(2022-3)207 PLR 442

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Augustine George Masih and Mr. Justice Sandeep Moudgil.

DR. CETNA JAIN – Appellant,

Versus

M/S ARVIND MEDICARE PVT. LTD. through its Authorsed Signatory – Respondent.

FAO (COMM.)-8-2022

(i)Contract Act, 1872 (9 of 1872) Section 73, 74 – Breach of contract – Clause 12 of the contract will come into operation, which stipulates that a party terminating the contract within the validity of period, has to pay to the other, an amount equivalent to professional fees as provided in Clause 5 of the unexpired duration of the contract – To ascertain the quantum, if the terms are not clear and are ambiguous in case of the breach of contract, the person aggrieved by such breach is not required to prove actual loss or damage suffered by him before the claim raised in a decree. The Court is competent to award compensation as it deems reasonable even if no actual damage is proved to have been suffered in consequence thereof. Such observations are based on the intent of legislation as incorporated under Section 73 and 74 of the Contract Act, 1872, which need to be read collectively – Litigation expenses is Rs.1,00,000/- against the claim of Rs.25,00,000/- is also absolutely very reasonable and need not to be decided any further inasmuch as the same have also not contested with force by the learned Counsel for the appellant.

[Para 9, 28, 30]

(ii) Contract Act, 1872 (9 of 1872) Section 73, 74 – Contract – Breach of – Damages – To ascertain the quantum, if the terms are not clear and are ambiguous in case of the breach of contract, the person aggrieved by such breach is not required to prove actual loss or damage suffered by him before the claim raised in a decree – The Court is competent to award compensation as it deems reasonable even if no actual damage is proved to have been suffered in consequence thereof. [Para 27, 28]

Mr. Ajay Brahme with Mr. J.S. Bhatia, for the appellant. *Mr. Biswajit Das, with Ms. Avantika Sharma,* for the respondent.

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Sandeep Moudgil, J. – *(4th April, 2022)* – The appellant has challenged the order dated 15.12.2021 passed by the learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, alleging the same to be violative of law of contract, in a suit for permanent injunction and recovery instituted by the respondent-plaintiff-M/s Arvind Medicare Pvt. Ltd.

2. The said suit was decreed partly to the extent of recovery of contractual fees/damages to the tune of Rs.1,41, 87,453/- alongwith interest at the rate of 6% per annum with effect from 01.08.2020 till its actual realization. However, prayer for injunctory relief was declined.

3. Looking at the factual matrix in the present appeal, while examining the facts before this Court, in a sequel is that the plaintiff-respondent preferred a suit for permanent injunction and recovery against the appellant-defendant, alleging that the plaintiff-respondent, a private limited company, is engaged in the business of health care with whom the appellant-defendant entered into a first service contract dated 07.05.2015 as HOD-Obstetrics & Gynaecology since 15.06.2015 and Medical Director and HOD-Obstetrics & Gynaecology since 15.06.2017. The first service contract is dated 07.05.2015 (Ex. P-4) vide which the defendant-appellant had undertaken to provide exclusive and wholesome

services to the plaintiff-respondent's hospital with a stipulation of not taking any other responsibility/engagement elsewhere for succeeding two years from the date of joining. The appellant-defendant was also estopped under the terms of contract that even if she chooses to terminate her contract, she will not serve anywhere else during those two years. The appellant-defendant was posted as Medical Director and HOD-Obstetrics & Gynaecology with her service contract dated 07.05.2015 as extended vide subsequent contract dated 04.03.2017 carrying higher remuneration with rest of the conditions to be the same. Such contract was again renewed on 22.02.2019 for another two years' tenure upto 14.06.2021 with the same designation, terms and conditions. The plaintiff-respondent has alleged a breach of contract by the appellant-defendant by resigning from her engagement by sending an e-mail dated 31.07.2020 at 5:35 p.m.

4. The case set up by the plaintiff-respondent before the Court below was that the defendant-appellant had secretly pre-planned some alternative place to work with higher financial package. The plaintiff-respondent is said to have sent reply to the said e-mail on 01.08.2020 and later through speed post on 03.08.2020 requesting the appellant-defendant to resume her services in compliance with her part of the contract.

5. Finally on facts, the plaintiff-respondent sought relief against the huge loss suffered on account of having given appointment/dates for deliveries/surgeries including many pre and post operative patients and also on account of such patients, who are under treatment. Such unilateral resignation which is not in consonance with the terms of the contract as stipulated under Clause 9 and Clause 12 thereof, has not only caused financial loss but also effected the reputation, which made tantamount to medical negligence as well as loss of goodwill in the medical sphere.

6. In the end, the plaintiff-respondent made a prayer that since the present suit involves commercial dispute, such dispute, as defined under Section 2(1)(c) of the Commercial Courts Act, 2015 and in the light of the fact that neither the damages can be quantified nor can be ascertained to enable the amount of compensation as an adequate measure of relief for such blatant abuse to the breach and term of the contract, gives rise to the recovery of an amount of Rs.2,16,87,453/- consisting of contractual fee of Rs.1,41,87,453/-, losses to the tune of Rs.50,00,000/- and litigation fees as Rs.25,00,000/-.

7. The suit was contested by the defendant-appellant with certain preliminary objections including maintainability of the commercial dispute, pleading that there is no clause in the service contract dated 07.05.2015, which talks about the restraint on the defendant-appellant for serving anywhere else till 15.06.2021 even if she chooses to terminate the contract. The defendant-appellant also submits that it was an employer-employee relationship and denied with regard to the averment made in Clause 9, raised by the plaintiff-respondent, clarifying that the alleged service contract dated 22.02.2019 do not depict independent management in any manner whatsoever. It has been also argued that the said service contract is not a contract for service rather is only an appointment letter with some terms and conditions inscribed therein, which were changed unilaterally in April, 2020 without the consent of the defendant-appellant. It has been further claimed that status of the contract became void after April 2020 and as such, there was no obligation for the defendant-appellant to continue in the plaintiff-respondent's hospital, still she considered it to be her duty to attend and treat the patients all the time she could do.

8. On filing of the replication reiterating the averments made in the plaint and controverting those of the written statement, the learned Court below framed following issues, vide order dated 19.03.2021:-

"1. Whether service contract dated 22.02.2019 executed between the parties is still in force? OPP

2. Whether plaintiff is entitled to relief of permanent/perpetual injunction against the

defendant for not joining any firms/clinics/hospital for providing medical services, on the basis of aforesaid contract? OPP

3. Whether plaintiff is entitled to a sum of Rs.1,41,87,453/- alongwith interest @ 12% per annum on account of breach of aforesaid contract? OPP

4. Whether the plaintiff is entitled to damages to the tune of Rs.50,00,000/- and litigation costs of Rs.25,00,000/- as prayed for? OPP

5. Whether the suit of the plaintiff is not maintainable? OPD

6. Whether there is no cause of action to maintain the suit? OPD

7. Whether plaintiff has suppressed the material facts? OPD

8. Whether subject matter of the suit does not involve a commercial dispute as defined under The Commercial Courts Act, 2015? OPD

9. Relief."

9. After examining the evidence and pleadings of the parties, the learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram partly decreed the suit declining the relief of injunction but granted decree for recovery of damages for contractual fee/damages to the extent of Rs.1,41, 87,453/- alongwith interest at the rate of 6% per annum with effect from 01.08.2020 till its actual realization. Such findings were recorded with the observation that the defendant-appellant being a doctor of repute, might have been offered engagement by another hospital with better pay package, who grabbed such opportunity and for having done so, rigors of Clause 12 will come into operation, which stipulates that a party terminating the contract within the validity of period, has to pay to the other, an amount equivalent to professional fees as provided in Clause 5 of the unexpired duration of the contract.

10. Aggrieved against the judgment and decree dated 15.12.2021, the defendant-appellant has approached this Court by way of an appeal under Section 13(1) of the Commercial Courts Act, 2015.

11. Learned Senior counsel for the appellant contends that it is the case of the plaintiff-respondent that the defendant-appellant resigned from her job in breach of the service contract dated 07.05.2015, who further alleged that the resignation by the defendant-appellant caused inconvenience to the hospital. However, the learned Court below failed and neglected the duly sworn statements of two patients, who were not only satisfied with the treatment meted out to them by the appellant but at the same time got satisfaction and contentment saying that they got treated elsewhere, which was better than to be treated in this hospital.

12. The appellant has made vehement attempt to put forth her case arguing that she had been all alone pointing out irregularities in the functioning of the respondent hospital, which were not attended too rather she was subjected to harassment and reducing her patient base by diverting patients to some other consultants for which CRM desk was utilized from where the patients were not referred to the appellant straightway. The things crossed the limit according to the appellant, when in November, 2019, the services of one associate consultant of the appellant namely Dr. Surbhi, were dispensed with without any sufficient cause, making it difficult for the appellant to function properly as a doctor. Similarly, one coordinating nurse namely Shiney Alyamma Philip was fired unceremoniously from the job in May, 2020 on certain frivolous and fabricated reasons without consulting the appellant.

13. The learned counsel also submitted on behalf of the appellant that actually it was a breach of service contract dated 07.05.2015 by the plaintiff-respondent, which did not pay remunerations for three months to the appellant-defendant and also paid no heeds to various representations made on her behalf. Since, the remunerations were not being paid for long and requests were not being entertained by the plaintiff-respondent, the appellant-

defendant was left with no choice but to resign from the job. It has been further pleaded on behalf of the appellant that there is no clause in the service contract dated 07.05.2015 restraining the appellant-defendant from serving anywhere else till 15.06.2021 even if she chooses to terminate the said contract still there was no such bar since there was only an employer-employee relationship and perusal of Clause 9 would depict that nothing of the sort with regard to independent management has been incorporated therein.

14. Learned counsel for the appellant draws the attention of this Court for putting a challenge to the service contract dated 07.05.2015 to be not a contract for service but rather is only an appointment letter with some terms and conditions stipulated therein, which are too stringent and the appellant-defendant was a Medical Director of the Gynaecology Department merely for the sake of name. Even the terms of said appointment letter/service contract dated 07.05.2015 were changed unilaterally on 04.03.2017 and subsequently on 22.02.2019 without the consent of the appellant-defendant and, therefore, the same cannot be said to be binding upon her.

15. Concluding the arguments, learned Counsel for the appellant stated that the status of contract became void after April, 2020 and the appellant-defendant was under no obligation to continue with the services in the plaintiff-respondent hospital but only on ethical and moral value as a doctor treated the patients all the time, she could do. She was not in a position to know internal issues of the hospital and ended up accepting the inappropriate and legally untenable terms and conditions on 22.02.2019 whereas the plaintiff-respondent hospital connived a strategy to reduce the patient base of the appellant-defendant at the hospital for commercial gains and at the same time not paid the remunerations to her for the month of April, 2020 till July, 2020.

16. Having heard the learned Counsel for the appellant and after examining the records of the case, it would be appetite to have a glance on the relevant Clauses admittedly existing in the service contract i.e. Clauses 5, 9 and 12, which read as under:-

Clause 5

5. *Professional Fee:* You will be paid Rs. 13,10,000/- (Rupees Thirteen Lakhs Ten thousand only) per month or the amount as calculated by adding 5(a), 5(b), 5(c), 5(d), 5(e), 5(f) & 5(g) per month, whichever is higher:

(a) Consultancy Charges- Your OPD consultancy charges have been kept at Rs. 800/- (Rupees eight hundred only). The management shall be entitled to retain 10% of the total revenue arising out of your consultation towards administrative charges.

(b) Health Check Consultation- Rs. 175/- per health check consultation conducted by you.

(c) 70% of Net Bill amount of any OPD procedure performed by you.

(d) Rs. 23,000/- (Rupees twenty-three thousand only) per delivery conducted by you. This amount is inclusive of visit charges for such patients.

(e) 100% of Surgeon fee & visit fee for the procedure/surgeries other than deliveries done by you in IPD.

(f) 2% of the Net Revenue (Net Billing amount less any discounts, write offs, refunds and unpaid amounts) generated in the obstetrics & Gynecology IPD Department. For purpose of calculating Net Revenue, the following shall not be considered as part of Net Revenue:

(a) Value of Medicines and consumables.

(b) Revenue of NICU.

(c) Amount on account of Baby bills.

(d) Revenue on account of Neonatal or Paediatric Admissions in IPD.

(e) IVF Unit revenues or surgeries in IPD by IVF specialists.

(f) Any revenue from any OPD services.

(g) Observation cases.

(g) Any other amounts payable to you, as mutually agreed.

Clause-9:

"Other Employment/Business: During the tenure of your Contract with the Company, you will not be allowed any Private Practice with any other Clinic/Hospital except at your personal OPD & your Elder Care Home in Gurgaon. You will not undertake any employment- full time or part time and not be engaged in any trade or business during the tenure of your Contract with the Company."

Clause-12:

"*Termination of contract* – Neither party shall terminate the contract during the validity period, as specified in Clause 10 hereinabove. In case any party terminates the contract, the terminating party shall be liable to pay to the other party an amount equivalent to the professional fees (as specified in Clause 5 hereinabove) for the unexpired duration of the contract."

17. The bare reading of Clause 5 makes it ample clear that the appellant was entitled to professional fees of Rs.13,10,000/- per month or the break up given in 5(a) to 5(g), whichever is higher. By reducing the referral of patients to the appellant-defendant, obviously the consultation charges are bound to come down along with health check consultation as well as on account of delivery as a gynaecologist and likewise. One can without hesitation, evaluate that the number of OPD patients referred to the appellant-defendant, was reduced without obvious reasons.

18. Clause 9 reflects a lock-in period in the service contract dated 07.05.2015 (Ex.P-4), which also stipulates that during the tenure of the contract, the defendant-appellant will not be allowed any private practice with any firm/clinic/hospital except her personal OPD clinic and Elder Care Home in Gurugram, and the same was valid upto 14.06.2021.

19. The termination of contract has been incorporated vide Clause 12, which envisages that in case any party terminates the contract, the terminating party shall be liable to pay to the other party, an amount equivalent to the professional fees for the unexpired duration of the contract, which is Rs. 13,10,000/- per month in the present case, as fixed vide Clause 5 of the service contract.

20. In the present appeal, issues No.1 and 2 are not in question as the same stood decided against the plaintiff-respondent by the Court below, however, the question before us is that whether plaintiff-respondent has been rightly awarded the contractual fees/damages, along with interest, which is sought to be examined before this Court in the present appeal. The plaintiff-respondent in the suit claimed recovery of an amount of Rs.2,16,87,453/- out of which the contractual fees of Rs.1,41,87,453/- is claimed on the basis of Clause 12 of the service contract dated 07.05.2015 (Ex.P-4), alleging that the defendant-appellant left the hospital without any cause whereas amount of Rs.50,00,000/- has been sought to be claimed as damages for the reason that appellant-defendant had suddenly resigned from the hospital without prior notice, and put the hospital in lurch resulting into huge losses not only financially but also to suffer its goodwill and reputation. The litigation expenses amounting to Rs.25,00,000/- were also claimed with the averment that it is the conduct of defendant-appellant, who made the plaintiff-respondent hospital to litigate and incur huge amount in that process.

21. A perusal of the record crystallizes that the deductions were made from the professional charges of the plaintiff-respondent by defendant-appellant for the period from April, 2020 till June, 2020. The resignation was sent through e-mail dated 31.07.2020 and since her grouse, which was raised in March, 2020 was not being addressed, the appellant had to resign on account of failure of respondent-plaintiff hospital for non-payment of her professional fees in violation of service contract dated 07.05.2015 (Ex.P-4).

22. A whatsapp message was also addressed to Dr. Mandeep Kour informing her about leaving the organization to which the plaintiff-respondent responded vide e-mail dated 01.08.2020 in the following manner:-

> "2. Regarding your allegation of non-payment of MG, since March, you accepted the payments (since March 2020) without any protest/complain. Also, you are fully aware that we paid you more than you were entitled, considering your unnotified & undeserving total absence for about half of the days, during the period since March 2020. You realize the consequences and losses of total non-presence of Medical Director & HOD in a hospital."

23. We can conclude the rival contentions as the plaintiff-respondent took the stand that full professional fees for the months of March till June, 2020 was not paid and deductions were made on account of defendant-appellant having not attended her duty in the hospital for a number of days.

24. Now, we need to examine, "whether less payment of professional fees be a ground to terminate the contract by tendering resignation".

25. Going through the cross-examination of DW-1, it is evident that she categorically admitted that there is no provision in the contract that for no payment, she could resign. Although as per the contract, before its termination, there was no requirement of issuing prior notice but what minimum required from a doctor carrying much higher responsibilities than any other normal service provider, is that if there is any payment issues, she was expected to raise such issue and get it solved. No such issue was ever raised in any representation as has been admitted in her cross-examination except verbally informing to Dr. Mandeep Kour, Medical Superintendent and Ms. Gunjan Jain wife of Paresh Jain.

26. Instead of getting the matter resolved amicably, plaintiff-respondent opted to leave the services probably with a better opportunity, therefore, she cannot escape the rigors of Clause 12, which mandates to pay to the other party, an amount equivalent to professional fees as provided in Clause 5, for the unexpired duration of the contract. However, the service contract dated 07.05.2015 (Ex. P-4) do not specify any rate of interest.

27. The averments made on behalf of the appellant-defendant do not inspire confidence of this Court so far as changing the terms of contract and reducing her pay is concerned, to which there is no corroboration by way of cogent evidence. The plaintiff-respondent very rightly put a claim to the tune of Rs.1,41,87,453/-.

28. To ascertain the quantum, if the terms are not clear and are ambiguous in case of the breach of contract, the person aggrieved by such breach is not required to prove actual loss or damage suffered by him before the claim raised in a decree. The Court is competent to award compensation as it deems reasonable even if no actual damage is proved to have been suffered in consequence thereof. Such observations are based on the intent of legislation as incorporated under Section 73 and 74 of the Contract Act, 1872, which need to be read collectively, and are reproduced hereinbelow:-

> "73. *Compensation for loss or damage caused by breach of contract.*-When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
>
> Compensation for failure to discharge obligation resembling those created by contract:- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had

contracted to discharge it and had broken his contract.

Explanation:- In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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."

Explanation:- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

29. In the light of these facts, discussion hereinabove and after examining the evidence on record, we uphold the judgment and decree passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram dated 15.12.2021, wherein 6% interest has also been awarded, which is just reasonable and fair particularly in the light of the fact that an amount of Rs.1,41,87,453/- is infact a pre-calculated amount at the time of entering into a contract and if Clauses 5, 9 and 12, service contract are read in consonance.

30. The litigation expenses is Rs.1,00,000/- against the claim of Rs.25,00,000/- is also absolutely very reasonable and need not to be decided any further inasmuch as the same have also not contested with force by the learned Counsel for the appellant.

31. No other issue has been raised before this Court in the present appeal and in view of the observations and findings recorded hereinabove, the present appeal is dismissed being devoid of merits.

32. Since the main appeal has been dismissed, all the pending miscellaneous application(s), if any, are rendered infructuous.

Sd/- Augustine George Masih, J.

R.M.S. – Appeal dismissed.