.10.2021 passed in Regular Civil Appeal Nos. 32/2017 and 37/2017 by learned District Judge-4, Jalgaon i.e. the learned first appellate

Court. Under the aforesaid judgment and order, the learned first appellate Court has not only confirmed the judgment and decree passed by the learned Civil Judge (Senior Division), Jalgaon (hereinafter referred to as the “learned trial Court”) in Regular Civil Suit No. 743/2012, but also modified the same in respect of grant of back salary to the plaintiff from 15.11.1997 instead of the date of filing suit. As such, the present Second Appeals have filed against concurrent finding of both the learned Courts below.

2. Brief facts giving rise to the present appeals are as under :

The present respondent i.e. the original plaintiff, feeling dis-satisfied with his forceful resignation at the hands of the appellant i.e. the original employer Company, filed Regular Civil Suit No. 743/2012 for declaration, perpetual injunction and arrears of salary on 23.08.2012 in the learned trial Court. After conducting the trial, the learned trial Court partly allowed the suit by declaring that the appellant/ Company had forcibly obtained resignation of respondent / plaintiff on 15.11.1997. The learned trial Court also directed the appellant/Company to reinstate the plaintiff to his service and to pay back salary for the period starting from the date of filing of the suit till it's decision and to pay him regular salary

thereafter. The appellant company had preferred Regular Civil Appeal No.32/2017 against the decision of the learned trial Court before the learned first appellate Court at Jalgaon. However, the said appeal was dismissed and Regular Civil Appeal No. 37/2017 filed by the present respondent/plaintiff was allowed and starting point of paying salary to the plaintiff was modified from 15.11.1997 instead of date of filing of the suit. Hence, these Second Appeals.

3. Learned Counsel for the appellant / Company vehemently submitted that the learned trial Court was not having any jurisdiction to direct the appellant/company for reinstatement of the plaintiff with back wages. According to him, Civil Court is not empowered for granting such relief. Further, he argued that contract of personal service cannot be enforced by Civil Court and as per the observation of the Hon'ble Apex Court, the only remedy with the respondent / plaintiff was to file a claim for damages and not reinstatement. For this purpose, he relied on the following judgments :

- (i) Integrated Rural Development Agency vs Ram Pyare Pandey, 1995 Supp (2) Supreme Court Cases 495***
- (ii) Nandganj Sihori Sugar Co. Ltd. Vs Rae Bareli and another, (1991) 3 Supreme Court Cases 54***

- (iii) Executive Committee of U.P. State Warehousing Corpn. Lucknow vs Chandra Kiran Tyagi, AIR 1970 SC 1244*
- (iv) Chander Shekhar Malhotra vs Nirion Ltd. & others 1999 (4) L.L.N. 850*
- (v) Kailash Singh vs Managing Committee, Mayo College, Ajmer and others, (2018) 18 SCC 216*
- (vi) Rajasthan State Road Transport Corporation vs Mohar Singh, (2008) 5 SCC 542*

4. On the contrary, learned Counsel for the respondent/plaintiff strongly opposed the submissions made on behalf of the appellant/Company. He pointed out that both the learned Courts below already dealt with the judgments relied upon by the appellant/Company. According to him, the plaintiff was neither terminated nor he had given voluntary resignation, but in fact the appellant/Company obtained his resignation forcefully and that is only set aside by the Civil Court. According to him, the issue of jurisdiction of Civil Court for granting reinstatement was not agitated by the appellant/Company in both the learned Courts below. As such, he supported the impugned judgments and prayed for dismissal of the Second Appeals at admission stage. He also relied on the judgment in the case of *Rajasthan State Road Transport Corporation vs Bal Mukund Bairwa* reported in *(2009) 4 SCC 299*.

5. It is significant to note that the learned Counsel for the appellant/Company has raised the following substantial questions of law :

- (i) Whether Civil Court can grant reinstatement?
- (ii) Whether the contract for personal service can be enforced by Civil Court?

6. Admittedly, the Hon'ble Apex Court in the case of *Integrated Rural Development Agency vs Ram Pyare Pandey* (supra) has observed that relationship between Society and it's employee being contractual and purely one of master and servant, the relief of arrears of salary is improper and illegal. Further, the Hon'ble Apex Court in the case of *Nandganj Sihori Sugar Co. vs Badri Nath* (supra) has observed that contract of employment of personal nature is not specifically enforceable and the only relief available to the aggrieved person is to claim for damages. The Hon'ble Apex Court in the case of *Executive Committee of U.P. State Vs Chandra Kiran* (supra) has taken same view. Further, it is specifically held in the case of *Chander Shekhar vs Nirlon Ltd* (supra) that the performance which would not be specifically enforceable, remedy of plaintiff lies in a claim for damages. Similarly, in the case of *Kailash Singh vs Mayo College* (supra), the Hon'ble Apex Court has reinstated the aforesaid

aspect. Further, in the case of ***Rajasthan State Road Transport Corp vs Mohar Singh*** (supra), it has been observed that if a right is claimed under Industrial Disputes Act or sister laws, the jurisdiction of Civil Court would be barred. Thus, on going through the observations in the aforesaid cases, it is clearly evident that Civil Court is not having jurisdiction to grant a relief arising out of right claimed under Industrial Disputes Act or any other sister laws and that reinstatement and payment of back wages cannot be allowed in case of specific performance of master and servant contract of service and proper remedy for the same is to claim damages. However, this is not the absolute position because the Hon'ble Apex Court has already held in the case of ***Integrated Rural Development Agency*** (supra) that specific performance of contract of service can be granted by Civil Court only in exceptional and rare cases. As such, the Civil Court can grant such relief by awarding back wages and reinstatement. There is no absolute bar for granting such relief for the Civil Court.

7. Further, both the impugned judgments are clearly evident of the fact that the respondent/plaintiff had neither given the resignation voluntarily nor the appellant/Company

had terminated him. On the contrary, it has been established on the basis of evidence that the respondent/plaintiff had not resigned from his job, but forceful resignation was obtained from him by the Company officials. Moreover, the learned trial Court on the basis of evidence, has observed that the appellant/Company could not establish as to what procedure they had followed while accepting resignation of plaintiff. The evidence on record has clearly shown that the respondent/plaintiff had immediately agitated the issue in respect of his alleged forceful resignation by making complaint to that effect. As such, both the learned Courts below have concurred on the issue of forceful resignation of respondent/plaintiff at the hands of the officials of appellant/Company and that too without following any procedure.

8. Therefore, considering all these aspects there appears no substance in these Second Appeals or any substantial questions of law as raised by the learned Counsel for the appellant. In view of the same, both the Second Appeals stand dismissed at admission stage alongwith pending Civil Applications.

(SANDIPKUMAR C. MORE, J.)