

(2015) 04 BOM CK 0109

Bombay High Court

Case No: Suit No. 2180 of 2001

Shanker Basu

APPELLANT

Vs

KBC Bank NV

RESPONDENT

Date of Decision: April 15, 2015

Acts Referred:

Contract Act, 1872 - Section 63

Citation: (2015) 04 BOM CK 0109

Hon'ble Judges: R.S. Dalvi, J

Bench: Single Bench

Advocate: Vishal Talsania and Radha Ved, Advocates i/b. Sanjay Udeshi and Co., for the Appellant; J.P. Sen, Sr. Adv., Rasmin Khandekar and Atul Thakkar, Adv. instructed by Mulla and Mulla CBC, Advocates for the Respondent

Judgement

R.S. Dalvi, J.

The service of the plaintiff who was an employee of the defendant bank, as the head of its corporate division, has been

terminated and the plaintiff has sued for declaration that the termination of his contract of employment is wrongful, illegal and malafide. The plaintiff

has claimed Rs.23.63 Crores with interest @ 16.5% thereon for delay in payment of the amounts payable under the plaintiff's contract of

employment.

2. The plaintiff was employed under the contract dated 19th June, 2000, Exh.P2 in evidence. The plaintiff's contract was terminable under clause

10 thereof either upon retirement or upon sooner determination by a termination notice upon the conditions mentioned in the said clause.

3. The plaintiff's contract was terminated after certain correspondence between the parties by e-mails on 12th February, 2001. The plaintiff was

offered severance package. The plaintiff accepted the said package and confirmed having received and accepted the terms and conditions in the

letter dated 12th February, 2001. The plaintiff has sued for the aforesaid declaration and the recovery of the aforesaid amount upon the plaintiff's

case that the employment has been wrongfully terminated.

4. It is the case of the defendant bank that the contract of termination is determined upon the defendant's business policy decision to close down

the corporate banking division of which the plaintiff was the head. The defendant claims that the suit is for specific performance of the contract of

employment which cannot be specifically enforced and that the plaintiff accepted the severance compensation. The defendant would, therefore,

claim that the plaintiff having accepted the compensation under the letter of the termination cannot challenge it.

5. The plaintiff would, therefore, have to show how the contract of termination by the letter of termination dated 12th February, 2001 is unlawful,

illegal and malafide.

6. Based upon the aforesaid pleadings the Court framed issues on 13th September, 2011 which are answered as follows:

7. The plaintiff has produced not only the contract of employment and the letters / contract of termination of his employment but also the agreement

of previous employment of the plaintiff with Deutsche Bank and the salary earned therein. The plaintiff has produced and the defendant has

accepted the letter of appointment reflecting the contract of appointment of plaintiff and the letter of termination accepted by the plaintiff reflecting

the contract of termination of the plaintiff. The defendant has also accepted the correspondence between the parties under two emails of the bank

to the plaintiff as also other employees in corporate division about the policy decision of the closure of such division and letter showing certain

bonus paid to the plaintiff after such correspondence and prior to the termination.

8. The plaintiff has led oral evidence of what transpired during his previous employment which led to the plaintiff leaving the earlier employment and

commencing the employment with the defendant bank under the aforesaid contract. To prove the worth of the plaintiff in the requirement of proof

of the extent of damages suffered by the plaintiff, the plaintiff had led evidence to show that the plaintiff brought in certain clients of his previous

bank to the defendant bank who could not be continued with defendant bank, so as to affect the plaintiff's reputation.

9. The defendant has not led any evidence. The defendant would rely upon the contract of employment and contract of termination of the

employment.

10. The issues in the suit would have to be decided upon the oral and documentary evidence as aforesaid.

ISSUE NO.1.

Re. : Illegality of the termination of the plaintiff.

11. The plaintiff initially served in Deutsche Bank. The agreement of employment Exh.P1 and the letter of promotion and salary Exh.P.8 and 9

show the plaintiff's then earnings from the bank. It shall be seen presently, that these documents do not matter.

12. Whatever may have been the plaintiff's employment position, the plaintiff voluntarily entered into the contract of employment with defendant

bank on 19th June, 2000, Exh.P3 in evidence. The contract relates to certain earlier conversation and the plaintiff's application for employment.

The conversation would necessarily be oral, for which oral evidence is led. The application for employment would necessarily be in writing which is

not produced. Nevertheless plaintiff has been employed as the head of corporate banking of the defendant. The plaintiff's emoluments package

and the various other perquisites and bonus have been enumerated in the contract of employment. The terms and conditions specified in the staff

manual of the defendant was to form an appendix to the contract of employment and which is relied upon by the plaintiff. The plaintiff signed the

contract of employment dated 19th June, 2000 for commencement of the employment from 15th August, 2000.

13. Clause 10 of the terms and conditions of the staff manual is relevant. It deals with the termination of the contract of the employees. The relevant

part which is the first paragraph of the said clause 10 is in respect of termination of dissatisfactory service of an employee. The plaintiff's

termination of the employment is admittedly not on the ground of unsatisfactory service. Hence it is argued on behalf of the plaintiff himself that the

clause would not apply.

14. It is argued that the last paragraph of the said clause 10 is titled ""retirement / end of career"" shows that the plaintiff would retire at the age of 60

years. It is argued on behalf of the plaintiff that since the clause relating to unsatisfactory service does not apply, it would imply that the plaintiff's

service would continue until his retirement at the age of 60 years and cannot be terminated until he reaches the age of retirement on any other

ground.

15. The plaintiff's service has been terminated, as the defendant has closed its corporate banking division of which the plaintiff was the head. It is

argued on behalf of the plaintiff that the plaintiff's corporate lending division ceased to exist on a policy decision. In other words the plaintiff's

service has been terminated because the defendant has ceased to carry on business. The argument on behalf of the plaintiff would mean and imply

that no businessman can be allowed to terminate carrying on his business and must employ its employees until their age of retirement. This absurd

argument would have been considered to determine that the termination of the employment of the plaintiff is illegal and malafide as claimed by the

plaintiff but for the contract of termination itself.

16. The letter of termination dated 12th February, 2001 of the defendant bank has been confirmed and signed by the plaintiff. It shows that the

plaintiff has confirmed having received and accepted the terms and conditions mentioned in the said letter and its annexures. The letter of

termination, therefore, constitutes a contract of termination between the parties. Both the parties are bound by the terms of the said contract.

17. Under the letter of the defendant it is recited that upon a complete review of the activities of the defendant made by its executive committee

decision, the defendant would cease its corporate lending activity and shut down corporate banking department of the bank in Mumbai. The

defendant is, therefore, constrained to terminate the plaintiff's services w.e.f. 1st July, 2001, 4 1/2 months after the said letter is issued. The letter

was to be treated as the notice of termination.

The said letter further shows that the severance compensation of 6 months salary, HRA and banks contribution upon PF would be given to the

plaintiff in appreciation of his services in addition to gratuity (irrespective of your length of service with the bank) and compensation of the

difference between staff (concessional) rate of interest on the loan given by the bank to the plaintiff and the commercial rate of interest thereon.

18. The defendants' letter further states that the plaintiff would not make any claim of whatsoever nature against the bank and the plaintiff has been

called upon to accept package and its terms and conditions.

19. The plaintiff had an option to accept or reject the package. The plaintiff would accept the package and make no claim against the bank. The

plaintiff may reject the package and claim the continuation of his employment and damages, if any, suffered by termination of the employment or

any other relief in a civil action.

20. The plaintiff has accepted in his cross examination that he put his signature on the termination of the employment contract and that he had not

addressed any letter to the defendant bank disputing his termination. Indeed none is produced. The plaintiff must be taken to be bound by the

severance package in the letter of termination dated 12th February, 2001 constituting termination of the employment contract of the plaintiff.

21. It is argued on behalf of the defendant that the plaintiff cannot accept the payment attached to the condition and then reject the condition in a

contract. It is argued on behalf of the defendant that the plaintiff cannot approbate and reprobate based upon the doctrine of estoppel and the once

having received consideration by way of the severance package, cannot avoid the contract in respect of its other conditions. (See R.N. Gosain Vs.

Yashpal Dhir, AIR 1993 SC 352 : AIR 1992 SC 352 : (1993) 103 PLR 184 : (1992) 2 SCALE 913 : (1992) 4 SCC 683 : (1992) 2 SCR 257

Supp . It is also argued on behalf of the defendant that the contract would constitute a final settlement between the parties, amicably arrived at,

making certain adjustments and would, therefore, conclude the controversy. Hence neither party can claim anything from other party. (See

Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (Intern.) Company Ltd., (2011) 4 ARBLR 1 : (2011) 10 SCALE 419 : (2011) 5 UJ

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22. The contract would contemplate a satisfaction under Section 63 of the Indian Contract Act which runs thus :

63. Promisee may dispense with or remit performance of promise.-

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such

performance, or may accept instead of it any satisfaction which he thinks fit.

23. The compliance of the requirement of the termination of the employment contract by acceptance of the consideration under the termination of

agreement results in satisfaction.

24. The plaintiff has indeed accepted the terms and conditions. The plaintiff has been paid the aforesaid severance package. The plaintiff has

received it and his service has been discontinued. The plaintiff has been employed thereafter in Agricole Bank but with which aspect this suit is not

concerned.

25. The plaintiff is a professional. He is stated to have carried the customers of his former bank to the defendant bank. He has been appointed a

head of the corporate division. He would well understand and appreciate the contract that he enters into. His contract of employment shows the

terms of employment and his termination. Though he claims that clause 10 of staff manual relates to the termination of the employment of the

employees, he would claim that it does not apply to him. His contract is, therefore, under an independent contract between him and the defendant

bank signed by both the parties. The plaintiff would be bound by its terms. The contract of employment can be terminated by the parties accepting

such contract upon its individual terms. Nothing illegal or unlawful is shown in the termination of the employment of the contract. No malafides are

imputed even in the oral evidence of the plaintiff. No illegality under any statute is shown. Consequently issue No. 1 is answered in the negative.

ISSUE NOS.2 and 3.

26. Consequently the computation of damages by the plaintiff is not seen.

27. These issues are not required to be answered since issue No. 1 is answered in the negative.

ISSUE NO.4

1. The suit is misconceived.

2. The plaintiff is not entitled to any relief.

3. The suit is dismissed with costs of Rs.50,000/-.