



2024:DHC:1622



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 91/2019 and CM APP No. 54001/2023**

NITIN KUMAR

..... Appellant

Through: **Mr. P.V. Raghunandan, Adv.**

versus

**M/S HOUSING DEVELOPMENT FINANCE
CORPORATION LTD**

..... Respondent

Through: **Mr. Jatin Chaudhary, Advocate**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (O R A L)

26.02.2024

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1. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC). The appellant has suffered adverse orders both at the hands of the learned Civil Judge (South East) and, thereafter, at the hands of the learned Additional District Judge (the learned ADJ). The appellant's suit was dismissed by the learned Civil Judge and the first appeal preferred by the appellant was also dismissed by the learned ADJ. The appellant is before this Court in second appeal.

2. The appellant was employed as a Senior Officer with the Housing Development Finance Corporation Limited (HDFC) on 26

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October 2009. He resigned from the services of the HDFC on 27 September 2011. The resignation was accepted by the HDFC on 5 December 2011.

3. On the ground that the appellant had been short paid his terminal dues, consequent on his resignation, the appellant instituted Suit 38/2015, subsequently numbered as Suit 50863/2016 (*Nitin Kumar v. HDFC and Ors*) before the learned Civil Judge. By way of the suit, the appellant claimed various amounts as terminal benefits, which allegedly remained outstanding.

4. As already noted, the learned Civil Judge rejected the appellant's claim and the learned ADJ has upheld the order of the learned Civil Judge.

5. Before this Court, however, the appellant on 5 July 2022, restricted his case to his claim for gratuity consequent to his resignation from the services of the HDFC.

6. I have heard Mr. P.V. Raghunandan, learned counsel for the appellant and Mr. Jatin Chaudhary, learned counsel for the respondent at length.

7. The issue being brief, no detailed illusion to evidence is necessary. The Court is only concerned with whether the appellant is entitled to gratuity from the respondent. For this reason, the following substantial question of law had been framed by this Court by its order



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dated 5 July 2022 :

“1. Whether the petitioner is entitled to gratuity, from the respondent, in excess of ₹ 20,196.50 and, if so, the basis for such entitlement?

2. Whether Civil Suit 38/2015, which was decided by the order dated 28th October, 2016 was barred by time?”

8. Both the Courts below have concurrently held that, as Section 4(1)¹ of the Payment of Gratuity Act, 1972 permits gratuity to be paid only where the employee concerned has served the organization for five years or more, and the appellant had resigned from the services of the HDFC after serving the HDFC for just two years, no gratuity was payable to the appellant.

9. On 5 July 2022, Mr. Raghunandan’s contention was that the Payment of Gratuity Act would not apply where there was any contract to the contrary between the parties.

10. Mr. Raghunandan has not been able to draw my attention to any

¹ 4. **Payment of gratuity. –**

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation. – For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

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contract between the appellant and the HDFC which would dilute the effect of Section 4 of the Payment of Gratuity Act. He has instead sought to argue that

- (i) during the period of two years of his service with the HDFC, HDFC booked, in its returns, the amount of gratuity payable to the appellant as a liability and availed income tax benefits thereon,
- (ii) the HDFC would, therefore, be unjustly enriched if, consequent to the appellant's resignation, the amounts booked by the HDFC in its own accounts as gratuity payable to the appellant are not released to him,
- (iii) the appellant, on the other hand, was faced with a double whammy as, in the first instance, as a tax paying citizen, the evasion of tax by the HDFC on the amount shown in its books as gratuity payable to the appellant affected him and, secondly, he was denied the gratuity which was otherwise payable to him, as booked by the HDFC in its books of accounts, and
- (iv) the HDFC was one of the largest companies in India with an attrition rate of upto 30% and could not, therefore, escape its obligation to pay gratuity to the appellant.

11. Mr. Raghunandan has also drawn my attention to an internal communication dated 19 July 2011 addressed by the HDFC to the appellant in which it was stated, based on the appellant's performance in the previous financial year, that his revised cost to company (CTC) included various elements, among which was the gratuity of ₹ 20,196/-.



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12. The submissions of Mr. Raghunandan, in my considered opinion, do not cut much ice.

13. The entitlement of the appellant to gratuity has to be assessed on the basis of the provisions of the Payment of Gratuity Act. Mr. Raghunandan has not been able to show me any contract between the appellant and the respondent which dilutes the impact of Section 4(1) of the Payment of Gratuity Act, 1972. The provision is perfectly clear. Gratuity is payable under Section 4(1) of the Payment of Gratuity Act to an employee on termination of his employment only if he has rendered continuous service of not less than five years.

14. “Employee” is defined in Section 2(e) as any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity”.

15. Clearly, therefore, the petitioner was the employee of the HDFC.

16. Admittedly, the petitioner had served the HDFC for less than



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five years. Section 4 of the Payment of Gratuity Act, therefore, disentitled the petitioner to gratuity. There is no contract between the petitioner and the HDFC which dilutes or mitigates the rigour of Section 4 of the Payment of Gratuity Act.

17. Though the petitioner is statutorily not entitled to any gratuity, the petitioner had relied on a communication dated 26 October 2009, which seem to indicate that the respondent had agreed to an amount of ₹ 20,196/- as payable to the petitioner. It was for this reason that Issue (1) was framed in the manner it was. In view of the aforesaid, the issue is necessarily to be answered in the negative.

18. The second issue which arises for consideration in this case is of limitation. On this, too, there are concurrent findings by both the Courts below that the petitioner's suit was barred by time. The findings of the learned Civil Judge and the learned ADJ on the issue of limitation are reproduced thus :

Findings of the learned Civil Judge

"10.2 As per Section 9 of the Limitation Act "where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it". Hence, in the present case the limitation starts running from 05-12-2011 and not from the dates of various communications exchanged between the parties after 05-12-2011. The various communications exchanged between 05-12-2011 the parties after 05-12- 2011 does not generate fresh cause of action as the cause of action had already begun to run from 05-12-2011 and not from subsequent dates as relied by the Plaintiff and for this reason the present suit be dismissed with heavy cost in the interest of justice. The reply dated: 13-11-2014 sent by the Defendant to the demand notice dated: 14-10-2014 made by the Plaintiff is not an acknowledgement of debt by the Defendant and hence it can be said that the limitation even does not start running from 14-01-2014. Thus, the issue No.02 has been amply proved by the Defendant and on this ground the present



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suit filed by the present Plaintiff be dismissed with heavy cost in the interest of justice.

10.3 On the other hand, as per Plaintiff the suit is within limitation as the Plaintiff has received the amount from Defendant on 05-12-2011 and thereafter Plaintiff has written a letter to the Defendant for asking his legitimate dues vide email dated:02-01-2012 and Defendant has replied the same vide email dated:09-01-2012. Thereafter, Plaintiff again wrote an email dated: 18-01-2012 and Defendant replied the same by email dated: 19- 01-2012. The last email was given by Plaintiff to the Defendant on 06-02- 2012 and legal notice was served on 14-10-2014. Therefore, the suit is within period of limitation as the Defendant has refused to give legitimate dues of Plaintiff.

10.4 Arguments heard. Records perused.

10.5 The facts and evidence of the case have already been discussed during findings upon Issue No.01 and same are not repeated here for the sake of brevity. Admittedly, the Plaintiff has received an amount of Rs.7,355/- from Defendant by way of cheque on 05-12-2011. Clearly, the cause of action arose in favour of Plaintiff on 05-12-2011. Further, even for the sake of arguments, if the plea of Plaintiff is admitted, even than the Plaintiff has written email dated:02-01-2012 for claiming his legal dues and he same was replied by the Defendant on 09-01-2012 in which the Defendant had made his intention clear that there are no dues remaining payable to the Plaintiff. Therefore, the cause of action has arisen in favour of Plaintiff on 09-01-2012 and period of limitation shall be computed from 09-01-2012. Now the subsequent exchange of email between parties cannot confer a fresh cause of action in favour of Plaintiff. Further none of the email sent by Defendant is an acknowledgment of liability by the Defendant.”

Findings of learned ADJ

“Lastly, as regards the arguments raised by the plaintiff with regard to the claim filed by him to be within limitation, it has been correctly observed by Ld. Civil Judge, who has discussed the entire issue minutely in para no. 10.2 to 10.5. As such, as the limitation period cannot be stopped once it begins to run. In other words, merely by placing on record various email communications exchanged between the parties does not generate a fresh cause of action or save the period of limitation. Moreover, reply to demand notice dated 13.11.2014 also cannot be considered as acknowledgement of debt as provided u/s 18 Limitation Act, as there was no clear and unequivocal admission made in the said reply. Therefore, I am in agreement with observations made by Ld. Civil Judge in para no. 10.5 of her judgment that the

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cause of action arose in favour of plaintiff on 05.12.2011 when he received full and final settlement amount of Rs.7,355 from defendant and at best, the cause of action can be said to accrue when plaintiff had written email dated 02.01.2012 claiming his legal dues which was refused vide mail dated 09.01.2012 wherein the defendant company had clearly denied that any dues were payable to the plaintiff. As such, the argument that the claim of plaintiff was within period of limitation is untenable and hence, dismissed.

19. On this issue, Mr. Raghunandan's only contention is that the petitioner was making repeated representations trying to obtain some relief at the departmental level before moving this Court. It was for this reason, he submits, that the appellant was unable to move the court within time.

20. The Courts below have correctly held that limitation has to be reckoned from 5 December 2011, when the appellant received full and final settlement amount from the defendant or at the highest from 9 January 2012 when the respondent refused the appellant's claim for additional retiral benefits. The suit was admittedly instituted on 20 January 2015 which was beyond three years from the said date.

21. The CPC does not envisage any condonation of delay in filing suits. Three years is the period provided is the maximum period within which a suit can be filed.

22. Moreover, the Supreme Court has held in *S.S. Rathore v State of M.P.*², that the limitation for approaching the court in the case of service benefits would run from the date of first rejection of the first

² AIR 1990 SC 10



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representation made by the employee and making repeated unsuccessful representations would not extend the period of limitation. The relevant paragraph from the said decision reads thus:

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. *Repeated unsuccessful representations not provided by law are not governed by this principle.*”

(Emphasis supplied)

23. The submission of Mr. Raghunandan that by not paying the gratuity to which his client is, as per him, entitled, the HDFC was unjustly enriching itself and was also making money from the activities which were different from its core business are also irrelevant as they do not in any way confer any right to the appellant to gratuity from the HDFC.

24. In the aforesaid circumstances, both the substantial questions of law framed by this Court on 5 July 2022 have to be necessarily answered in the negative.

25. The judgments of the learned Civil Judge and the learned ADJ therefore have to be upheld in their entirety.



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26. The appeal is, therefore, dismissed with no orders as to costs.

C.HARI SHANKAR, J

FEBRUARY 26, 2024

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[Click here to check corrigendum, if any](#)

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