

**Ranbir Kumar Gugneja Vs. M/S Continental Engines Ltd and ors.**

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**Court :** Delhi

**Decided On :** Dec-24-2010

**Judge :** V.K. Jain, J.

**Acts :** Limitation Act - Section 19, Article 7

**Appeal No. :** CS(OS) No. 24/2005

**Appellant :** Ranbir Kumar Gugneja

**Respondent :** M/S Continental Engines Ltd and ors.

**Advocate for Def. :** Mr. Sanjiv Bahl; Mr. Eklavya Bahl, Adv.

**Advocate for Pet/Ap. :** Mr. Jasbir Singh, Adv.

**Judgement :**

1. This is a suit for recovery of `63,65,103/-. The plaintiff was appointed as the Chief Executive Officer of defendants No. 1 to 4 vide appointment letter dated September 1, 2000, followed by a supplementary letter dated September 29, 2000. As per the terms and conditions of his appointment, the plaintiff was entitled for a compensation of `2.50Lacs per month in addition to 10% profit of each of the four companies as also the benefits of contribution to provident fund, accommodation, transportation, medical expenses, entertainment expenses, leave benefits, etc. The plaintiff continued in the employment of defendants No.1 to 4 w.e.f. 30th September 2000 till 31st March 2002.

2. It is alleged that after numerous requests from the plaintiff, requesting the defendants to clear his outstanding dues, the defendants sent an e-mail letter dated 4th October 2003 to him attaching therewith a statement of account, giving the amount which according to the defendants was payable to the plaintiff. Vide that statement of account, defendants agreed to pay a sum of `27,79,739/- towards overdue payment of salary, special allowances, contribution towards provident fund and reimbursement of expenses as also towards severance compensation consisting of salary, special allowance and contribution towards provident fund. Since there was no mention of entitlement of the plaintiff to 10% profit, in the plaintiff's statement of account, he never accepted that he was entitled to only to a sum of `27,79,839/-. The plaintiff received a sum of `22,65,154/- from the defendants, leaving a balance amount of `5,14,585/- in terms of the settlement of account sent to him by the defendants.

3. The case of the plaintiff is that defendant No.1 M/s Continental Engines Ltd. made a profit of `2,11,31,856/- whereas defendant No.2 M/s L.P. Castings Pvt. Ltd. made profit of `4,86,563/- and, therefore, he is entitled to 10% of the above profits amounting to `21,61,842/- for his service tenure and a sum of `8,47,438/- towards profit of six months for the severance period (calculated proportionate to six months of profit of the year 2001-02). The plaintiff has also claimed a sum of `2,62,000/- from the defendants towards his salary, special allowance and contribution to provident fund for the month of March 2002. Thus, besides three principal sums viz. (i) `5,14,585/- being the unpaid amount in terms of the statement of account sent by defendants to the plaintiff (ii) `2,62,000/- towards salary, contribution to provident fund and supplementary allowance for the month of March 2002 and (iii) `30,09,280/- towards profit, the plaintiff has also claimed a sum of `25,79,238/- towards interest calculated at the rate of 18% per annum, as on 31st October 2004, thereby making a total sum of `63,65,103/-.

4. The defendants have contested the suit. They have taken preliminary objections that the suit is bad for misjoinder of defendant No.5 Sh. Amarjit Singh Bakshi and that the suit is barred by limitation. On merits, appointment of the plaintiff vide appointment letter dated September 1, 2000 and issue of supplementary letter dated September 29, 2000 has been admitted. As regards profits of defendants

No.1 to 4, it is stated in the written statement that defendant No.1 M/s Continental Engines Ltd made profit of `84.72Lacs and `55.27Lacs, respectively in the years 2000-01 and 2001-02 whereas defendant No.2 M/s L.P. Castings Pvt. Ltd. made profit of `1.71Lac and `9.60Lacs, respectively during these two years. It is also alleged that defendant No.3 M/s Continental Brakes Ltd. incurred net loss of `18.75Lacs and `37.95Lacs during the years 2000-01 and 2001-02, respectively, whereas defendant No.4 M/s Bakshi Steels Ltd. made net loss of `76.08Lacs and `132.89Lacs during this period. It is also alleged in the written statement that profit, if any, was to be paid to the plaintiff after considering the profit and loss of all the four companies and since all of these companies did not make any profit, no amount towards profit became payable to the plaintiff. It is also alleged that since the defendants were always ready and willing to pay the legitimate due of the plaintiff despite his performance not being up to the mark, they agreed to pay a sum of `27,79,739/- in full and final settlement. The defendants made a payment of `22,65,154/- to the plaintiff as per his instructions and the balance amount of `5,14,585/- was offered to him with a request to furnish a receipt for full and final settlement, so as to keep the record straight. However, the plaintiff, after receiving the aforesaid sum of `22,65,154/-, became dishonest and sent a notice based on false facts and claims.

5. The following issues were framed on the pleadings of the parties:-

(i) Whether defendant No.5 is not a necessary or proper party and if so whether the suit is bad for misjoinder of parties? OPD

(ii) Whether the suit is barred by limitation? OPD

(iii) Whether the plaintiff is entitled to a decree for a sum of `63,65,103/-? OPP

(iv) Whether the plaintiff is entitled to claim future and pendente lite interest, if so at what rate? OPP

(v) Whether the suit discloses no cause of action? OPD

(vi) Whether the defendants are liable to pay to the plaintiff only admitted sum of `5,24,585/-? OPD

(vii) Whether the plaintiff is entitled to 10% profit of each of the four companies as per supplementary letter dated 29th September 2000? OPP (viii) Whether the plaintiff was responsible for the performance of all the four companies, if so to what effect? OPD

(ix) Relief.

## 6. Issue No.1

It is an admitted case of the parties that the plaintiff was appointed by defendants No. 1 to 4 which are four companies. Defendant No.5, who was a Director of these companies is not personally liable to make any payment to the plaintiff and there was no privity of contract between him and the plaintiff. Defendant No.5 is, therefore, neither a necessary nor a proper party to the suit. His name is, therefore, struck off the array of defendants. The issue is decided accordingly.

## 7. Issue No.2

In terms of the letter dated September 29, 2000, the plaintiff was entitled to a share in the profit of defendants No. 1 to 4. Share of the plaintiff in the profits of defendants No. 1 to 4 was to be paid quarterly on a provisional basis and adjusted at the end of the year i.e. in the last quarter of the financial year. Referring to this letter, it was contended by the learned counsel for the defendants that the profit for the year 2000-01 became payable to the plaintiff on 31st March 2001 and, therefore, having been filed on 30th November 2004, the suit, to the extent it pertains to the claim of the plaintiff in the share of profits for the year 2000-01, is barred by limitation. The learned counsel for the plaintiff on the other hand contended that till the balance sheet of the companies were prepared, the amount of the profit of the company in a particular financial year cannot be ascertained and consequently the exact amount payable to the plaintiff towards his share in the profit could not have been worked out before the balance sheets for the year 2000-01 were actually prepared. However, on perusing the balance sheets, the learned counsel for the plaintiff conceded that the balance sheet of defendant No.2 for the year 2000-01 having been prepared on 1st September 2001 and the balance sheet of defendant No.1 M/s Continental Engines Ltd. having been

prepared on 6th June 2001 as is evident from the balance sheet Ex.DW1/2(colly) and Ex.DW1/1(colly), the suit, to the extent it pertains to share of the plaintiff in the profits of defendant companies for the year 2000-01, has been filed after expiry of three years from the preparation of balance sheets.

8. The case of the plaintiff is that the principal amount claimed by him including share in the profits of defendant companies formed part of his wages. Article 7 of the Limitation Act provides that the suit for wages in case of any person other than a seaman will be 3 years from the date when the wages accrued/due. The amount claimed by the plaintiff, though under different sub-heads, formed part of his wages and, therefore, constituted one single debt. It cannot be said that the share in the profits, to be paid to the plaintiff, constituted a debt distinct from and independent of other payments required to be made to him, as part of his pay package. Computed from the date on which the balance sheets of defendant Nos. 1 and 2 for the year 2000-01 were signed by the Auditors of these companies, the suit, to the extent it pertains to share of the plaintiff in the profits of defendant Nos. 1 and 2 for the period from 1 st April, 2000 to 31st March, 2001 would be barred by limitation. However, payments have, thereafter, been made by the defendants to the plaintiff from time to time and those payments admittedly were made in writing and within the period of limitation prescribed for a suit for wages. As provided in Section 19 of the Limitation Act, payment on account of a debt made before the expiry of the prescribed period of limitation by the person liable to pay the debt or by his agent duly authorized in this behalf extends a fresh period of limitation from the time a payment is made. When confronted with this, the learned counsel for the defendants did not press this issue further during the course of the argument.

The issue is decided accordingly.

#### 9. Issue No.8

Being the CEO of these companies, the plaintiff was expected to give his best to his employers and make all possible efforts to increase their profit and improve their performance. Obviously, the quantum of the profit payable to the plaintiff out of the profits of defendant companies would increase or decrease, as the case may be, depending upon the financial performance of the companies. But, a

perusal of the appointment letter Exh. PW1/2 and the supplementary letter dated 29th September, 2000 would show that payment of wages including share in the profits of the companies was not linked to the performance of the plaintiff. None of the amounts payable to the plaintiff including share in the profit of defendant companies was dependant on his individual performance qua the employer companies. In terms of the appointment letters, he was to be paid salary of `1,00,000/- per month, special allowance of `1,50,000/- per month besides contribution to provident fund, residential accommodation, transportation, leave travel expenses, medical expenses, travel expenses etc. the payment of 10% share in the profits of the employer companies was linked to the profits of these companies and not to the quality of the performance of the plaintiff. The defendant companies, if they were not satisfied with the performance of the plaintiff as their CEO, could have dispensed with his services, but, having not done that, they cannot deny his share in profit of the companies to him on the ground that his performance was not up to the mark. Therefore, it is not necessary for this Court to examine whether the plaintiff was responsible for the performance of his employer companies.

The issue is decided accordingly.

10. Issue Nos. 3, 5, 6 and 7

The relevant portion of the supplementary letter dated 29th September 2000 (Ex.PW-1/3) issued by the defendant companies to the plaintiff provided that the plaintiff would be paid 10% of the profits of each of the companies in which he was appointed as the Chief Executive Officer.

11. The contention of learned counsel for the plaintiff was that his share in the profits was to be worked out individually with respect to each company and that if two companies out of the four who had employed him made profits whereas the remaining two incurred losses, the losses suffered by the loss making companies were not to be set off against the profits made by the profit making companies, for the purpose of computing the profit payable to the plaintiff. In this regard, he emphasized on use of the words 'profits of each companies' in the letter dated 29 th September, 2000. On the other hand, the contention of the learned counsel for

the defendants was that since the plaintiff was appointed as Chief Executive Officer of all the four companies by a common appointment letter and the wages agreed to be paid to him were a composite wages, payable by all the four companies, without any bifurcation as to how much would be paid to him by M/s Continental Engines Ltd., how much by M/s L.P. Castings Pvt. Ltd., how much by M/s Continental Brakes Ltd. and how much by M/s Bakshi Steels Ltd, the intention of the parties was to pay to him 10% of the profits, if any, made by the profit making companies after setting off the losses incurred by the loss making companies. It was also pointed out by the learned counsel for the defendants that though the letter dated 29th September, 2000 provided that the share of profit will be paid to the plaintiff quarterly on provisional basis and adjusted at the end of the year i.e. in the last quarter of the financial year, the plaintiff despite being CEO of the defendant companies, did not draw any amount towards his share in the profits of defendant Nos. 1 and 2, either on quarterly basis or at the end of the financial year, which clearly indicates that he was to be paid out of cumulative profit, if any, of all the four companies and that is why no amount was drawn by him towards his share in the profits made by defendant Nos. 1 and 2 despite there being a stipulation for payment of profit to him on a quarterly basis.

12. It was also pointed out by learned counsel for the plaintiff that the defendants have artificially depressed the profits made by defendant No.1 and inflated the losses incurred by defendant Bakshi Steels Ltd, in order to deprive him of his share in the profits. It was pointed out that while computing the cumulative profit/loss of defendant No.1, M/s Continental Engines Ltd, for the year 2001-02, though the net profit comes to `16,247,736/-, a sum of `10,000,000/- paid towards dividend, `10,20,000/- paid towards tax and surcharge on dividend as well as the amount provided for payment of income tax were deducted so as to reflect a net profit of `5,527,986/- though, in fact, the net profit comes to `16,247,736/-. I have no doubt that in my mind that in order to work out the share of the plaintiff in the profits of the defendant companies, the amount of dividend, tax on dividend or income tax could not have been deducted. The profit made by the company exclusive of dividend, tax on dividend and income tax etc. is the amount representing the net profit made by the company in a particular financial year. The dividend can be paid only out of net profit of the company and income tax also is

payable on net profit. Therefore, the profit of defendant No.1 for the year 2001-02 would be `16,247,736/- and not `5527986/-.

It was also pointed out by the learned counsel for the plaintiff that as would be evident from the report of Auditors, Chordiya and Company of Bakshi Steels Ltd., the liability towards employees, pertaining to the previous year, has been taken into consideration while working out the profit and loss of by `67.84Lacs. Had the liability of the previous year not been taken into account during the financial year 2001-02, the profits of the company would have been higher by that amount or the losses would have been lowered by that amount, as the case may be of M/s Bakshi Steel Ltd for the financial year 2001-02.

13. I, however, feel that I need not go into the question as to whether the plaintiff was to be paid only if profits were made by defendant companies on a cumulative basis i.e. by setting off the loss incurred by loss making companies against the profits made by the profit making companies or he was to be paid 10% of the profits earned by the profit making companies irrespective of the losses incurred by loss making companies, since the evidence on record shows that the plaintiff had agreed to accept the amount of `27,79,739/- from the defendants in full and final settlement of all his dues.

14. Vide letter dated 14th April, 2003 (Ex.PW-1/DA), the plaintiff wrote to Mr Alok Dutta of Continental Engines Ltd., referring to his request for settling his accounts and summarizing the areas of agreement as also the areas of difference between him and Mr Alok Dutta. The areas of difference pointed out in this letter were (1) severance (terminal) amount (a) related to house rental of `4.5lacs, (b) transport (personal) and other benefits of `1.3lacs and (c) supplementary allowance for six months; (2) profit share, and (3) interest on overdue payments. He also requested Mr Alok Dutta to refer the differences to Shri A.S. Bakshi for final decision. Similar letter was written by him to Shri A.S. Bakshi on 07th May, 2003, which is Ex.PW-1/DB. In both the letters, he pointed out that according to Mr Alok Dutta, there was no profit generated during the period October, 2000 to March, 2003. Vide e-mail dated 27th May, 2003, Mr Amarjit Bakshi informed the plaintiff that he had viewed each area with great details. As regards profits, he stated that since no profit had

accrued (accumulative) of the four companies, no share in the profits was payable to him. As regards interest, he stated that since the delay in settling it was not on account of Bakshi Enterprises, this was not payable. He also requested him to conclude the matter by confirming the settlement proposed in his e-mail and informed the plaintiff that immediately on receiving his confirmation, they would arrange to release the payment as mutually agreed. The communication from Mr Bakshi was acknowledged by the plaintiff vide his e-mail dated 04th June, 2003 to Mr Alok Datta.

15. Vide e-mail dated 09th September, 2003, Mr Alok Dutta sent to the plaintiff, final calculations of the amount payable to him and also stated that on receipt of a letter from him accepting that final settlement, they would initiate the payment in line with their discussion. Vide e-mail dated 30th September, 2003 sent to Mr Dutta, the plaintiff sought revised settlement in line with his discussion with Mr Dutta. Vide e-mail dated 31st March, 2004, sent to the plaintiff, Mr Alok Dutta sent corrected statement to the plaintiff. The e-mail shows that the amount of supplementary allowance was amended and Mr Dutta thanked him for pointing out the error. It is quite clear from a perusal of the above-referred correspondence between the parties that the plaintiff sought intervention of Mr Amarjit Bakshi for a decision on the areas of difference which remained unresolved between him and Mr Alok Dutta, Mr Amarjit Bakshi informed the plaintiff that he was not entitled to any share in the profits since the defendant companies did not make any profit on cumulative basis and no interest was payable to him. A careful analysis of the e-mails dated 30th September, 2003 and 04th October, 2003 would show that the only mistake pointed out by the plaintiff in the final calculations sent to him by Mr Alok Dutta on 09 th September, 2003 was with respect to supplementary allowance and that mistake was corrected in the revised Statement of Accounts to the plaintiff on 04th October, 2003. It is quite apparent from the consideration of these e-mails that the plaintiff did not insist on claiming a share in the profits of the defendant companies while responding to the final calculations sent to him by Mr Alok Dutta on 09 th September, 2003. Also, the plaintiff did not insist on payment of salary for the month of March, 2002, while responding to the final calculations sent to him by Mr Alok Dutta. It is an admitted case that the plaintiff started receiving payments from the defendant companies after receipt of final

calculations from Mr Alok Dutta vide e-mail dated 09th September, 2003. In his cross-examination, the plaintiff has admitted having received payments from the defendants after 09th September, 2003. He has also admitted that after 09th September, 2003, he did not write any letter to the defendants demanding either salary for March, 2002 or a share in the profits of defendants 1 and 2. If the final calculations sent to him by Mr Alok Dutta on 09 th September, 2003 were not acceptable to the plaintiff in full and final settlement of his claim, he should either not have accepted any payment from the defendant companies thereafter or he should have at least accepted payments under protest or reserved his right to claim salary for March, 2002 and share in the profits of defendants No.1 and 2. The conduct of the plaintiff in pointing out no mistake other than with respect to supplementary allowance in the calculations sent to him by Mr Alok Dutta on 09th September, 2003, coupled with his acceptance of part payments from the defendants, from time to time, without any protest and without reserving any right to claim salary for March, 2002 and a share in the profits of defendants No.1 and 2 clearly shows that he had agreed to accept the amount of `27,79,739/- from the defendants in full and final settlement of all his claims. The plaintiff, therefore, is now estopped from raising any further claim against the defendant companies with respect to his wages, including a share in the profits of defendants No.1 and 2. He, therefore, is entitled only to the admitted amount of `5,24,585/- from defendants 1 to 4.

16. It was contented by the learned counsel for the plaintiff that payments from the defendants after 09 th September, 2003 were accepted under duress and, therefore, it cannot be said that the plaintiff had agreed to receive the amount of Rs 27,79,739/- in full and final settlement of all his dues. In support of his contention, he has referred to the decision in National Insurance Co. Ltd.Vs. Boghara Polyfab Pvt. Ltd. 2008 (12) Scale 654. I, however, find absolutely no merit in this contention. No duress or coercion on the part of the defendants has been pleaded by the plaintiff. In the plaint, there is no allegation constituting any duress or coercion on the part of the defendants. Order 6 Rule 4 of CPC provides that that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and any of other cases in which particulars may be necessary beyond such as are exemplified in the

aforesaid forms, particulars shall be stated in the pleadings. In *Ranganayakamma and another v. K.S. Prakash (dead) by LRs. and others*; (2008) 15 Supreme Court Cases 673, the Supreme Court referring to the provisions contained in Order VI Rule 4 of the CPC held that when a fraud is alleged, the particulars thereof are required to be pleaded. It was observed that when a contract is said to be voidable by reason of any coercion, misrepresentation or fraud, the particulars thereof are required to be pleaded. In *Ramesh B. Desai v. Bipin Vadilal Mehta*; (2006) 5 SCC 638, Supreme Court observed that Order VI Rule 4 of CPC requires that complete particulars of fraud shall be stated in the pleadings. A similar view was taken in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*; (2005) 11 SCC 314.

When duress is alleged, the allegation like fraud or misrepresentation must be supported by particulars. It is only after complete particulars of the alleged duress are given that the Court can inquire into it and decide whether it stands proved or not.

In the case of *National Insurance Company (supra)*, Supreme Court gave some illustration as to when the claims of a contractor are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed. One of the illustrations given by the Supreme Court reads as under:

(iii) A contractor executes the work and claims payment of say Rupees Ten Lakhs as due in terms of the contract. The employer admits the claim only for Rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of Rupees Six Lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The 'accord' is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

However, in the case before this Court, there is no averment in the plaint that the plaintiff was hard pressed for funds or was under economic duress and, therefore, was compelled to accept payments from the defendants despite the fact that they were offering the sum of Rs 27,79,739/- in full and final settlement of all his claims. The plaintiff was not a junior employee of the defendant companies and was their Chief Executive Officer who was to be paid a handsome salary running into lacs of rupees per month even in the year 2000. Hence, no case of economic duress or coercion has otherwise been made out by the plaintiff. The issues are decided accordingly.

#### 17. Issue No. 4

Since the defendant companies were always ready and willing to pay the balance amount of `5,14,585/- to the plaintiff and were justified in insisting upon a receipt from the plaintiff acknowledging receipt of the aforesaid sum in full and final settlement of all his claims, the plaintiff who delayed receipt of this balance amount by his own conduct in insisting upon a share in the profits of defendants 1 and 2 and salary for the month of March, 2002 in addition to the balance amount of `5,24,585/- is not entitled to any interest. The issue is decided against the plaintiff.

#### 18. Issue No.9

In view of my findings on the other issues, the plaintiff is entitled only to recover a sum of `5,14,585/-. ORDER

A decree for recovery of `5,14,585/- is hereby passed in favour of the plaintiff and against defendants 1 to 4. If the payment of the aforesaid amount of `5,14,585/- is not made or tendered by defendants 1 to 4 to the plaintiff within one week from today, the plaintiff will also be entitled to interest on the aforesaid amount at the rate of 12% per annum from the date of filing of the suit till the date of payment. In the facts and circumstances of the case, there will be no order as to costs.

Decree sheet be prepared accordingly.

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