C.S. No:52/13A vs Mr. Monal Sachdeva on 26 September, 2014

IN THE COURT OF MS. JASJEET KAUR, CIVIL JUDGE-I
NEW DELHI DISTRICT, NEW DELHI

C.S. No:52/13A
Unique Case ID No.
M/s Spicejet Limited
Having its registered office at
Near Steel Gate Bus Stop, Terminal -I
Indira Gandhi International Airport,
New Delhi-110037
Through its authorized representative
Sh. Sanjay Sharma ..

Versus

Mr. Monal Sachdeva
House No.4, Nyaypuri
Karnal, Haryana-132001

Also at :-
Monal Sachdeva (In-Flight Manager)
MDLR Airlines, MDLR House,
S.C.O.-2,3,4, Sec-15, Old Judicial Complex,
Gurgaon-122001 ....

Date of Institution : 24.01.2009
Date of Reserving Judgement : 23.09.2014
Date of Judgement : 26.09.2014

SUIT FOR RECOVERY OF RS. 2,22,000/- (RUPEES TWO LACS AND TWENTY TWO THOUSAND ONLY)

JUDGMENT

1. By instituting the present suit, plaintiff has sought recovery of a sum of Rs.2,22,000/□from the defendant with future and pendente□lite interests at the rate of 12% per annum.

2. The brief facts of the case from the perspective of plaintiff as discernible from the plaint are that the plaintiff is a limited company duly incorporated under the provisions of Companies Act, 1956 having its registered office at Cargo Complex, Indira Gandhi International Airport Terminal □I, New Delhi and Sh. Sanjay Sharma, an officer of the plaintiff company had been duly authorized to sign, verify and file the present suit vide board resolution dated 11.11.2008. It is the case of the plaintiff that the defendant was an employee of the plaintiff company appointed to the post of Senior Cabin Attendant in the In Flight Services Department of the plaintiff company vide appointment letter dated 22.03.2005. During the course of employment of the defendant with the plaintiff company, the plaintiff company had proposed the name of the defendant for training as an under study In Flight Cabin Safety Instructor and all expenses of the said training undergone by the defendant were borne by the plaintiff company. It is the case of the plaintiff that the defendant had willingly

undergone the said training and had executed an indemnity bond□cum□service undertaking dated 16.01.2006 Ex.PW1/3, whereby the defendant had bound himself to work exclusively for the plaintiff company in such functions as would be assigned to him from time to time for a period of two years from the date of completion of the said training.

3. It is further the case of the plaintiff that the defendant had also issued cheque no. 728305 dated 07.10.2008 drawn on ICICI Bank, 9□A Phelps Building, Connaught Place in the sum of Rs.2 lacs in favour of the plaintiff company as a security to cover up the tangible and intangible costs incurred by the plaintiff company on the training of the defendant in the event of defendant leaving employment of the plaintiff company before completion of service period of two years stipulated in the indemnity bond Ex.PW1/3. It is the alleged case of the plaintiff that the defendant had subsequently resigned from the plaintiff company on 05.12.2007 without completing mandatory service period of two years stipulated in the indemnity bond dated 16.01.2006 and was therefore liable to pay the cheque amount of Rs.2 lacs to the plaintiff, however, when the cheque bearing no. 728305 dated 07.10.2008 in sum of Rs.2 lacs was presented for encashment by the plaintiff company, the same was dishonoured on account of insufficiency of funds in the account of the defendant and therefore, plaintiff company had issued a legal demand notice dated 21.10.2008 calling upon the defendant to pay the cheque amount or bond amount of Rs. 2 lacs. Consequent upon failure of the defendant to make payment of the cheque amount of the dishonoured cheque within fifteen days of receipt of legal notice, the plaintiff company had filed a criminal complaint u/s 138 NI Act against the defendant and had simultaneously instituted the present suit for recovery of sum of Rs.2,22,000/□ from the defendant.

4. Upon receipt of summons for settlement of issues, the defendant had appeared and had filed a written statement wherein it had been claimed by the defendant that the indemnity bond dated 16.01.2006 Ex.PW1/3 had been obtained by the plaintiff company by using undue influence being the employer of the defendant and the plaintiff company had never incurred any expenditure on training the defendant. It had been further submitted in the written statement that the indemnity bond dated 16.01.2006 was hit by the provisions of section 27 of the Indian Contract Act and Article 19 (1) (g) of the Constitution of India as the said indemnity bond was meant for imposing conditions in restraint of trade in violation Article 19 (1) (g) of the Constitution of India which guarantees freedom of trade to all citizens of India. It had been further submitted in the written statement that indemnity bond dated 16.01.2006 was also violative of the provision of Section 27 of the Indian Contract Act, which makes void all agreements in restraint of trade. It had also been submitted in the written statement of the defendant that the defendant had completed 23 months of service with effect from date of signing the bond and had been compelled by the plaintiff company to resign before the completion of two years of mandatory service period, as the said company had sought to bind the defendant by another indemnity bond□cum□service undertaking in September 2007. By virtue of this proposed indemnity bond, the plaintiff company had proposed to bind the defendant for a period of another three years in lieu of two short terms training undergone by the defendant at UK and Singapore and in the alternative, the plaintiff company had also proposed to make the defendant to pay Rs.6 lacs to the plaintiff company towards the costs of the said two trainings. It had been alleged in the written statement that in order to pressurize the defendant to sign the said bond in lieu of two trainings imparted to him in Singapore and United Kingdom, the plaintiff company

had started deducting his salary and a sum of Rs.12,111/□and Rs.11,111/□had been respectively deducted from his salary from the months of October and November 2007, due to which the defendant had felt compelled to resign and had eventually resigned from his job on 05.12.2007. It had been further submitted in the written statement that in compliance of the conditions stipulated in the indemnity bond dated 16.01.2006, the defendant had discharged duties in the plaintiff company for a period of 23 months and had resigned only a month before the expiry of mandatory service period of two years stipulated in the bond. Therefore, even if the defendant was found liable to pay damages for breach of the indemnity bond, the defendant cannot be held liable to pay entire sum of Rs.2 lacs stipulated in the bond as damages for breach of the bond because the sum of Rs.2 lacs mentioned in bond was only the upper limit of liquidated damages, which the plaintiff was entitled to in the event of breach of bond. However, the exact damages which the defendant would become liable to pay to the plaintiff would be equivalent to the proportionate damages for breach of the bond by a period of one month as the defendant had resigned only a month before the completion of two years period of mandatory service stipulated in the bond.

5. In the replication filed by the plaintiff to the written statement of the defendant, the averments made in the written statement were denied and the contents of the plaint had been reiterated by the plaintiff.

6. On the basis of the pleadings of the parties, following issues were framed by the learned Predecessor Court on 06.08.2009 :□

1. Whether, plaintiff has suffered any expenses in imparting training to the defendant as reflected in Indemnity Bond cum Service undertaking? If yes, to what extent? OPP.

2. Whether, the above said bond has been obtained by the plaintiff from the defendant by using undue influences and by coercion? OPD.

3. Whether, defendant was compelled by the plaintiff company to leave the job and the plaintiff company itself is responsible for defendant leaving the job?

OPD.

4. Whether, Indemnity Bond cum Service undertaking is hit by Section 27 Indian Contract Act and Article 19 (1) (g) of the constitution of India? If so, its consequence? OPD.

5. Relief.

7. After the framing of issues, opportunity was granted to the plaintiff as well as to the defendant to prove their respective versions of the case by leading evidence in support of their respective case.

8. Plaintiff had examined one witness in order to prove its case. A brief account of the deposition made by the witness of the plaintiff is reproduced below.

9. PW-1 Sh.Sanjay Sharma, AR of the plaintiff company had reiterated the facts narrated in the plaint in his affidavit Ex.PW1/A. He had relied upon following documents in support of the averments made in his affidavit Viz:

(i) Letter of authority and board resolution authorizing him to institute the present suit Ex.PW1/1.

(ii) Letter of appointment of the defendant dated 22.03.2005 Ex.PW1/2.

(iii) Indemnity bond-cum-service undertaking executed by the defendant Ex.PW1/3.

(iv) Details of expenses incurred by the plaintiff on the training of the defendant Ex.PW1/3A.

(v) Cheque no. 728305 dated 07.10.2008 Ex.PW1/4 drawn on ICICI Bank in the sum of Rs.2 lacs issued by the defendant in favour of the plaintiff towards the bond amount of Rs.2 lacs.

(vi) Copy of e-mail dated 16.10.2007 Ex.PW1/5 whereby the defendant had agreed to a deduction of Rs.11,000/- per month from his salary for a period of three years as installment towards reimbursement of training expenses of Rs.4 lacs incurred by his company.

(vii) Return memo dated 15.10.2008 Ex.PW1/6 whereby cheque Ex.PW1/4 was dishonoured due to insufficiency of funds in the bank account of the defendant.

(viii) Legal notice dated 21.10.2008 Ex.PW1/7 whereby the plaintiff had called upon the defendant to pay the cheque amount.

(ix) Details of pre-training salary and other benefits of the defendant Ex.PW1/8.

(x) Details of post-training salary and benefits of the defendant Ex.PW1/9.

(xi) Details of increase in salary of the defendant after his training in United Kingdom and Singapore Ex.PW1/10.

10. In his cross examination by Sh. Sudhir Nagar, learned counsel for defendant, PW-1 deposed that In Flight Safety Cabin Instructor Training of the defendant had commenced on 16.01.2006 at the corporate office of the plaintiff company in Gurgaon and was completed in the month of May 2006. He, however, could not recall the exact date of the completion of the said training of the defendant. He deposed that the cheque Ex.PW1/4 submitted by the defendant was related to the expenses incurred by the plaintiff company on training of the defendant as referred to in para (b) of indemnity bond Ex.PW1/3. He deposed that he had filed details of expenses incurred on the training of the defendant vide documents collectively Ex.PW1/3A, wherein he had also included expenses

incurred on the In Flight Safety Instructor Training of the defendant. He admitted that the said document Ex.PW1/3A pertained to the period commencing from 31.05.2005 and ending on 31.01.2008 but the entries in the said document commenced from 14.05.2007. He expressed his inability to tell whether the defendant had signed any other bond for a period of three years for any other training given to him by the plaintiff company. He, however, admitted that the defendant had been asked to sign a bond in respect of other training undertaken by him and the defendant had avoided signing the same. He denied the suggestion that miscellaneous deductions had been made from the salary of the defendant in the months of October and November 2007 in order to coerce the defendant to execute the fresh indemnity bond. He deposed that the exact amount spent by the plaintiff company on the In Flight Cabin Safety Instructor Training to the defendant was Rs.2 lacs. He denied the suggestion that the said In Flight Cabin Safety Instructor Training imparted to the defendant was of only about 20 days and the plaintiff company had not incurred any expenditure on the said training. He clarified that although, the defendant had initially agreed to signing a fresh indemnity bond in respect of two trainings undergone by him in U.K and Singapore vide e□mail Ex.DW1/B. However, after the conclusion of the said trainings, the defendant had refused to sign the bond but had agreed to get the bond amount deducted from his salary in 36 equated monthly installments of Rs. 11,111/□each.

11. After the plaintiff company closed its evidence, defendant Monal Sachdeva examined himself as DW1 in his defence by way of affidavit Ex.DW1/1, wherein he had reiterated the averments made in his written statement. He had relied upon record the following documents in support of his case :□

(i) Draft of proposed second indemnity bond Ex.DW1/A for a period of three years which the plaintiff company was asking him to sign.

(ii) The copy of printouts of e□mail correspondence between the defendant and the senior officers of the plaintiff company regarding non□release of his (the defendant's) salary for the period of three months Ex.DW1/B.

(iii) Copies of salary slips of the defendant for the months of October and November 2007 Ex.DW1/C and Ex.DW1/D showing deductions of Rs.12,111/□and Rs. 11,111/□respectively from his salary for the months of October 2007 and November 2007.

12. The defendant had claimed in his evidence by way of affidavit Ex.DW1/1 that he had been compelled to resign from the plaintiff company due to high handedness of the officials of the plaintiff company, who were deducting his salary in order to coerce him to sign a fresh bond in the sum of Rs.6 lacs binding him for exclusively serving the plaintiff company for a period of three years.

13. In his cross examination by Sh. Kapil Sankhla, learned counsel for the plaintiff, DW1 deposed that when the cheque Ex.PW1/4 was presented for encashment there was only a sum of Rs. 15000/□ in his account. He deposed that he had joined his service with the plaintiff company as a Senior Cabin Attendant and was subsequently promoted to the post of an Under Study Cabin Safety Instructor in the months of January and February 2006 and thereafter, he was promoted to the post

of In Flight Cabin Safety Instructor after two months. He deposed that after his promotion to the post of Cabin Safety Instructor, his salary was enhanced from Rs.15,000/- to Rs.20,000/- per month. He deposed that he had undergone the training of two days at the office of British Airways Institute in United Kingdom and during the said period, he had been lodged at a hotel in United Kingdom. He stated that the boarding and lodging charges of the said hotel as well as the travel expenses for the trip to United Kingdom had been borne by the plaintiff company. He clarified that he had also undergone a training at Singapore for about seven days. He deposed that his under study Cabin Safety Instructor training was for a period of 25-30 days and was a prerequisite for sitting in Directorate General of Civil Aviation Examination. He admitted that by way of indemnity bond Ex.PW1/3, he had undertaken to maintain a sufficient balance in his bank account for clearance of cheque Ex.PW1/4 in the sum of Rs.2 lacs issued by him in favour of the plaintiff company, however, when the cheque in question was presented for encashment, the same was dishonoured due to insufficiency of funds in his account. He further admitted that he had an offer of appointment from some other company at the time of leaving his job with the plaintiff company. He expressed his inability to tell whether the other employees of the plaintiff company who had accompanied him to the trainings in UK and Singapore had signed any bond in relation to the said trainings or not.

14. DW2 S.R. Solanki, Assistant Director of Airworthiness produced the letter dated 05.09.2006 Ex.DW2/1 issued by the Controller of Airworthiness, Department of Civil Aviation, Government of India, whereby the Controller of Airworthiness had informed various airlines including the plaintiff company Spice Jet Ltd. that whenever any Cabin Crew Training Instructor leaves the services of his employer airline, his or her approval as an instructor becomes null and void and he cannot act as a DGCA approved instructor in any unapproved Cabin Crew Training Institute.

15. In his cross examination by Sh. Kapil Sankhla, learned counsel for the plaintiff, DW2 deposed that from the letter Ex.DW2/1, it could be concluded that in order to become a DGCA improved Cabin Safety instructor, the concerned candidate had to be familiar with the working conditions of the concerned organization or employer. He clarified that the training was generally given by the concerned employer and not by DGCA and before approaching DGCA for approval, the candidate was supposed to undergo a training with his employer, the curriculum and duration of which were prescribed in rules and regulations of DGCA. He admitted that previous qualifications including previous training undergone with the previous employer had bearing on the approval given by DGCA.

16. DW2 was re-examined by the defendant with the permission of the Court. In his re-examination by the defendant, DW2 deposed that upon change of employer or company, the class room training required to be attended by a candidate could be exempted, if the conditions of the aircraft of his subsequent employer were the same in respect of which previous training had been given. However, if the type of aircraft of new employer was different then the candidate was required to undergo fresh class room training.

17. After the defendant closed his evidence, final arguments were heard from the learned counsel for the plaintiff as well as from the learned counsel for the defendant on 28.08.2014 and 10.09.2014.

Besides, written arguments were also filed by the plaintiff and the defendant on 15.09.2014 and 23.09.2014 respectively.

18. Learned counsel for the plaintiff has argued that the plaintiff company has proved its case against the defendant by examining PW1 Sanjay Sharma who has fully supported the case of the plaintiff by deposing that the defendant had executed indemnity bond□cum□service undertaking Ex.PW1/3 whereby the defendant had undertaken to serve the plaintiff company for a period of two years with effect from completion of his training as an In Flight Cabin Safety instructor. However, the defendant had prematurely resigned from the employment with the plaintiff company on 05.12.2007 in violation the conditions contained in para (b) of indemnity bond□cum□service undertaking Ex.PW1/3. Learned counsel for the plaintiff has further submitted that apart from failing to perform service for the plaintiff company for a period of two years in compliance of conditions of indemnity bond□cum□service undertaking Ex.PW1/3, the defendant had also failed to keep his commitment of forfeiting or paying a sum of Rs.2 lacs to the plaintiff company as damages for violation of the indemnity bond□cum□service undertaking or as compensation towards the costs of training undergone by the defendant.

19. Learned counsel for the defendant has on the other hand argued that the suit of the plaintiff is liable to be dismissed in view of the fact that the defendant has led sufficient evidence to prove that he had been compelled by the senior officers of the plaintiff company to leave the service of the plaintiff company. Learned defence counsel has further submitted that by placing on record his salary slips Ex.DW1/C and Ex.DW1/D, the defendant has proved that the plaintiff company had deducted a sum of Rs.12,111/□and Rs.11,111/□respectively from the salary payable to the defendant in October and November 2007 in order to coerce him to sign a fresh indemnity bond□cum□service undertaking for a period of three years with effect from May□June 2007 in lieu of a training of seven days imparted to the defendant in Singapore and another training of two days imparted to the defendant in United Kingdom. Learned defence counsel has further argued that the plaintiff company itself was indirectly responsible for coercing the defendant to resign prematurely from his job by forfeiting a part of his salary and therefore, the plaintiff company was not entitled to any liquidated damages from the defendant.

20. Alternatively, learned defence counsel has also argued that even if it is presumed that the defendant had prematurely resigned from his service with the plaintiff company in violation of the indemnity bond□cum□service undertaking, then also the defendant cannot be held liable to pay the entire sum of Rs.2 lacs stipulated in the indemnity bond Ex.PW1/3. On the contrary since the defendant had served the plaintiff company for a period of about 23 months and had resigned only a month prior to the expiry of the mandatory service period of 24 months stipulated in the indemnity bond□cum□service undertaking Ex.PW1/3, therefore, as per the provisions of Section 74 of Indian Contract Act, the plaintiff company is entitled to damages only for the period of one month for which the defendant had failed to perform service for the plaintiff company in violation of the terms and conditions of indemnity bond Ex.PW1/3.

21. This Court has considered the rival submissions of parties and perused the entire evidence led by the parties. Based on the appreciation of the entire evidence led by the plaintiff and defendant, the

issue□wise findings arrived at by this Court are reproduced below.

ISSUE WISE FINDINGS:

> Issue No. 1: Whether the plaintiff has suffered any expenses in imparting training to the defendant as reflected in indemnity bond□cum□service undertaking? If yes, to what extent. OPP.

22. The onus of proving this issue was on the plaintiff. The plaintiff company has relied upon details of expenses Ex.PW1/3A in support of the claim of the plaintiff company that it had incurred expenses on imparting training to the defendant. It is pertinent to note that on the details of expenses Ex.PW1/3A, it is mentioned on the top of the each page that the analysis/ sub analysis report is for the period between 31.05.2005 to 31.01.2008. However, on a perusal of the entire set of document Ex.PW1/3A, it is evident that there is no entry for the years 2005 and 2006 in the details of expenses Ex.PW1/3A and the first entry in the said document is for the date 14.05.2007. Thus, Ex.PW1/3A contains details of the expenses incurred by the plaintiff company on imparting various trainings to the defendant with effect from 14.05.2007. However, the bond in question Ex.PW1/3 was signed on 16.01.2006 and pertained to the training imparted to the defendant in the year 2006. Therefore, the plaintiff company has not placed on record any details of expenses incurred by the plaintiff company in imparting In Flight Cabin Safety Training Instructor to the defendant in the year 2006. However, the costs of any training imparted to a employee may not always be tangible costs in terms of expenditure incurred by the employer on the training. The costs of a training may often be intangible in the form of losses incurred by the employer during the period when the employee is unable to perform his duties on account of being busy in training. Besides, the costs incurred by the employer also include costs incurred by the employer in training another employee to occupy the same post, which had been occupied by a previously trained employee as well as the time consumed in the training of the said other employee.

23. It has been similarly held by Hon'ble High Court of Delhi in the case of Ashwani Bahl vs Air India Ltd. FAO No. 222/2012 decided on 21.01.2014 that the damages sustained by an employer upon breach of a service contract do not only include the cost of training but also include the damages sustained by the employer in training another person to occupy the same post. The Hon'ble High Court of Delhi had further observed that the time taken by the employer in training a new person to take charge of the post previously occupied by the employee who commits breach of the conditions stipulated in the service bond is also included in the damages sustained by the employer. Relevant observations made by Hon'ble High Court of Delhi in paras 6 and 7 of the judgement passed in this case are reproduced below in this context :□"6. In the present case, the Arbitrator while awarding the damages as claimed by the respondents/ claimants has made the following observations :

> 18. In my view therefore the respondent No.1 has committed a breach of the contract and the only question is as to what damages is the claimant entitled to. It is argued on behalf of the respondent No.1 that the cost of training is only to the extent of about Rs. 50,000/□to Rs. 60,000/□and therefore the amount mentioned in the contract

and by way of damages is in the nature of a penalty. It is no doubt true that the amount of Rs.

7,50,000/- does not appear to have any being or relation to the cost of training and therefore I have to consider what should be the amount of damages to be awarded. However, it is to be noted that the cost of the training is only one aspect of the matter. The real question for purpose of determining the damages is how long the claimant would take to train another person to be trained and become a pilot with the efficiency as the respondent No.1. The time taken to train a new person to become a pilot and for him to take charge of a plane and the loss which would be caused in that period to the claimant is running its business and obtaining the goodwill of its customers is also matters to be taken into consideration. It is not possible to measure the amount of losses which the claimant would suffer and if the party had chosen to measure the said damages on the basis of losses per year then it is not either for the court or the arbitrator to determine the same in absence of evidence which undoubtedly cannot be given with sufficient accuracy. In conclusion therefore I hold that the agreement between the claimant and respondent No.1 is valid and enforceable in law. I also hold that the respondent No.1 had committed a breach of the contract. I further hold that there are no extenuating circumstances not to hold respondent No.1 for being liable in damages.

7. In my opinion, the reasoning and discussion given by the Arbitrator is flawless. The language used is completely apposite and I am sure this Court could have done no better. Surely, losses which are caused to an Airline on account of a Pilot leaving before the contractual period has various ramifications of which the cost of the training is only but one aspect.

..."

24. In the light of aforecited opinion expressed by Hon'ble High Court of Delhi in the decided case of Ashwani Bahl vs Air India Ltd. (Supra), it can be safely concluded that mere fact that the plaintiff company has failed to place on record any bills of expenditure or statement of account to quantify the expenses incurred by the plaintiff company in providing the In Flight Cabin Safety Instructor Training to the defendant is not sufficient to reject the entire case of the plaintiff. Although, the exact amount of costs or expenses incurred by the plaintiff in training the defendant cannot be ascertained due to non -filing of details of expenses by the plaintiff. However, as has been observed by the Hon'ble High Court of Delhi, the costs of any training do not only include tangible expenses incurred on the training but may also include intangible costs including the time for which the employee who was imparted training was unable to discharge duties for his employer on account of being busy in training. Besides, the expenses on training may also include the loss of business sustained due to time consumed in training another employee to occupy the post of the previously trained employee in the event of breach of contract by the said trained employee. In accordance with the above observations made by Hon'ble High Court of Delhi, it can be concluded that certain amount of costs were in fact incurred by the plaintiff company in training the defendant and loss was also sustained by the plaintiff company on account of the fact that the plaintiff company would have been compelled to provide the same training to some other employee of the company due to premature tendering of his resignation by the defendant prior to the expiry of service period of two years. However, the exact amount of money spent by the plaintiff on the training of the defendant

cannot be ascertained in the absence of any direct evidence led by plaintiff to depict the amounts spent on the training of the defendant. Although, the plaintiff has assessed the said expenses incurred on training the defendant to be recoverable from the defendant by the defendant rendering his services for the plaintiff company for a period of two years or by the defendant paying a sum of Rs.2 lacs to the plaintiff. However, no statement of account or bills of expenditure have been filed by the plaintiff company to provide details pertaining to tangible costs incurred by the plaintiff company on the training of the defendant. Hence, this issue is partially decided in favour of the plaintiff and against the defendant by arriving at a finding that the plaintiff had incurred some expenses on training the defendant. However, the same cannot be quantified in terms of exact cash amount spent on the training of the defendant.

Issue No.2 □Whether the above said bond has been obtained by the plaintiff from the defendant by using undue influences and by coercion? If yes, to what extent. OPD.

25. The onus of proving this issue was on the defendant. The defendant has deposed in his evidence that he had been coerced to sign the bond Ex.PW1/3 and had signed the same as he did not want to leave his job with the plaintiff company. However, he has led no evidence to substantiate his claim that he had been forced to sign the indemnity bond□cum□service undertaking dated 16.01.2006 Ex.PW1/3. He has neither examined any witness in support of his submission that he had been forced to sign the above mentioned bond Ex.PW1/3 nor produced any document including e□mail or written communication whereby he had been directed by the officials of the plaintiff company to either sign the bond Ex.PW1/3 or to leave his job. Therefore, there is no evidence on record to establish that the defendant had been coerced to sign bond Ex.PW1/3. Hence, the second issue is decided in favour of the plaintiff and against the defendant by arriving at a finding that the bond Ex.PW1/3 has not been obtained by the plaintiff from the defendant by using undue influence and by coercion.

Issue No.3 □Whether defendant was compelled by the plaintiff company to leave the job and the plaintiff company itself is responsible for the defendant leaving the job? OPD.

26. The onus of proving this issue was on the defendant, The defendant has placed on record his salary slips Ex.DW1/C and Ex.DW1/D to prove that the plaintiff company had deducted an amount of Rs.12,111/□and Rs.11,111/□respectively from the salary of the defendant for the months of October and November 2007 in order to coerce him to sign another indemnity bond□cum□service undertaking for a period of three years and in the alternative, to forfeit a sum of Rs.6 lacs in favour of the plaintiff company in the event of breach of the second proposed indemnity bond□cum□service undertaking Ex.DW1/A and since the defendant did not want to sign the said proposed indemnity bond□cum□service undertaking Ex.DW1/A, therefore, he had felt compelled to leave his job with the plaintiff company due to conduct of the officials of the plaintiff company who were pressurizing him to sign the proposed second indemnity bond□cum□service undertaking.

27. The defendant has also placed on record e□mail communication between himself and the plaintiff company Ex.DW1/B to prove that the plaintiff company had withheld his salary for the period of three months in order to coerce the defendant to sign the proposed indemnity bond□cum□

service undertaking for the period of three years.

28. On the other hand, plaintiff has also placed on record printout of an e□mail dated 16.10.2007 whereby the defendant had himself agreed to a deduction of Rs.11,000/□per month from his salary as installment towards the cost of two trainings undergone by him in UK and Singapore amounting to Rs.6 lacs.

29. From the material on record, it is evident that although the plaintiff company had deducted Rs.12,111/□and Rs.11,111/□from the salary of the defendant. However, such a deduction had been duly authorized by the defendant himself who had agreed to the deduction in lieu of execution of a fresh bond □cum□service undertaking for a period of three years to reimburse the expenses incurred by the plaintiff company in imparting two separate trainings to the defendant at UK and Singapore.

30. In this context, it has been submitted by the learned counsel for the plaintiff that if the defendant had availed the opportunity to undergo two separate trainings at UK and Singapore at the expenses of the plaintiff company, then he should have either reimbursed the expenses of the said training by allowing a deduction towards the costs of the said training from his salary or he should have signed a fresh indemnity bond□cum□service undertaking as per the procedure of the plaintiff company.

31. I am in agreement with the aforementioned submission of the learned counsel for the plaintiff. In this context, a perusal of the entire evidence led by the defendant that the defendant has nowhere alleged in his deposition that he had been compelled to undergo two separate trainings at Singapore and UK. On the contrary, the defendant had willingly availed the opportunity to undergo two trainings at UK and Singapore, which were for the mutual benefit of the plaintiff company and the defendant. Therefore, the defendant should have also reimbursed the costs of the said trainings incurred by his employer, that is, plaintiff company. Moreover, when the defendant had himself allowed deduction of Rs.11,000/□per month from his salary to reimburse the expenses of the said trainings borne by his employer then he cannot take undue advantage of the said deduction of a part of his monthly salary by claiming that he had been compelled by the plaintiff to leave his job on account of deduction of a sum of about Rs.11,000/□from his salary every month. Hence, the above issue is decided in favour of the plaintiff and against the defendant by arriving at a finding that the defendant had not been compelled by the plaintiff company to leave the job and the plaintiff company itself is not responsible for the defendant leaving the job. Issue No.□4 Whether indemnity bond□cum□service undertaking is hit by Section 27 of Indian Contract Act and Article 19 (1) (g) of the Constitution of India? If so, its consequences. OPD.

32. The onus of proving this issue was on the defendant. In this context, it has been submitted by the defendant that Article 19 (1) (g) of the Constitution of India guarantees freedom of trade to every citizen of India. However, the provisions of clause (g) of Article 19 (1) are subject to reasonable restrictions which can be imposed on freedom of trade to ensure welfare of general public. The said restrictions can be imposed on the freedom to practice any profession or to carry on any occupation, trade or business by any law for the time being in force in any part of the country. The provision of clause (g) of Article 19 (1) and the proviso detailing restrictions on the freedom of trade contained in

Article 19 (6) of the Constitution of India are reproduced below in this context :□

19. Protection of certain rights regarding freedom of speech, etc.□(1) All citizens shall have the right □

(g) to practise any profession, or to carry on any occupation, trade or business.

(6) Nothing in sub□clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub□clause, and, in particular, [nothing in the said sub□clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, □

(i) the professional or technical qualifications necessary for practising any profession or carrying on an occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

33. A bare perusal of the above mentioned provision of Article 19 (6) of the Constitution of India reveals that the freedom to practice any profession or to carry out any occupation trade or business is not absolute and can be subject to reasonable restrictions imposed on the same in the interest of general public.

34. Besides, as per the provision of Article 19 (6) of the Constitution of India, the State can enact laws to completely or partially exclude citizen from carrying out any particular type of trade, occupation or business so as to ensure welfare of the general public. If such a law which completely or partially excludes citizen from carrying out any trade or profession is not violative of Article 19 (1) (g) of the Constitution of India then by the same analogy, the indemnity bond Ex.PW1/3 which does not propose to prevent the defendant from carrying out any profession or trade forever but reasonably restricts the defendant from serving any other employer for a period of two years only for the limited purpose of recovering costs incurred by the plaintiff company in training the defendant cannot be held to be violative Article 19 (1)

(g) of the Constitution of India.

35. Likewise, Section 27 of Indian Contract Act, 1872 provides that every agreement by which any person is restrained from exercising his right to practice a lawful profession or to carry out any trade or business of any kind is void. However, even the said provision is subject to reasonable restriction in the form of exception (i) to Section 27 which provides that a person who sells the goodwill of a business can enter into an agreement with a buyer to restrain the buyer from carrying on a similar business within the specified local limits of the area where the seller of goodwill is carrying on business so as to ensure that the buyer or any other person deriving titled to the goodwill from him (the buyer) does not carry out a similar business within the local limits in which the seller himself is

carrying out his business. On the same analogy, if an employee agrees to serve a particular employer for a particular period or duration of time then during the said period, the employee can be bound by the agreement not to serve any other employer for the purpose recovering the costs incurred by the employer on training the said employee and such an agreement is neither void nor hit by the provision of section 27 of the Indian Contract Act in any manner. The provision of Section 27 and exception (i) of the same are reproduced below in this context :□

27. Agreement in restraint of trade, void□Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1. □Saving of agreement not to carry on business of which goodwill is sold.□One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

36. A perusal of the abovecited provision of Section 27 of Indian Contract Act reveals that even agreements in restraint of trade are not void when such agreements are covered under exception (i) to the said section Also,it is settled law that an agreement between an employee and employer seeking to restrain the employee from working under any other employer during a particular period for which the employee agrees to exclusively serve his employer so as to reimburse the costs incurred by his employer on training him is not void and in such circumstances, if the employee takes up another job during the subsistence of the contract period, then an injunction can also be passed to restrain the employee from taking up the said job. Similar observations made in para 15 of the judgement passed by Hon'ble Supreme Court of India in the case of Niranjan Shankar Golikari v. Century Spinning and Manufacturing Co., Ltd., AIR 1967 SC 1098 are noteworthy in this context and are reproduced below :□"15. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one□sided as in the case of W.H. Milsted and □Son Ltd., 1927 WN 233 (Supra). Both the Trial Court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent company was reasonable and necessary for the protection of the company's interests and not such as the court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and therefore against public policy."

38. By applying the ratio of the aforecited decision to the facts of the present case, it can be safely concluded that when the plaintiff company had imparted training to the defendant so as to enable him to become an In Flight Cabin Safety Instructor then plaintiff company could have made the defendant enter into an agreement whereby the said company could have restrained the defendant from taking up employment with any other company for a limited period and could have further bound the defendant to exclusively serve the plaintiff company during the said period in order to derive benefits from the investment made by the plaintiff company in training the defendant. Therefore, the indemnity bond Ex.PW1/3 which binds the defendant to remain in exclusive employment of the plaintiff company for a period of two years to derive benefit from the investment made by the plaintiff in training the defendant does not violate the provision of Section 27 of the Indian Contract Act.

39. Also, as already discussed above, freedom of trade envisaged in Article 19 (1) (g) of the Constitution of India is subject to the reasonable restrictions which can be imposed on the same by virtue of operation of laws enacted by the State including laws prescribing qualifications for carrying out certain kinds of trades or professions as well as for the welfare of the public in general. The provision of indemnity bond □cum□service undertaking Ex.PW1/3 which reasonably restricts the defendant from serving any employer other than the plaintiff company for period of two years only for the limited purpose of recovering costs incurred by the plaintiff company on training the defendant is not violative of provision of Article 19 (1) (g) of the Constitution of India. Thus, the indemnity bond□cum□service undertaking agreement Ex.PW1/3 executed between the plaintiff and the defendant neither violates Article 19 (1) (g) of the Constitution of India nor does it violate the provision of Section 27 of the Indian Contract Act. Hence, the issue no.4 is decided in favour of the plaintiff company and against the defendant by arriving at a finding that the indemnity bond□cum□ service undertaking is not violative of provision of Section 27 of Indian Contract Act and Article 19 (1) (g) of the Constitution of India.

Issue No.□5 Relief.

40. Having decided the issue no.4 in favour of the plaintiff, it can be safely concluded that the indemnity bond□cum□service undertaking Ex.PW1/3 is a valid agreement and is binding between the parties. The only question which now remains to be decided is the relief to which the plaintiff is entitled, according to the indemnity bond□cum□service undertaking Ex.PW1/3. In this context, it has been argued by learned counsel for the plaintiff that the plaintiff company is entitled to damages to the extent of bond amount of Rs.2 lacs as the defendant had prematurely left the service of the plaintiff company in violation of the conditions of indemnity bond Ex.PW1/3. Learned counsel for the plaintiff has relied upon the judgement passed in the case of Ashwani Bahl vs Air India Ltd. (Supra) in support of his argument.

41. On the other hand, learned counsel for the defendant has argued that the amount of Rs.2 lacs stipulated in the indemnity bond□cum□service undertaking Ex.PW1/3 is the maximum liquidated damage that can be awarded for breach of the said bond. However, the actual damage has to be determined by this Court in the light of provisions of section 74 of the Indian Contract Act. Learned counsel for the defendant has further submitted that in the light of provisions of section 74 of the

Indian Contract Act, the amount of compensation, if any is to be awarded to the plaintiff for breach of contract by the defendant then the same has to be proportionate to the period of breach of the contract in question and in this particular case, the contract, that is, indemnity bond□cum□service undertaking Ex.PW1/3 had been broken by the defendant merely one month prior to its expiry. Therefore, at the most plaintiff company can be awarded damages for the period of one month for which the defendant had failed to render the services in the plaintiff company during the subsistence of bond period and not for the entire period of two years. Hence, it has been submitted on behalf of the defendant that the sum of Rs.2 lacs cannot be awarded as damages to the plaintiff company as the said amount was the total liquidated damage that could have been awarded to the plaintiff company and the actual damage has to be determined for the actual period for which the defendant had failed to perform service with the plaintiff company during subsistence of the bond period. Learned counsel for the defendant has relied upon following judgements in support of his submission :□

(i) M/s Sicpa India Limited Vs. Shri Manas Partim Deb Manu□DE 6554 2011 RFA No. 596/2012 decided on 17.11.2011.

(ii) Rajender Singh Rathore Vs. Delhi Metro Rail Corporation 211 (2014) DLT 39

(iii) B. S. Saini & Anr. Vs. DCM Limited RFA No. 195/2004 decided on 24th April 2012.

(iv) Shubh Gautam Vs. Nabanita Mukherjee RFA No. 560/2013 and C.M. No. 19100/2013 decided on 2nd December 2011.

42. I have considered the rival submissions of learned counsel for the plaintiff and learned counsel for the defendant. It has been time and again reiterated by the Hon'ble High Court of Delhi, that the clauses prescribing liquidated damages to be invoked in case of breach of a contract between an employee and the employer are meant to prescribe maximum amount of liquidated damages that can be awarded for breach of the contract in question, however, if the actual damages can be proved in a case then the same should be awarded. In the case of M/s Sicpa India Limited Vs. Shri Manas Partim Deb Manu□DE 6554 2011 RFA No. 596/2012 decided on 17.11.2011 it was held by the Hon'ble High Court of Delhi that clauses detailing the amount of liquidated damages incorporated in contracts were only a reference to the upper limit of the damages which can be awarded when it was difficult to ascertain the actual damages sustained by the aggrieved party in case of a breach of contract by the opposite party. However, when the actual damages can be quantified, then the same should be awarded. The Hon'ble High Court of Delhi had further observed that since the defendant had served the plaintiff company nearly for the entire period of bond, therefore, it was not necessary to award compensation equivalent to total liquidated damages amounting to Rs.2 lacs as stipulated in the bond and rather compensation could be awarded for the period of one year for which the conditions of bond had been violated by the defendant by proportionately dividing the total bond amount and the total training expenses etc. and thereby ascertaining the reasonable compensation for the period of breach. Observations made in paras 6, 7 and 10 of the judgement are noteworthy in this context and are reproduced below :□

6. ... 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 uot to be '22532. He has already served for 2 years meaning thereby that just reasonable compensation shall be '22532/□

...

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, MANU/SC/0258/1963 : AIR 1963 SC 1405, Maula Bux Vs. Union of India, MANU/SC/0081/1969:1969 (2) SCC 554 and Union of India Vs. Raman Iron Foundry MANU/SC/0005/1974 : (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.Meha & Sons Ltd. Vs. Century Spinning and Manufacturing Company Ltd. MANU/SC/0056/1963 : AIR 1962 SC 1314 (1) and O.N.G.C. Vs. Saw Pipes Ltd., MANU/SC/0314/2003 : 2003 (5) SCC 705.

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."

43. The judgement of Ashwani Bahl vs Air India Ltd. (Supra) does not support the case of the plaintiff as in that case, the bond in question had been executed for a specialized training imparted to a pilot and it had not been possible in that case to ascertain the exact damages sustained by the plaintiff on account of breach of conditions of the bond by the defendant. Also, it is pertinent to mention that contrary to the claim of the plaintiff of award of compensation equivalent to the bond amount, even in the said case of Ashwani Bahl vs Air India Ltd. (Supra), the maximum liquidated damages stipulated in the contract amounting to about Rs. 7.5 lacs were not awarded to the plaintiff and the arbitrator as well as the Hon'ble High Court had awarded proportionate damages amounting to Rs.6,42,857/□only to the plaintiff. Besides, it is settled law that in a case where the actual damages in respect of breach of a contract can be calculated in terms of money then the same should be awarded. Similar views were expressed by Hon'ble Supreme Court of India in the case of Maula Bux v. Union of India 1969 (2) SCC 554 wherein the Hon'ble Supreme Court of India had observed that in a case where a Court is unable to assess the reasonable or actual compensation due for a breach of the contract, the Court may in such circumstances take into consideration the

damages predetermined by the parties as measures of reasonable compensation. Observations made in para 6 of judgement are noteworthy in this context and are reproduced below :

> 6. Counsel for the Union, however, urged that in the present case Rs.10,000/- in respect of the potato contract and Rs.8,500/- in respect of the poultry contract were genuine pre-estimates of damages which the Union was likely to suffer as a result of breach of contract, and the plaintiff was not entitled to any relief against forfeiture. Reliance in support of this contention was placed upon the expression (used in Section 74 of the Contract Act), "the party complaining of the breach is entitled, whether or not actual party who has broken the contract reasonable compensation".

...

44. In the light of observations made by Hon'ble Supreme Court of India in the decided case of Maula Bux v. Union of India (Supra) as well as observations made by Hon'ble High Court of Delhi in the case of M/s Sicpa India Limited Vs. Shri Manas Partim Deb (Supra), it can be safely concluded that the amount stipulated for breach of contract in a service contract provides the maximum amount of damages that can be awarded for a breach of the said contract and in a case where the actual damage can be quantified in terms of money, the same should be awarded.

45. Before applying the ratio of above-cited decided cases to the facts of the present case, it is pertinent to note that although in the present case plaintiff company has not disclosed the exact costs incurred by it on the training imparted to the defendant for becoming eligible for appointment to the post of Inflight Cabin Safety Instructor by placing on record bills of expenses incurred on the training or the statement of account of plaintiff company depicting the costs of the training undergone by the defendant as discussed in issue no. 1 above. However, the plaintiff company has itself determined the maximum amount of damages due for breach of indemnity bond-cum-service undertaking by defendant to be Rs.2 lacs.

46. The case in hand is similar in facts to the abovecited case of M/s Sicpa India Limited Vs. Shri Manas Partim Deb (Supra) decided by Hon'ble High Court of Delhi and in the present case as well, defendant Monal Sachdeva has served the plaintiff company for a major part of the bond period and had resigned on 05.12.2007 shortly before the expiry of the bond. Therefore, the defendant cannot be called upon to pay the entire sum of Rs.2 lacs to the plaintiff company for violation of the conditions of the bond. In this context, a perusal of the bond Ex.PW1/3 reveals that as per clause 1 of the bond, the mandatory service period of two years was supposed to commence from the date of successful completion of the training of the defendant as In Flight Cabin Safety Instructor. The bond was executed on 16.01.2006. It is the admitted case of the defendant that the In Flight Cabin Safety Instructor training of the defendant had commenced after 16.01.2006. In the replication filed by the plaintiff, it has been submitted in para (b) that the defendant had underwent training as understudy In Flight Safety Instructor which had commenced on 16.01.2006 and completed on 12.05.2006 as per the DGCEA approval letter. Besides, while being examined in Court as PW1, plaintiff witness Sanjay Sharma has similarly deposed in para 3 of his affidavit that the training of the defendant had commenced on 16.01.2006 and was completed on 12.05.2006 as per the DGCEA approval letter. No

suggestion has been given to PW1 by the counsel for the defendant to the effect that In Flight Cabin Safety Instructor training of the defendant had not concluded on 12.05.2006. Also, in his cross-examination by learned counsel for the defendants, PW1 Sanjay Sharma had maintained his stand that the defendant had completed his training in the month of May 2006. The relevant extract of cross examination of PW1 is reproduced below in this context :-"The Inflight Safety Instructor of the defendant had commenced on 16.01.06. The said training was conducted at the corporate office of the plaintiff in the training cell of the company at Gurgaon. The said training was completed in the month of May 2006."

47. From the above-mentioned averments made in the pleadings of the defendant as well as from the deposition of PW1 Sanjay Sharma, it can be safely concluded that the In Flight Safety Instructor training of the defendant had commenced on 16.01.2006 and was completed on 12.05.2006. Besides, as per the clause 1 of the indemnity bond-cum-service undertaking the bond period of two years was supposed to commence from the date of completion of training of the defendant. Relevant portion of the bond is reproduced below in this context:-"I shall work for a minimum period of two years with Spicejet in such functions as may be assigned to me from time to time. The two years period shall commence from the date of successful completion of my training as In flight Safety Instructor."

48. Hence, from the above-mentioned clause of the indemnity bond-cum-service undertaking, the mandatory service period of two years stipulated in the bond was supposed to commence from 12.05.2006 and would have logically expired on 12.05.2008. However, the defendant had chosen to resign on 05.12.2007 nearly 157 days prior to the expiry of the bond period. Hence, the damages to be awarded to the plaintiff company are to be calculated for the period of one hundred and fifty seven days by which the bond in question had been violated. Since a total sum of Rs.2 lacs had been determined by the plaintiff company as the maximum compensation which the plaintiff was entitled to in the event of breach of bond by the defendant by a period of two years (comprising of 731 days), therefore, for a breach of the bond occurring 157 days prior to the expiry of the bond period, the plaintiff company would be entitled to proportionate damages amounting to Rs.42954.86.

49. Hence, the issue no. 5 is decided partially in favour of the plaintiff and against the defendant by arriving at a finding that the plaintiff is entitled to the recovery of damages amounting to Rs.42,954.86 (Rupees Forty Two Thousand Nine Hundred Fifty four and Eighty Six paise only) from the defendant along with costs to the extent of decreetal amount and interests at the rate of 10% per annum for the period commencing from the date of issuance of legal demand notice for recovery of bond amount of breach of the bond to the date of institution of the present suit. Additionally, the plaintiff is also entitled to recover pendente-lite and future interest on the decreetal amount @ 10% per annum from the defendant. The suit is partially decreed in favour of the plaintiff and against the defendant on the above terms. Decree sheet be prepared accordingly.

50. File be consigned to record room after due compliance of necessary formalities.

Announced in the open Court
today on 26th September, 2014

(Jasjeet Kaur)
Civil Judge-I, New Delhi District
New Delhi