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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**RFA No.596/2002**

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**17<sup>th</sup> November, 2011**

M/S. SICPA INDIA LIMITED

..... Appellant

Through: Mr. M.L. Mahajan, Advocate with  
Mr. Gourav Mahajan, Advocate.

Versus

SHRI MANAS PRATIM DEB

..... Respondent

Through: Mr. Sandeep Bhuraria, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 9.7.2002. By the impugned judgment, the trial Court dismissed the suit of the appellant/plaintiff filed for recovery by entitling the appellant to adjust an amount of

Rs.44,330/- payable to the respondent/defendant/employee and held that the appellant was not entitled to recovery of Rs.3,95,170/- as claimed in the plaint.

2. The facts of the case are that the appellant/plaintiff/employer appointed the respondent/defendant as a Sales Executive on 28.11.1994. The appellant/plaintiff company is engaged in manufacture of specialized inks. The appellant/plaintiff claims to have sent the respondent/defendant abroad for training twice and for which two employment bonds dated 24.4.1995 and 24.1.1998 were got executed. As per the employment bonds, the respondent/defendant was either bound to serve for a period of five years or pay a sum of Rs.2 lacs if he left the services earlier. The respondent/defendant tendered his resignation vide letter dated 21.2.2000 i.e. before the expiry of period of five years i.e. period of the second bond dated 24.1.1998. The appellant/plaintiff therefore enforced the two bonds and called upon the respondent/defendant to make the payment of Rs.2 lacs for each of the bond besides claiming an amount of Rs.17,290/- as notice period of 57 days and Rs.117/- towards excess medical expenses reimbursed.

3. The respondent/defendant contested the suit and pleaded that the clauses of the bonds in question were unfair, unjust and just

opposed to the public policy and therefore the same were not enforceable. It was also pleaded that there was in fact no training imparted to the respondent/defendant on both his trips which were basically trips for dealing with the customers of the appellant/plaintiff. It was also argued that bonds in question were taken just a few hours before boarding in the plane and therefore the same were signed without reading of the same and in a hurry. It is stressed that really the so called training programmes were only business trips meant to promote sales or deal with the customers. During the course of final arguments, it was also argued that the period of first bond of five years from 24.4.1995 had more or less come to an end because the period of five years from the first bond would otherwise have come to an end on 24.4.2000 and the resignation was submitted on 21.2.2000. So far as the second bond was concerned, it was argued that whatever were the expenses incurred were more than fully recouped in the period of two years of the service after the second bond was executed. It was prayed that the suit be dismissed.

4. After the pleadings were complete, trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to a decree of a sum of Rs.3,95,170/- with interest @ 18% p.a. pendente lite and future? OPP
2. Whether the suit has not been signed and verified by a

competent person? OPD

3. Whether there is no cause of action? OPD

4. Reief.”

5. The trial Court has arrived at the following conclusions for dismissal of the suit:-

(i) Clauses in question which are part of the employment bonds are violative of Section 74 of the Contract Act, 1872 as they are in the nature of penalty and hence the same cannot be enforced.

(ii) So far as the first bond is concerned, the same was more or less complied with as the resignation is of February, 2000 and the bond would have expired by April, 2000. So far as the second bond is concerned, it was held that total expenses which were incurred for the second trip were of Rs.67,596/- and which would have been recouped by the period of two years of the service given after execution of the second bond. In any case, the trial Court held that the respondent/defendant was entitled to Rs.44,330/- as per the admitted case of the appellant/plaintiff and which amount therefore can be treated as adjusted for the claims against the second bond since the expenses of the second trip were only Rs.67,596/-.

6. The trial Court has given the following conclusions and findings in the impugned judgment and with which I completely agree:-

“It is further significant to note that for a period of 28 days of training he was to serve the plaintiff for a period of 5

years and in default he was to pay a sum of Rs.2,00,000/- with 18% p.a. interest in respect of breach of first bond. Not only that Clause-8 of Bond dt.24.4.95 Ex.PW1/3 which reproduced earlier provides that in case of subsequent training the defendant has to execute a fresh bond to serve the plaintiff company for a period of 36 months. Though subsequent bond Ex.PW1/4 also provides that defendant was to serve for another period of 5 years. On second occasion when he was required to execute Bond Ex.PW1/4 he was imparted the so called training of seven days only which the defendant has refuted by saying that he went there just to procure the business for the plaintiff company.

It is submitted by the Ld. Counsel for the plaintiff company that the defendant himself has submitted the bill Ex.DW:1/P-1 when he went for training on 24.4.95 showing the purpose of visit as Technical Training. He again submitted the Bill Ex.DW:1/P-2 when he went for the training for the second time on 24.1.98 again enumerating the purpose of his visit as training. The defendant stated in his statement that he mentioned these things in the bills at the instance of Mr. N.K. Gupta the then President of the plaintiff company. Thing remains that he was sent abroad twice for the purpose of training on first occasion for 28 days and on second occasion for 7 days. But I have no hesitation in coming to the conclusion that these bonds were got executed from the defendant only on the date he was to board the flight and was not given sufficient time to go through these Bonds. These bonds amount to bonded labour in perpetually where virtually an employee has no bargaining power.

So far as the question regarding enforcibility of these penalty clauses of the bonds are concerned, it is appropriate to look into the legal position. There is no doubt that these clauses are in the nature of the penalty and Sec.74 of the Contract Act in applicable. The Hon'ble Supreme Court in case Maula Bux Vs. Union of India 1969 (2) SCC 554 held that "if the forfeiture is of the nature of penalty Sec.74 applies. Where-under the terms of contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid to the party complaining of a breach of contract, the

undertaking is of a nature of a penalty.

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Ld. Counsel for the defendant also referred to AIR 1963 AP 312 and AIR 1987 SC 1260. The gist of the authorities cited by the Ld. Counsel for the defendant is that while invoking the penalty clause as per Sec.74 of the Indian Contract Act, it is not necessary to award the compensation stipulated in the agreement rather a reasonable compensation is to be awarded irrespective fact whether the party invoking the clause has actually suffered the damages or not.

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Before proceeding further and taking clue from the case of Narendra Singh (supra). I have no hesitation in coming to the conclusion that these bonds were terrorem, unconscionable and extravagant.

The first Employment Bond Ex.PW:1/3 was executed on 24.4.95. As per this bond the defendant was to serve the plaintiff company for a period of 5 years. The period of 5 years came to an end on 23.4.2000. The defendant served the plaintiff company upto 27.3.2000 so virtually he has served the entire bond period and the penalty clause cannot be invoked at all.

As per clause-8 of Employment Bond Ex.PW:1/3 in case the defendant undertakes another training when he has executed the fresh Employment Bond which shall be for a period of 36 months. The fresh Employment Bond is Ex.PW:1/4, the same is dt. 24.1.98. In view of the terms and conditions of Employment Bond Ex.PW:1/3 the subsequent bond period should have been for 36 months but this bond also was made for a period of 5 years contrary to the terms and conditions stipulated in Employment Bond Ex.PW:1/3.

Employment Bond Ex.PW:1/4 was executed on 24.1.98. It could not have been for a period of 5 years in view of clause-8 of Employment Bond Ex.PW:1/3. It should have been for a period of 3 years that means this Bond would have expired on 23.1.2001. The defendant served the plaintiff company upto 27.3.2000 meaning thereby he was to further serve for a period of 1 year.

In these circumstances it is to be seen as to what reasonable compensation is to be awarded to the plaintiff

company. As I have already stated that there is no question of invoking the penalty clause in respect of Employment Bond Ex.PW:1/3 as the defendant has virtually served the defendant for the entire period stipulated in that bond. At the time of his second visit plaintiff company incurred an expenditure of ₹67596/- as is proved from Ex.DW:1/P-2. He was to serve for a period of 3 years w.e.f.24.1.98. He served upto 27.3.2000 i.e. almost for a period of 2 years. If this amount of ₹67596/- is divided by 3 then the amount for one year comes out to be ₹22532. He has already served for 2 years meaning thereby that just reasonable compensation shall be ₹22532/-.

Though there is no counter claim but in para-25 of the plaint the plaintiff has himself stated that he has to pay to the defendant a sum of ₹44330/-. Defendant tendered resignation vide letter dt. 21.2.2000 and finally handed over the charge on 27.3.2000. As per initial terms and conditions of Employment Bond he was to give 3 months' notice. So he has to pay 2 months' pay which comes out to be ₹12,000/- Approx. and if this amount of ₹12,000/- is added to a sum of ₹22532/- then the total amount defendant has to pay to the plaintiff by way of compensation is ₹34532/-. On the other hand the plaintiff had to pay a sum of ₹44330/- to the defendant. Though there is no counter-claim but yet the plaintiff itself has admitted in the plaint that he is to pay this amount to the defendant. Hence the plaintiff is not entitled to a sum of ₹3,95,170/- with plaintiff is not entitled to a sum of ₹3,95,170/- with 18% interest pendente lite and future. This issue is decided." (underlining added)

7. In addition to the aforesaid reasoning, I may refer to the three main judgments of the Supreme Court in this regard being the cases of **Fateh Chand Vs Balkishan Dass, AIR 1963 SC 1405**, **Maula Bux Vs. UOI, 1969 (2) SCC 554** and **Union of India Vs. Raman Iron Foundry (1974) 2 SCC 231**. As per the ratio of these cases, clauses of liquidated damages which are in the nature of

penalty are void and the liquidated damages are only the upper limit of damages which are awarded once actual damages are proved. This legal position applies when losses from the breach of contract can otherwise be proved. When losses cannot be proved, then, of course the liquidated damages specified can always be recovered vide ***Sir Chunilal V. Mehta & Sons Ltd. Vs. Century Spinning and Manufacturing Co. Ltd. AIR 1962 SC 1314 (1)*** and ***O.N.G.C. Vs. Saw Pipes Ltd., 2003 (5) SCC 705.***

8. An important aspect I must note is that there was really no training abroad on both the trips because a reference to the two vouchers Ex.DW1/P1 and Ex.DW1/P2 (not disputed by appellant in the deposition of its witness) which were submitted by the respondent/defendant to the appellant/plaintiff after the trips show that there are no charges included in the same for any training institute or training of any nature whatsoever. The bills are basically to and fro cost of travel abroad alongwith expenses of stay abroad and the related expenses. Really therefore there was no training which was imparted to the respondent/defendant. In fact, in the entire trial Court record i.e. whether in the pleadings of the appellant/plaintiff or in the evidence led on behalf of the appellant/plaintiff there is not even a whisper as to what was the nature of the training which was imparted

to the respondent/defendant in his trips abroad and by which institute and where. I am therefore inclined to believe on balance of probabilities the stand of the respondent/defendant that the trips were basically commercial trips for dealing with the customers of the appellant/plaintiff abroad.

9. Learned counsel for the appellant sought to argue that the respondent has not pleaded a case in the written statement of the claim in the suit being barred by Section 74 of the Contract Act, 1872 and no such issue was framed and therefore the trial Court erred in disposing of the suit on that basis. At the first blush, this argument may appear attractive, however, I am inclined to reject this argument for several reasons:-

(i) Firstly to allow this argument would be to set the clock back to 2001 when the suit was filed for de novo trial of the whole case especially when the necessary evidence with respect to the expenses incurred qua both the trips have already been filed on record and proved as Ex.DW1/P1 and Ex.DW1/P2. In fact as stated above, these are admitted documents and which documents would be the only evidence to determine the loss caused to appellant which it would now seek to prove.

(ii) Secondly, the issue which has been disposed of by the trial

Court of the claim being barred by Section 74 of the Contract Act, 1872 is though partially an issue of fact, however, really the issue is an issue of law because it was for the appellant/plaintiff to plead in the plaint that in spite of such clauses being bad and being hit by Section 74 of the Contract Act, 1872, such clauses can be enforced because there was no method of calculation of damages considering that it was aware of cost incurred for the two trips of the respondent/defendant abroad vide Ex.DW1/P1 and DW1/P2 in its possession. The appellant/plaintiff however did not plead that no damages can be calculated and therefore the bonds have to be enforced. Accordingly, there was no such response in the written statement of Section 74 of the Contract Act, 1872 by the respondent/defendant.

(iii) Finally, once the parties with complete knowledge go to trial and the evidence has otherwise come on record, then, on the admitted evidences which have otherwise come on record, a Court can always mould the relief in accordance with Order 7 Rule 7 CPC, and which in my opinion has been done by the trial Court in sum and substance, dissuading me to interfere with the impugned judgment and decree.

10. In view of the aforesaid and considering the fact that first bond had more or less worked itself out, the second bond was towards

a trip of which expenses were only of about Rs.67,000/- and the respondent/defendant had worked for two years besides the impugned judgment allowing an adjustment of Rs.44,330/-, I do not find any reason to exercise my powers in appeal for setting aside the impugned judgment inasmuch as otherwise there will result grave injustice to the respondent/defendant in the facts and circumstances of the present case.

11. In view of the above, the appeal is dismissed, leaving the parties to bear their own costs.

**VALMIKI J. MEHTA, J**

**NOVEMBER 17, 2011**

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