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Court : Andhra Pradesh

Decided On : Feb-07-2011

Judge : N.R.L. Nageswara Rao, J.

Acts : Contract Act - Section 74

Appeal No. : CITY CIVIL COURT APPEAL No. 259 OF 2002

Appellant : Ledalla Ravichandar and Another

Respondent : M/S Satyam Computer Services Limited

Advocate for Pet/Ap. : Ledalla Ravichandar, Adv.

Judgement :
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1. The City Civil Court Appeal is filed by the defendants in O.S.No.327 of 1994 on the file of the III Senior Civil Judge, City Civil Courts, Secunderabad, are the appellants herein. The suit was filed for recovery of Rs.2,00,000/-.

2. According to the case of the plaintiff, the first defendant was offered as Programmer Trainee vide letter dated 26-03-1993 on a consolidated stipend of Rs.2,250/- per month and the first defendant signed the letter of appointment on 05-04-1993 agreeing the terms and he underwent training. As guaranteeing the

due performance of the terms, the second defendant stood as a surety and both the defendants executed a surety bond on 27-04-1993 and subsequently, the first defendant joined on 03-05-1993, at programme training and was paid stipend at the rate of Rs.2,250/- per month and after successful completion of the training, he was absorbed into the plaintiff company as Software Engineer vide appointment letter, dated 15-12-1993 with retrospective effect i.e., from 01-10- 1993. But, however, the first defendant left the services abruptly from 12-07- 1994 onwards. As per the terms of the contract, the defendants have to pay liquidated damages of Rs.2,00,000/- and stipend charges and also the expenses incurred by the plaintiff. Totally, the plaintiff claimed a sum of Rs.2,78,500/- as due, but confined to the liquidated damages of Rs.2,00,000/-.

4. The defendants filed a written statement, denying several allegations in the written statement and pleading that there was no sufficient work and no programmes were given and due to the lack of infrastructure, the future of the first defendant was not as expected. The agreement about the payment of damages and the undertaking deed have been given are not correct. The period of training and absorption and leaving the company is not disputed. The contract will not enable the plaintiff to get any remedies.

5. On the basis of the above pleadings, the following issues were framed for trial:

1) Whether the plaintiff is entitled for recovery of Rs.2,00,000/- from the defendants?

2) Whether the suit is not maintainable under law?

3) To what relief?

6. On behalf of the plaintiff, PW.1 was examined and marked Exs.A-1 to A-11. On behalf of the defendants, DW-1 was examined.

7. After considering the rival contentions, the learned III Senior Civil Judge, City Civil Courts, Secunderabad, decreed the suit for an amount of Rs.2,00,000/-. Aggrieved by the said judgment, the present CCCA is filed.

8. The points that arise for consideration are:

1) Whether the plaintiff suffered any damages or loss and if so, whether the plaintiff is entitled for the amount claimed?

2) Whether the damages granted by the lower Court is legal and sustainable?

3) To what relief?

9. POINTS:

So far as the facts are concerned, it is not in dispute that the first defendant joined in service as a trainee and the second defendant stood as a guarantor and executed the agreement Ex.A-3. It is also not in dispute that the defendant worked for some time after he was absorbed and thereafter, he left the services. Though several contentions were raised about the validity of the contract for claiming the damages, the evidence of defendants i.e. DW-1 does not disprove the terms of the contract. But, the fact remains that the Ex.A-3 was executed by both the defendants and the terms therein are not in dispute. Therefore, the only question for consideration before this Court and which is canvassed by the appellants, is that there is no proof of damages by the plaintiff and consequently the penal clause in Ex.A-3 about a consolidated amount of Rs.2,00,000/- is not valid and in the absence of proof of real damages, such a clause cannot be enforced.

10. On the other hand, it is the contention of the counsel for the respondents, the plaintiff has been put to loss, struggle, wastage of manpower and time in training the appellants/defendants with the fond hope that their projects with others will be expeditiously taken up with necessary expertise and if the employee is to leave the organisation in the middle, the sufferance caused by the plaintiff due to lack of experienced and trained person, is obvious and to avert such situation only, the contract stipulates the conditions for damages.

11. In order to appreciate this contention, it is useful to extract the relevant clause (3) in the bond, which is as follows:

i) a) Training expenses towards Professional and Technical Training imparted (Value Rs.5,000/- per month)

b) Non-compliance of Service Agreement (Para 1, Clause 2 of Annexure-A of your Appointment letter, dated 26th March, 1993) -Rs.2,00,000/-

ii) Stipend paid (actual stipend paid +prevailing Bank interest)

iii) Other expenses related to services provided such as computer time, copies of manual, Technical books borrowed/supplied etc. (at actual)

12. Even in fact, in Ex.A-2 as per clause 2 Service Agreement, the terms are as follows:

"In view of the knowledge/benefit accrued to you due to company's training program on professional and technical areas at a considerable cost, you will be required to sign a service agreement with the company with the company along with a surety, that you will serve the company for 2 years in confirmed service failing which you will compensate the company for the expenses incurred on you which will include:

(1) Training expenses towards professional and technical training imparted

(2) Stipend paid

(3) Other expenses related to services provided, if any".

13. Thereafter, whatever service the first defendant entered and whatever agreement was executed by the defendants, it is with knowledge of the facts of the consequences of the breach. It can be expected that when a person is having been trained for nine months, his training expertise is meant for future utility of the plaintiff. The abrupt leaving of the job by the persons naturally disturbs the planning on the programmes undertaken by the plaintiff. Therefore, in such circumstances and the parties being aware of the consequences, it cannot be said that there is no loss or proof of damages to the plaintiff.

14. The question before the Court is whether the Court can interfere with the quantum of damages, which were fixed by the parties, in case of breach?.

15. Evidently, when a claim for damages was made by a party, it is the duty of the plaintiff to prove the actual damages. In case where the parties themselves have quantified the damages, then the Court has to see whether such damages are real or whether they are meant as a terrorem and as a penalty for the party. In fact, though several decisions were cited by both the parties, the law is well settled. In this connection, it is useful to refer the Section 74 of the Contract Act (for short "the Act"), which is as follows:

74. Compensation for breach of contract where penalty stipulated for:- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for".

16. The decision reported in Fateh Chand, v. Balkishan Dass1, wherein it has been specifically held in Para Nos. 8 and 10, as follows:

"8. The Section is clearly an attempt to eliminate the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties: a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.

10. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by S.74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damage"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach".

17. In fact, the same view has been reinforced in the decision reported in Maula Bux v. Union of India2. Further-more, in the recent judgment of the Supreme Court reported in Ashokan v. CCE3, the scope of Section 74 of Contract Act and the criteria for grant of compensation under Section 74 of the Act was considered referring to all the earlier judgments on this aspect. The power of the Court to grant reasonable compensation even inspite of stipulated liquidated damages were recognized and referred in para 66 at page 112.

18. Therefore, in view of the settled principle of law, the question arises is whether the plaintiff is entitled to the damages of Rs.2,00,000/- and whether the loss suffered by the plaintiff is real

19. Evidently, as can be seen from the pleadings, the plaintiff has joined as a trainee on 03-05-1993 and was in service till 11-07-1994, which clearly goes to show that he has served the company for a longer time and his services were also utilized by the plaintiff without any complaint. As can be seen from the agreement, the confirmed service is for two years. Evidently, in this case, the services were confirmed w.e.f. 15-12-1993 under Ex.A-4. Therefore, the first defendant has been in employment or service of the plaintiff from 03-05- 1993 till 11-07-1994. As such, enforcing the breach of contract for a period of two years appears to be unreasonable and will cause hardship to the first defendant, who was evidently an Engineering Graduate, hoping bright future, when an opportunity was open to him. At any rate, there was no substantial loss or damages proved by the plaintiff for the loss of manpower of the first defendant in the organisation. Therefore, keeping in view the totality of the services, I feel recovery of damages, which was liquidated at Rs.2,00,000/- is unreasonable and I feel the ends of the justice would meet if the damages are determined as reasonable as Rs.1,00,000/- payable by the defendants.

20. With the above modification, the judgment of the lower Court has to be confirmed. Accordingly, points are answered.

21. In the result, the appeal is allowed in part and the suit of the plaintiff is decreed for a sum of Rs.1,00,000/- instead of Rs.2,00,000/- and the interest granted by the lower Court from the date of suit till the realisation, is confirmed. The plaintiff is granted proportionate costs in the lower Court. Each party has to bear their own costs in this appeal.