

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.M.A. No.180 of 2025
with
F.M.A. No.181 of 2025
IA No: CAN 1 of 2025**

**Standard Chartered Bank Limited
Vs.
Sanjib Kumar Dey, alias Sanjib Dey and another**

For the appellant	:	Mr. Sabyasachi Chowdhury, Sr. Adv., Mr. Soorjya Ganguli, Ms. Pooja Chakraborti, Ms. A. Bhattacharyya, Mr. Aritra Deb
For the respondent	:	Mr. Soumya Majumdar, Sr. Adv., Mr. S. R. Saha
Hearing concluded on	:	30.01.2025
Judgment on	:	06.02.2025

Sabyasachi Bhattacharyya, J.:-

1. The two appeals are taken up for hearing together, since both arise from connected orders passed in the same suit.
2. The plaintiff/respondent no.1 is an employee of the defendant no. 1/appellant-bank by virtue of an offer of appointment and employment

agreement dated January 20, 2015. The defendant no. 2 /respondent no. 2 is a Mumbai branch of the appellant-bank.

3. The genesis of the appeals is a suit filed by the plaintiff/respondent no. 1, *inter alia*, for a decree of declaration that issuance of a letter dated January 29, 2024 by the defendants to the plaintiffs is illegal, bad in law and without jurisdiction, a declaration that the letter of appointment dated January 20, 2015 executed between the parties is still existing and cannot be cancelled unilaterally without due process of law, for other consequential declarations and for injunction.
4. In connection with the said suit, the plaintiffs/respondents filed an application for temporary injunction restraining the defendants and/or their men, agents and servants from giving effect to the letter issued by the defendants dated January 29, 2024 to the plaintiff/respondent no.1 and to allow him to continue peacefully working as Support Officer and for interim injunction in similar terms.
5. By Order No.02 dated February 26, 2024, an *ad interim* injunction was granted by the learned Trial Judge, restraining the defendants from giving effect to the letter dated January 29, 2024 till March 28, 2024, which order is the subject-matter of challenge in FMA 180 of 2025.
6. Thereafter the interim order was extended from time to time, lastly *vide* Order No.10 dated December 9, 2024, whereby the said interim order was extended till the next date, that is, February 5, 2025. The order dated December 9, 2024 is the subject-matter of challenge in FMA 181 of 2025.

- 7.** Learned senior counsel appearing for the appellant argues that the impugned letter dated January 29, 2024 is not a termination notice but merely an intimation of the potential redundancy situation due to proposed restructuring of the bank and, as such, the defendants ought not to have been restrained from giving effect to the same. It is argued that by virtue of the injunction order, the defendants have been, in effect, restrained from issuing any valid termination notice under Clause 6 of the Employment Contract between the parties.
- 8.** Learned senior counsel next submits that the Employment Contract between the defendants/employers and the plaintiff/respondent no.1 is in the nature of a personal contract and, as such, cannot be specifically enforced under Section 14 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”). Moreover, the said contractual employment being in itself determinable, no specific performance could be granted in respect of the same. As such, it is argued, no injunction order could be passed in respect of the said contract.
- 9.** Learned senior counsel argues that Clause 6.1 of the Employment Agreement contemplates early termination of the plaintiff’s employment upon the simple issuance of a written notice of three months. The said clause confers such option of early termination to both parties. As such, the contract is determinable by its very nature.
- 10.** It is further contended that any employment contract is a contract of personal nature and, as such, no injunction can be granted in respect of breach thereof.

- 11.** Learned senior counsel appearing for the appellant further submits that at best, even if the impugned notice is construed to be a termination notice, the appropriate remedy of the plaintiff would be three months' salary for the mandatory notice period as contemplated in Clause 6.1 of the Employment Agreement, which the appellant is, in any event, willing to pay. Hence, the grant of injunction and subsequent extension thereof are palpably barred by law.
- 12.** Learned senior counsel appearing for the plaintiff/respondent no. 1 argues that after the 2018 amendment to Section 14 of the 1963 Act came into force on and from October 1, 2018, there is no bar to grant of specific performance of personal contracts, except in exceptional cases as envisaged in the amended Section 14(c) thereof.
- 13.** It is argued that under Section 14(c), as amended in 2018, specific performance is barred only in respect of a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms. The plaintiff/respondent no.1, it is argued, has been employed as an officer of the appellant-bank and there is no scope of the employment contract being dependent on personal qualifications of the plaintiff to such an extent that the court cannot enforce specific performance of its material terms.
- 14.** In support of the above proposition, learned senior counsel cites *Church of North India v. Rt. Reverend Ashoke Biswas*, reported at 2019 SCC OnLine Cal 3842, a judgment of a learned Single Judge of this Court.

- 15.** Learned senior counsel appearing for the plaintiff/respondent no.1 next argues that the employment contract between the parties is not, by its very nature, determinable and as such does not come within Section 14(d) of the 1963 Act. By referring to Clause 6.1 of the Employment Agreement, it is contended that as per the same, the employment of respondent no.1 is for an indefinite period, unless terminated by three months' written notice. Clause 6.2 provides that the plaintiff/respondent no.1 will retire from service of the Bank on reaching the age of 60 years. As such, the contract, by its very nature, is for an indefinite period, at least till the plaintiff attains 60 years of age.
- 16.** Again, Clause 13 of the Agreement contemplates immediate termination without notice only upon certain breach, as stipulated therein, having occurred at the instance of the plaintiff. However, in the event any such breach is alleged, it is the incumbent duty of the defendants to give a prior right of hearing to the plaintiff and only terminate his services upon a reasoned decision being taken. In any event, it is submitted, no violation under Clause 13 has been alleged in the impugned letter dated January 29, 2024 by the defendants.
- 17.** Learned senior counsel appearing for the plaintiff/respondent no.1 takes the court through the impugned notice and points out that the same warns the plaintiff of a risk of termination due to redundancy, which constitutes a present threat of termination. If read in proper perspective, the notice is seen to give a thirty-day consultation period to explore suitable alternative roles of the plaintiff to avoid a redundancy

situation. It clearly mentions that in the absence of any alternative roles, the plaintiff's employment will terminate by reason of redundancy. Thus, it is contended that the notice tantamounts to a termination notice without adhering to either Clause 6 or Clause 13 of the Employment Agreement.

18. Accordingly, the respondent no. 1 submits that the impugned orders of interim injunction and the extension thereof are fully justified in law and on facts.

19. Upon a consideration of the submissions of parties and a scrutiny of the materials on record, it transpires that the following three questions primarily fall for consideration before the court:

- I) Whether the impugned notice dated January 29, 2024 can be construed as a termination notice?
- II) Whether the employment contract, being a contract of personal nature, any injunction could be granted in respect thereof?
- III) Whether the employment contract is, in its nature, determinable, thus debarring the court from granting any injunction in respect thereof?

20. The above issues are decided as follows:

I) Whether the impugned notice dated January 29, 2024 can be construed as a termination notice?

21. The assailed notice dated January 29, 2024, if read as a whole, brings forth certain features implicit in it. The same is captioned as a notice

of risk of redundancy and not as a termination notice. It is stated therein that the appellant-bank considers that they will source personal loans only from alternate intra-bank channels going forward, which means that the plaintiff's employment is "at risk" of termination due to redundancy. It goes on to say that the meeting between the parties on the same date was the beginning of a thirty-day consultation period and it was kept open to the plaintiff to raise any clarifications or questions on the potential redundancy of his role as well as granted an opportunity to the plaintiff to look for any suitable alternative roles to avoid a redundancy situation.

- 22.** It is also worthwhile to note that in the penultimate paragraph, the notice provides that the plaintiff is still an employee of the bank and would remain subject to all the terms of the contract of employment and continue to receive full salary and benefits as normal throughout the consultation period. It also grants the plaintiff the scope of contacting the author of the notice, the National Sales Manager, Unsecured Lending, India of the appellant-bank in the event the plaintiff has any queries.
- 23.** Thus, on a composite reading of the said notice, it is clear that the same does not pose a present threat of termination but merely mentions about the risk of a potential termination. By itself, the said notice does not purport to terminate the contract of employment of the plaintiff at all but leaves open the scope for discussion and consultation on the issue of potential redundancy due to lack of alternative roles, if any. Although it states that in the absence of any alternative roles, the

plaintiff's employment will terminate by reason of redundancy, the same speaks about a future termination in the event such redundancy scenario occurs. There is nothing in the notice to indicate that it would automatically terminate the services of the plaintiff after a particular period without compliance of Clause 6.1 of the Employment Contract. Hence, it would be premature to label the notice dated January 29, 2024 as a termination notice as such.

- 24.** It is noteworthy that even the learned Trial Judge, in the substantive ad interim order of injunction dated February 26, 2024 which is impugned in one of the appeals, treats the said communication as a letter having *potential* threats of termination. Thus, even in the perception of the learned Trial Judge, the letter dated January 29, 2024 does not constitute a present threat of termination or a termination notice but merely poses a potential and future threat of termination.
- 25.** Rather, the said notice gives a prior opportunity of exploring options to the plaintiff to find alternative roles to remain relevant to the appellant-bank and avoid a redundancy situation which might, if unavailable, lead to a situation where the Banks would terminate the employment of the plaintiff. Hence, even after the notice, if a suitable alternative role could be found for the plaintiff, the potential threat of redundancy might very well have been negated and he retained in service.
- 26.** As such, this issue has to be decided in the negative, inasmuch as the notice dated January 29, 2024 cannot be construed as a termination notice and as such, does not pose any present threat to the plaintiff.

II) Whether the employment contract, being a contract of personal nature, any injunction can be granted in respect thereof?

- 27.** The next question which arises is where the Employment Contract is of a personal nature and precludes the court from granting an injunction. The plaintiff/respondent no.1 cites *Church of North India (supra)* to argue that after the 2018 amendment to the 1963, Act in order to come within the purview of Section 14(c) of the said Act, a contract has be so dependent on the personal qualification of the plaintiff that the court cannot enforce specific performance of its materials terms.
- 28.** An examination of the 2018 amendment and its effect is germane in the context. Prior to the amendment, which came into effect on October 1, 2018, the relevant corresponding provision relating to personal contract was Clause (b) of Section 14 as it stood before the said amendment. As per the said Clause, the court could not grant specific performance in respect of a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms. The said Clause has now been removed by the 2018 amendment.
- 29.** The current relevant clause is Clause (c) of Section 14, which speaks about a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its materials terms. Examining the nature of service being rendered by the

plaintiff to the defendant-Banks in terms of his employment agreement, such work is of a general nature which can be performed by any officer appointed to such post and is not dependent on the personal qualifications of the plaintiff to such an extent that the material terms of the contract cannot be specifically enforced. Such a situation might have occurred if the plaintiff had some specialized skill or intellectual expertise directly related to the work which would make him indispensable for performance of the work which he is doing. In such a case, the personal qualifications of the plaintiff would be of such a level that specific performance of the material terms of the contract could not be enforced by the court.

- 30.** In the present case, however, the contract is not at all dependent on such personal qualifications or skills so as to prevent the court from specifically performing its material terms. Thus, it cannot be said that the contract is of a personal nature so as to attract the amended Section 14(c) of the 1963 Act.
- 31.** Hence, this issue is decided in favour of the plaintiff/respondent no.1 and it is held that the specific performance of the contract is not barred under Section 14(c) of the 1963 Act.

III) Whether the employment contract is, in its nature, determinable, thus debarring the court from granting any injunction in respect thereof?

- 32.** The most crucial question to adjudicate the present case is whether the Employment Contract between the parties is in its nature determinable. To answer the question, we are to consider the termination Clauses inbuilt in the Employment Contract of the plaintiff.
- 33.** Clause 6.1 of the same specifies that the employment would be for an indefinite period. However, such expression is immediately qualified by the phrase “unless and until terminated by three months’ written notice on either side, or otherwise as provided in the agreement.” Thus, the “indefinite” nature of the employment is squarely circumscribed by a prior termination option at the instance of either of the parties or as otherwise provided in the agreement. Clause 13 of the contract contemplates termination without notice or compensation in certain cases of breach of the Employment Contract.
- 34.** The word “determinable” connotes that there is scope of its being determined before the expiry of its otherwise normal tenure. It includes both automatic terminations, limited by tenure or the happening of a fixed event or, alternatively, contemplate early determination before the expiry of its normal period, depending on the terms of the contract.
- 35.** It has also to be considered that merely because certain prior formalities might be required to be carried out before such earlier termination, the said requirement does not necessarily render an otherwise determinable contract non-determinable. If we consider the relevant clauses of the instant employment agreement from such perspective, we clearly find that Clause 6.1 contemplates early

termination before the expiry of the normal tenure of the employment, that is, the superannuation age of 60 years, merely by issuance of a written notice of three months by either of the parties to the contract.

- 36.** Also, Section 13 contemplates early determination without notice or compensation in case the situations mentioned in Clause 13.1 are satisfied.
- 37.** Thus, the present contract of employment of the plaintiff is undoubtedly determinable in its nature in view of Clause 6.1 as well as Clause 13.1 of the same.
- 38.** In any event, a contract of employment cannot be perpetuated indefinitely irrespective of the happening of situations which may call for a termination of such employment. Unlike something like an agreement for sale having no stipulated time limit, in which case the contract is not implicitly determinable and the rights created therein are of a perpetual nature, a service contract, by its very nature, can be determined by the employer or the employee, of course, upon certain pre-conditions being fulfilled. There may very well arise situations where the employer, in order to remain viable in its business, requires restructuring or downsizing, or scenarios where a change in technology alters the required employee profiles drastically. If an employment, once granted, is lent an armour of permanence by the law, commercial realities and the priorities of the employer would be relegated to the back-seat, which is palpably counter-intuitive.
- 39.** It is entirely a different matter that in case of early retrenchment or forced retirement and/or illegal termination, the employee might have

other legal remedies. However, such proposition does not clothe contracts of employment of the present nature with a cloak of immunity from being determined at all.

- 40.** The concept behind Section 14(d) of the 1963 Act is that if there is a scope of prior determination of a contract, the court cannot perpetuate the tenure of the contract indefinitely by directing enforcement of the same.
- 41.** Section 41(e) of the 1963 Act precludes a court from granting an injunction to prevent the breach of a contract, the performance of which would not be specifically enforced. Read with Section 14(d), since a contract which in its nature is determinable cannot be specifically enforced, the court also cannot grant injunction to aid the enforcement of such a contract or in respect of breach of such a contract which is by its very nature determinable.
- 42.** In view of the above discussions, the contract of employment of the plaintiff is held to be determinable in its nature, due to which no injunction can be granted in respect thereof.
- 43.** The third issue formulated above is, thus, decided in the positive and against the plaintiff/respondent no. 1.
- 44.** Thus, upon a comprehensive interpretation of the relevant clauses of the contract of employment of the plaintiff with the appellant-bank, this Court is of the clear opinion that Section 41(e), read with Section 14(d), of the 1963 Act, as amended, precludes the court from granting an injunction which will have the effect of perpetuating the employment

contract between plaintiff and the defendants in the present case. Hence, the impugned orders of injunction are bad on such count.

- 45.** Moreover, as observed earlier, even the Trial Court proceeded on the basis that the assailed notice dated January 29, 2024 only contains “potential” threat of redundancy, which necessarily implies that it cannot be construed as a termination notice in itself. The case sought to be made out by the plaintiff/respondent no. 1, that is, of present threat of termination *de hors* the Employment Contract of the plaintiff is, thus, negated on such count.
- 46.** Another aspect of the matter cannot be overlooked. As rightly argued by learned senior counsel for the appellant, both the parties to the contract of employment have the right, at their option, to terminate the contract at any point of time during its tenure, without attributing any reason whatsoever, giving three months’ prior notice. Thus, the maximum relief to which the plaintiff could be entitled is three months’ salary, which is the salary for the mandatory notice period in terms of Clause 6.1 of the Contract, in the event a termination is effected without granting the three months’ mandatory prior notice.
- 47.** Hence, the remedy of the plaintiff would lie in damages and not by way of injunction.
- 48.** Section 41(h) of the 1963 Act provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings.

- 49.** Thus, in the present case, in view of availability of the alternative relief of compensation by way of three months' salary for the mandatory notice period, even if the termination is effected without a prior notice in terms of Clause 6.1, the learned trial Judge was precluded from granting injunction in view of the bar under Section 41(h) of the 1963.
- 50.** Hence, we find that the initial substantive grant of *ad interim* injunction by Order No.02 dated February 26, 2024, impugned in FMA 180 of 2025, and the last extension of the same by Order No.10 dated December 9, 2024 which is assailed in FMA 181 of 2025, and the extensions of the said interim order granted in the interregnum, which have merged with the last extension, are all bad in law and as such, ought to be set aside.
- 51.** At the time of closing of arguments, we had observed that any order which may be passed by the learned Trial Judge thereafter in connection with the injunction application shall abide by the outcome of the present appeals. Hence, even if any further extension(s) of the impugned orders have been granted in the meantime, such extension(s) stand(s) automatically vacated and set aside.
- 52.** Accordingly, F.M.A. No.180 of 2025 and F.M.A. No.181 of 2025 are allowed on contest without any order as to costs, thereby setting aside the respective impugned orders, being Order No.02 dated February 26, 2024 and Order No.10 dated December 9, 2024, passed respectively by the learned Judge and the learned Judge-in-Charge, Seventh Bench, City Civil Court at Calcutta in Title Suit No.313 of 2024. Any

subsequent extension of such interim order of injunction, if granted, stands automatically vacated and set aside as well.

- 53.** CAN 1 of 2025 filed in connection with F.M.A. No.181 of 2025 stands dismissed as well.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)