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Delhi High Court

Case No: Writ Petition (C) 5177 of 2011

Jagat Singh	APPELLANT
Vs	
Syndicate Bank and Others	RESPONDENT

Date of Decision: July 8, 2013

Acts Referred:

- Constitution of India, 1950 - Article 12

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: K. Venkataraman and Party in Person, for the Appellant; S.K. Taneja and Mr. Puneet Taneja, Advocate for Respondent No. 1 and Mr. Keshav Mohan, Advocate for Respondents 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.
This writ petition is filed by the petitioner Sh. Jagat Singh seeking a writ or order from this Court against the respondent No. 1/Syndicate Bank/erstwhile employer for directing respondent no. 1 to release an amount of Rs. 2,07,710/-. Out of this amount, Rs. 1,07,710/- is the amount of provident fund of the petitioner and a sum of Rs. 1,00,000/- is the gratuity due of the petitioner. Petitioner also seeks payment of interest. It is not disputed that the petitioner stands dismissed from service on certain charges, however, even after taking those enquiry proceedings as final, the aforesaid amount is said to be due to the petitioner.

2. On behalf of the respondent No. 1-Bank reliance is placed upon the letter dated 27.07.1999 sent by it to the petitioner as also another letter dated 06.02.1999 to claim that respondent no. 1 has appropriated the amount claimed on account of losses suffered by it on account of the illegal acts of the petitioner. In effect the legal plea is of adjustment. These letters of the respondent No. 1-Bank gave break-up of the amounts

appropriated towards the losses caused by the petitioner to the respondent No. 1-Bank. The letters dated 27.07.1999 and 06.02.1999 read as under:

Ref. No. 9009/Est/F-j : 38/Est.

Date: 27.07.1999

To

Mr. Jagat Singh

1/75, Sadar Bazar

Delhi Cantt

New Delhi.

Dear Sir,

Sub: Payment of gratuity and EPF-terminal benefits.

We requested you to call on us vide our letter NO. 9009/RKEV/STE/j 38 dated 6.2.09, however you did not call on us.

In the circumstances, as per higher authorities instructions we has credited Rs. 07,710-00 EPF amount and Rs. 1,00,000/- gratuity into you SB account No. 99887. Further the said amount was appropriated towards your liabilities/outstanding as below:

1. Rs. 71000/- towards claim paid account of Dhaula Kuan Branch in the matter of cash misappropriation in account of DSOI.

2. Rs. 34244/- towards out claim account in the matter of fraudulent withdrawal of Rs. 30000/- in the SB account of M. Lal, and Rs. 93000/- towards claim paid account in the matter of AFW of account No. 500669 of P.L. Mongia.

3. Rs. 5920/- towards Festival Advance and Rs. 3546-70 towards leave encashment for LFC for which bills were never submitted.

This is for your kind information.

Yours faithfully,

Sd/-

Asst. General Manger.

Ref: 9009/RKF-V/STF/J-38

Place: R.K. Puram

Dated: 06.02.99

By Regd. Post

Mr. Jagat Singh

1/75, Sadar Bazar

Delhi Cantt

New Delhi

Dear Sir,

Reg: Regarding Payment of EPE

Please call on us to complete the formalities for settlement of your EPF account. Please treat the matter as urgent.

Yours faithfully,

Sd/-

Manager

3. I asked the counsel for the respondent No. 1-Bank to show me what are the rules of the respondent No. 1-Bank which entitles the respondent No. 1-Bank either to withhold or appropriate the amounts which are otherwise due to an ex-employee. Learned counsel for the respondent No. 1-Bank says that as of today no rules are filed on the record of this Court. In my opinion, even if no rules are filed on the record, yet, whether for withholding or for appropriation of the amounts, the respondent No. 1-Bank which is a State under Article 12 of the Constitution of India cannot do so without conducting necessary enquiries which hold the petitioner guilty of the alleged losses caused to the bank. Thereafter, it was perfectly permissible for the respondent No. 1-Bank to appropriate or at least withhold the amounts which are now claimed by the petitioner, unless a law mandates payment to the petitioner. I may mention that simple withholding of an amount is not illegal because even if there are no rules of an organization (and a relevant rule is Rule 9 of CCS (Pension) Rules, 1972 entitling withholding of pension and gratuity) even under the general law, an organization can always withhold or appropriate/adjust amounts lying with it because payment in spite of a claim of withholding an appropriation would amount to payment to be made to an ex-employee which would result in payment of a disputed amount which is claimed by the organization on account of losses caused by the employee. In fact there is always a legal right to appropriate amounts already in the hands of a person and which belongs to another person, if the person

holding/appropriating the same does it towards his entitlement vide Walchandnagar Industries Ltd. Vs. Cement Corporation of India, . The only exception is if law or rules of the employer direct/require the payment and thus disentitles appropriation/adjustment. As already stated above, appropriation is actually adjustment in legal terms and is part of the genre of equitable set off.

4. I also asked the counsel for respondent No. 1-Bank to show me the enquiry proceedings and the orders which were passed entitling the respondent No. 1-Bank to withhold the amount as stated in the communication dated 27.07.1999, however, counsel for the respondent No. 1-Bank has failed to show me any Departmental Proceedings i.e. issuance of show cause notice, holding of an enquiry and thereafter passing of an order holding the petitioner guilty of causing losses to the respondent No. 1-Bank and, therefore, the entitlement of respondent No. 1-Bank to appropriate this amount.

5. Therefore, the order which is required to be passed in the facts of the present case is that before appropriating the amount i.e. deciding that the amount has not to be paid to the petitioner, the respondent No. 1-Bank will have to hold enquiry against the petitioner. Respondent No. 1-Bank is entitled to conduct an enquiry to find out whether petitioner is liable for the losses as stated in the letter dated 27.07.1999. However, on a query put to the counsel for the petitioner, counsel for the petitioner on instructions from petitioner who is present in the Court, states that petitioner will not participate in the enquiry which is to be conducted by the respondent No. 1-Bank. If that be so, it will be a futility to direct respondent No. 1-Bank to conduct an enquiry proceeding for determining the amounts which are stated as having been appropriated in the letter dated 27.07.1999.

6. In view of the aforesaid position, there are disputed questions of facts which require trial as to whether or not petitioner has caused losses to the respondent No. 1-Bank or that no loss is caused to the respondent No. 1-Bank. If loss is caused, under the general law, respondent No. 1-Bank can always withhold and appropriate the amount due to it from the person who caused loss to the respondent No. 1-Bank. Allowing of the writ petition would therefore amount to passing of a money decree for an amount when there exists disputed questions of facts. It is only after such disputed questions of facts are decided by an appropriate civil court in favour of the petitioner can then there be issued the direction as being prayed by the petitioner.

7. In view of the above, the writ petition is dismissed reserving liberty to the petitioner to file a civil suit for recovery of the amounts which are claimed by him and the amount respondent No. 1-Bank is held presently entitled to withhold the amounts of the petitioner with it subject to the final decree of the civil court. The writ petition is accordingly dismissed and disposed of with the aforesaid observations.