Shree Gopal Paper Mills Ltd. vs Surendra K. Ganeshdas Malhotra on 5 December, 1960

Equivalent citations: AIR1962CAL61, AIR 1962 CALCUTTA 61

JUDGMENT

A.N. Ray, J.

1. This is a suit for an injunction restraining the defendant during the continuance of the agreement of employment dated November 22, 1957 from giving his services or advice to any person or company whatsoever other than the plaintiff or from becoming interested or engaged in any enterprise or undertaking either alone or jointly with other or any other in any business or trade Other than the plaintiff's business or trade. The plaintiff is a limited company and carries on business mainly of manufacture of paper. The plaintiff runs a scheme to train up graduates fresh from the Universities, inter alia, in the manufacture of paper on their agreeing to serve the plaintiff and/or the companies under the management of the managing agents and/or their allied concerns for 17 years after completion of an apprenticeship period of 3 years. In pursuance of the scheme the plaintiff issued advertisements for recruitment of apprentices and the defendant, who had graduated from the Bombay University, applied to the plaintiff on or about June 28, 1957 for being taken in as an apprentice under the plaintiffs scheme.

2. By an agreement dated November 22, 1957 the plaintiff agreed to appoint the defendant as an apprentice. The terms and conditions of the agreement are inter alia as follows :

> "(a) That the defendant will serve the plaintiff for a term of twenty years from the date of his joining the duties i.e., September 30, 1957 including the apprenticeship period of three years at the remuneration specified in the schedule to the said agreement;
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> (b) That in the event of the defendant's work being found satisfactory, during the apprenticeship period, the plaintiff shall be entitled to retain his services for a period of further seventeen years after the expiry of the training period of three years, in the post of an Assistant Shift in charge (Pulp) or an Assistant Shift Chemist (Recovery) of a Laboratory Chemist giving him the remuneration set out in the said schedule subject to the conditions therein mentioned and intimating to the defendant its intention so to do within two months after the expiry of the apprenticeship period of three years;
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> (c) That the defendant during the continuance of his employment shall well and diligently, according to the best of his ability, employ himself in the service of the

plaintiff and shall obey the orders from time to time of the Plaintiff or its managing agents and in all respects shall conform to and comply with the directions and regulations given and made by them and shall well and faithfully serve the plaintiff and use the utmost of his endeavour to promote its interest and shall not divulge nor communicate to any person or persons whatsoever any information which he may receive or obtain in relation to the affairs of the plaintiff and/or its managing agents and shall not, nor will absent himself from the duty at any time without the sanction of the plaintiff or its managing agents first had or obtained, nor shall give his services or advice to any other person or company whomsoever, nor become interested nor engaged in any enterprise or undertaking either alone or jointly with other or any other in any business or trade;

(d) That the plaintiff or its managing agents shall be entitled to terminate the services of the defendant without notice on account of either of the following events, irrespective of the fact whether the said agreement period would have expired or not:

(i) If the plaintiff decides not to retain the services of the defendant at any time during the apprenticeship period of three years.

(ii) If the defendant fails to perform his duties to the satisfaction and approval of the Plaintiff and/or its managing agents who shall have the absolute discretion in deciding whether the defendant does so and their certificate shall be final and conclusive between the parties hereto.

(iii) If the defendant shall at any time wilfully disobey or be found unable to perform or comply with all lawful instructions given to him by the plaintiff and/or its managing agents or if he fails to observe proper discipline, or if he fails to carry out the conditions and stipulations of this agreement, or if he be considered guilty of neglect of duty, insobriety, dishonesty, insubordination, fraud, or other indiscretion or any offence under the law of the country.

In the event of the Company terminating the Agreement under this clause, the Assistant shall have no claim whatsoever against the Company."

3. The defendant acted as an apprentice and he was posted in the Mills of the plaintiff at Yamunanagar in the district of Ambala. It is alleged that the defendant started his training in paper manufacture and was given full facilities to learn the technicalities thereof and to get specialised knowledge and experience therein. The defendant, St is also alleged, was given special training in the manufacture Of paper and by reason of his association with the said Paper Mills the defendant acquired special knowledge and experience in the manufacture of paper and by reason of his having acquired such knowledge and experience the plaintiff came to repose confidence in him.

4. On or about February 1, 1958 the defendant applied for leave on ground of illness and left the Mills. Thereafter the defendant did not resume his duties and applied for further leave from time to

time.

5. By a letter dated May 24, 1958 the plaintiff called upon the defendant to present himself for being medically examined by the plaintiff's doctor and informed the defendant that after the medical report was obtained certifying the defendant's illness then only the plaintiff would consider the defendant's application for extension of leave, The defendant failed to present himself before the plaintiff's doctor for being examined and did not also resume his duties.

6. By a letter dated July 10, 1958 the defendant requested the plaintiff to terminate his services. By the letter dated July 17, 1958 the plaintiff called upon the defendant to present himself before the plaintiff's doctor within 14 days and further informed the defendant that in case of his failure so to report, the plaintiff would apply for injunction restraining the defendant from serving elsewhere.

7. In these circumstances the plaintiff has instituted the suit urging that the defendant wrongfully threatens and intends to serve elsewhere in similar industry and to pass on the knowledge and information acquired ay aforesaid regarding the manufacture of paper to the detriment of the plaintiff's interest.

8. The defendant in the written statement stated that under the agreement there was a period of apprenticeship for three years and in the event of the defendant's work being found satisfactory the plaintiff might retain his services. In these circumstances the defendant states that in respect of the period of 17 years after the said apprenticeship period there was no concluded contract of service between the plaintiff and the defendant. The defendant further states that the agreement imposes unreasonable restraint on the defendant from exercising lawful profession, trade and business of any kind. The defendant further alleges that the contract imposes restrictions on the personal liberty of the defendant and reduces him to the status of a serf. It is further alleged that the contract wants in mutuality and there is no reciprocal obligation upon the employer vis-a-vis the employee. The restraints imposed by the contract are alleged to be not reasonable in the interest of the defendant and to be against public policy.

9. It is further stated that the stipulation in the agreement confers arbitrary powers on the plaintiff to terminate the agreement and there is no such provision made in favour of the defendant. The defendant further impeaches the contract on the ground of mutuality.

10. The defendant denies that due training was imparted to him in the paper manufacture and/or that he was given full facilities to learn the technicalities. The defendant states that the plaintiff committed breach of the agreement by not giving him the necessary training as covenanted in the agreement of apprenticeship but by utilising his services for gain and manufacturing work. The defendant further denies that he was given any special training or that he acquired any special knowledge or experience in the manufacture of paper.

11. The defendant states that he actually fell ill and therefore his application for leave was granted by the local manager. The defendant states that he validiy terminated his contract with the plaintiff by the letter dated July 10, 1958. The defendant denies any wrongful act. The defendant states that the

contract has been validiy terminated by the defendant.

12. The defendant denies that any time he threatened and/or intended to serve elsewhere in similar industry and/or to pass on the knowledge and information if any acquired as alleged. The defendant denies that he has been imparted any trade secret or special knowledge or information by the plaintiff. The defendant states that after terminating his contract with the plaintiff the defendant has sought employment in a Pharmaceutical firm having no concern with manufacture of paPer. The defendant denies that he threatens or intends to continue or do any wrongful act or that the plaintiff will suffer any loss or injury.

13. The following issues were framed at the trial:

1. Has this Court jurisdiction to try this suit?

2. Was there a concluded agreement for service of 17 years to commence after termination of apprenticeship for 3 years?

3. Was any specialised training imparted to the defendant?

4. Is the said agreement unreasonable, in total restraint of trade or against public policy?

5. Has the defendant validly terminated his contract with the plaintiff by letters dated 3rd and 10th July 1958?

6. Is the plaintiff entitled to the injunction claimed?

7. Is the plaintiff entitled to Rs. 12,000/- or any other sum as damages in addition to or in, lieu of injunction claimed by them?

8. To what relief, if any, is the plaintiff entitled? .

14. On behalf of the Plaintiff there is the oral testimony of Munshi Singh Tyagi and Dewan Dinanath. Munshi Singh Tyagi is the Deputy General Manager of Sree Gopal Paper Mills Ltd., nnd Dewan Dinanath is the General Secretary of Karamchand Thapar Ltd. The oral evidence on behalf of the plaintiff is that there is a scheme for recruiting graduates from Universities. The apprentice is for the first 10 or 15 days taken round the various departments to give him an overall idea of the various sections of the Mill. Thereafter an apprentice is put in a particular section and he sees the work in that section, and his departmental head explains to him how work of that section is carried on. Then he works under the supervision of the Supervisor or a Sirdar or a workman. Thereafter he does it independently and every evening an apprentice has got to be interviewed by the departmental head to find out if he has any difficulty or if he has utilised his time profitably. As far as the training programme is concerned it is drawn by the Technical head for all apprentices, and then it is sent to the Deputy General Manager for approval. The training programme in this particular case was

drawn up by J. C. Agarwal. J. C. Agarwal was not called. As far as the Deputy General Manager is concerned his evidence was that the apprentices were required to maintain a note book in which they were to write what they had leaint every day, and any books which had been recommended by the departmental heads. The apprentices were to go every week to the senior departmental head and every fortnight they were to come to the Deputy General Manager. He said that he went through the note books to find out whether the apprentices had utilised their time profitably. The witness further stated that every apprentice had to maintain a note book. He further stated that theoretical lectures were not given as such, but there were facilities of a library. The library was open to all the apprentices so that they might acquaint themselves with various Journals & other books. There is a scientific society of the Mills in which lectures on technical subjects are delivered by various departmental heads and apprentices are required to attend these lectures as part of their training. The witness was asked as to whether training was imparted to the defendant and if so what was the nature thereof. The witness wanted to look at the programme and stated that for about 12 or 15 days the defendant must have been initiated in the general set up of the Mill and then his training started from October 15, For three months the defendant was trained in Dusters, Digesters, Pocher, Green Side, Screening and Plant He was to be trained, but that occasion never arose as the defendant had left. The witness referred to the progress report of the defendant. The report was made by William Marshal. William Marshal was not called as a witness. The witness signed the report and stated that he agreed with William Marshal. The witness was further asked about stipend and other benefits that the defendant was entitled to. The witness stated that if the defendant left the company, the company would suffer for a year till the new man was ready to take the job. In cross-examination the witness suggested in Q. 78 sequiter that "the process, i.e., grass cooking was significant. Good production depend on how the Supervisor manipulates the ratio of the chemicals and pressure of the steam and for how long he keeps it." The witness said' that it amounted to trade secret. The training was imparted by K.C. Khanna. K.C. Khanna was not called as a witness. The witness stated that he personally never gave instruction to the defendant, but he checked up that the defendant received all training. This is, in short, is the evidence on which the plaintiff asks for an injunction.

15. The agreement on which the suit is founded is contained in twelve clauses. It is stated that the Company shall employ the Assistant at the 'Company's Factory and/or allied concerns. The Assistant is to serve for a period of 20 years with effect from September 30, 1957 including the apprenticeship period of three years. The apprentice is to keep in deposit with the company a cash security of Rs. 1000/, payable in six instalments, the first instalment being a sum of Rs. 500/-, the other sum of Rs. 500/- being payable in instalments of Rs. 100/- each. The security deposit is to earn interest at the rate of 4 per cent. The apprentice or the assistant is entitled to withdraw the security deposit after three months from the date of the termination of the agreement, the Company having the right to adjust any amount due from him under the agreement or otherwise. In the event of the Assistant's work being found satisfactory during the apprenticeship period, the company shall be entitled to retain the services for a further period of 17 years. The annual increments in the salary of the assistant during the apprenticeship period and service periods would depend on the efficient and honest discharge of duties by him to the entire satisfaction of the managing director for the time being. Clause 7 contains the restrictive covenant. The important parts of the covenant are as follows:

..... nor shall give his service or advice to any other person or company whomsoever, nor become interested nor engaged in any enterprise or undertaking either alone or jointly 'with other or any other in any business or trade."

The agreement provides that the apprentice will be entitled to a salary of Rs. 75/- per month for the first, year, Rs. 85/- per month for the second year and Rs. 95/- per month for the third year. On confirmation he will have a salary of Rs. 125/-per month in the grade of Rs. 125-10-255/E.B.-15-800. At the end of 20 years' service the assistant will be entitled to Rs. 300/- per month. In addition to the salary -the assistant will be entitled to receive during the apprenticeship and service period dearness allowance according to the rates fixed for the centre where he works, which may be discontinued at any time at the discretion of the company. The other facilities are as and when the same are available all the facilities to which the staff of his status is entitled to at the centre of his posting on the same terms and conditions as may be fixed from time to time far the purpose.

16. The main question in this suit is whether the agreement is in restraint of trade. Under Section 27 of the Indian Contract Act every agreement by which any one is restrained from exercising a lawful profession or trade or business of any kind is to that extent void. Section 27 further enacts that one who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the specific local limits so long as the buyer or any person deriving title to the good will from him carries on a like business provided that such limits appear to the court reasonable, regard being had to the nature of the business. Ordinarily, there are three types of agreements in restraint of trade. First, there can be an agreement between master and servant whereby the servant covenants not to set up business on his own account on leaving his service or to enter into employment with a rival firm. Secondly, there can be an agreement between buyer and the seller of a business whereby the seller covenants not to carry on a business which will compete with that of the buyer. Thirdly, there can be an agreement between the traders whereby they contract to regulate their supplies or production or price of articles.

17. The decision of Lord Macclesfied in Mitchel v. Reynolds, (1711) 1 P. Wms. 181 is the foundation of the law on the subject. It was held there that the validity of a contract would depend upon whether the contract was reasonable and fair. A distinction was made between general and partial restraints and until the close of the 19th Century it was generally held that an agreement imposing general restraint was necessarily void but that a partial restraint was prima facie valid and was prima facie enforceable. The recent law in England is embodied in the trilogy of cases Nor-denfelt v. Maxim Nordenfelt Guns and Ammunition Co., 1894 AC 535, Mason v. Provident Clothing and Supply Co. Ltd., 1913 AC 724 and Herbert Morris Ltd. v. Saxelby, 1916-1 AC 688. In Nor-denfelt's case, 1894 AC 535, Lord Macnaghten for the first time drew a distinction between cases of master and servant agreement on one hand and cases of the sale of business on the other and said that there is obviously more freedom of contract between buyer and seller than, between master and servant. Lard Macnaghten further said that all contracts which had for their object the restraint of trade were prima facie void but all might be justified it they were reasonable in the interests of the parties and of the public.

> "Restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed it is the 'only' justification. (I have underlined (here into ' ') the word 'only') if the restriction is reasonable--reasonable, that is, in reference to the interests of the parties concerned, and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public." See 1894 AC 535 at p. 565 per Lord Macnaghten,

18. The English decisions lay down the following principles. First, all restraints of trade in the absence of specially justified circumstances are contrary to public policy and void. Secondly, it is a question of law whether the special circumstances do or do not justify the restraint; and if a restraint is not justified, the court will, since it relates to a matter of public policy, not enforce agreements which are contrary to public policy. Thirdly, a restraint can only be justified if it is reasonable in the interests of the parties and in the interests of the public. Fourthly, the onus of showing that the restraint is reasonable between the parties rests upon person alleging it to be so. The onus of showing that notwithstanding that a covenant is reasonable as between the parties, it in nevertheless injurious, to the public interest and therefore void, rests upon the party alleging it to be so.

19. It is, therefore, for the court to decide whether there is a restraint and whether the restraint is valid or justified. The validity cf a restraint has to be tested. The tests are two-fold, First, what is the restraint directed against? Secondly, is the restraint justified? A covenant of restraint is designed to protect the legitimate proprietary interests of the covenantee. An employer may protect his trade secrets against their disclosure or revelation by an employee. A buyer of the goodwill of a business may protect it from the competitive activities of the seller. In no case will the law allow a covenant merely to avoid competition. Nor will law allow a restraint wider than the protection of the proprietary interests requires. In the Nordenfolt case 1894 AC 535 it was held to be reasonable in the interests of the parties to restrain, Nordenfelt from trading in guns, gun mountings or carriages, gun powder, explosives or ammunitions since the business that lie had sold, for a large sum of money consisted in the manufacture of those very things. This part of the covenant was held to be reasonable, in the interests of the public since it secured to England the business and inventions of a foreigner and thus increased the trade of , the country. On the other hand the covenant to restrain Nordenfelt from engaging in any business, competing or liable to compete in any way, with that for the time, being' carried on by the company was unreasonable since it was wider than was reasonably necessary to protect the proprietary interests that the company had, bought. That part of the covenant was severed from the rest and declared void. In cases of covenant relating to sale of the goodwill of a business restraints are imposed more readily and more widely upon the vendor of a business in the interests of a purchaser for if the vendor is free to continue his trade with his Own customer the purchaser may lose much of the value of the business or proprietary interests acquired.

20. In contracts of service it is the proprietary interest owned by the master that requires protection. As Lord Parker said in 1916-1 AC 688.

> "The reason, and the only reason, for upholding such a restraint on the part of an employee is that the employer has some proprietary right whether in the nature of trade connection or in the nature of trade secret, for the protection of which such a restraint is--having regard to the duties of the employee--reasonably necessary. Such a restraint has, so far as I know, never been upheld if directed only to the prevention of competition or against the use of a personal skill and knowledge acquired by the employee in his employer's business."

In master and servant contracts restraint can be imposed upon a servant in respect of trade secrets and business connection of the master. In the case of Forster and Sons Ltd. v. Suggett (1918) 35 TLR 87 the works manager of the plaintiff who were chiefly engaged in making glass and glass bottles was instructed, in certain confidential me those concerning inter alia the correct mixture of gas and air in the furnaces. He agreed that during the five years following the determination of his employment he would not carry on in the United Kingdom or be interested in glass bottle manufacture or in any other business connected with glass making as conducted by the plaintiffs.

The restraint for protection of trade secrets was held to be reasonable. It is indispensable that the employer must prove definitely that the servant has acquired substantial knowledge of some' secret process or mode of manufacture used in the course of his business. In our country the restriction beyond the period of employment would not, how ever, be valid. Similarly, an employee is entitled to protect his trade connection. The nature of the business and the nature of the employment are important considerations justifying a restraint. It may appear that the servant had no access to the trade secrets of his master or to his customers. If that is so, the covenant is in gross and unenforce able. As Farwell, J., said in Towns End v. Tarman (1900) 2 Ch 69S at p. 703.

> "Now, if one man apart from any business takes a covenant in gross from another man, that he will not trade at all, that is simply oppressive.
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> He does not require it to protect his own interest, because he has no interest to protect."

In the Herbert Morris case, 1916-1 AC 688 Lord Atkinson said that an oppressive agreement meant that it would, if enforced, deprive a person for lengthened period of the power of employing that mechanical and technical skill and knowledge which his own industry, observation and intelligence have enabled him to acquire in the very specialised manufacturing, business, thus forcing him to begin life afresh as it were, depriving him of the means of supporting himself and his family. Lord Atkin-son further said that the general public suffer with him for it is in the public interest that a man should be free to exercise his skill and experience to the best advantage for the benefit of himself and of all those who desire to employ him. See 1916-1 AC 688 at pp. 698, 699 per Lord Atkinson.

21. In all cases of covenants of restraint between master and servant the two questions are first what are the interests of the employer that are to be protected and secondly, against what is he entitled to have them protected. The master is entitled to be protected in regard to his interests in trade secrets

and secret process of manufacture. That protection is secured by restraining the employee from divulging those trade secrets or putting them to the use of the servant. The master is also entitled to be protected against invasion of his customers Or clientele but the master is not entitled to be protected against competition. In the present case the restraint sought to be unforced is not against protection of trade secrets or of trade connection. The restraint sought to be enforced here is that the defendant during the continuance of his employment shall not give his services or advice to any other person or company or be engaged in any enterprise or undertaking to any business or trade. In the present case there is no trade secret imparted to the defendant. In paragraph 16 of the plaint it was alleged that the defendant threatened and intended to pass on the knowledge and information acquired regarding the manufacture of paper to the detriment of the plaintiff's interest. In paragraph 7 of the plaint it was alleged that during the period of apprenticeship the defendant was given training in the manufacture of paper and that the defendant acquired special knowledge and experience in the manufacture of paper. There is no allegation in the plaint that any thrade secret or confidential information was imparted to the defendant. The oral evidence on behalf of the plaintiff was that the defendant was to be given training but since the defendant left the occasion did not arise. Counsel for the plaintiff submitted that if the defendant continued the employment he would have received training, The defendant's evidence was that he did not receive any special training. I am inclined to accept the defendant's evidence and I am of opinion that no special training or trade secret or confidential information was imparted to the defendant. Furthermore I hold that there has been no proof that the defendant has threatened or committed any breach of the covenant, namely, not to divulge or communicate any information in relation to the affairs of the plaintiff. In the case of Sir W.C. Leng and Co. v. Andrews, (1909) 1 Ch. 763 it was held that an employer cannot prevent his employee from using the skill and knowledge in his trade or profession which he has learnt in the course of his employment by means of directions or instructions from the employer. The court interferes only in the protection of trade secrets. In the present case there is no evidence that any confidential information in the nature of trade secret was entrusted to the defendant. Nor is there any evidence that the defendant threatens or intends to commit any breach of communication of trade secret. In the case of (1916) 1 AC 688 special method, of organisation in the business was held not to be a trade secret. In that case it was also held that the company's system of standardising mechanical apparatus capable of being used in more than one class of machine was not a trade secret. There was no suggestion that the defendant acquired any trade connection of the plaintiff.

22. The plaintiffs case is that the defendant was employed for the purpose of being trained up and if the defendant left the employment the system of training started by the plaintiff would be rendered inconvenient in having to recruit persons. As a matter of fact the evidence is that within one year such posts have been filled up. The plaintiff's claim is, therefore, that since the defendant has agreed with the plaintiff to be in service for 20 years the defendant will not during that period serve anywhere else. As Lord Shaw said in the Herbert Morris case 1916-1 AC 688 that it would be an audacious claim if a master were entitled to a claim against competition per se and a claim to cripple rivals in trade by the denial to them of a supply of all skilled labour and to compel rivals to seek for labour in a foreign market and from the point of view of the servant it would amount to a claim to put in such a bondage in regard to his own labour that if he sought to find employment he must for 20 years of his life become an exile. In the present case there is no question of the defendant joining even a rival concern. The defendant was willing to give an undertaking that he would not join a

paper Mill but the plaintiff was not agreeable to accept the undertaking. The plaintiff wanted an injunction to restrain the defendant from working anywhere else. In the plaint it was alleged in paragraph 16 of the plaint that the defendant threatened and intended to serve elsewhere in a similar industry. The case at the trial was that the defendant was working with a Pharmaceutical firm. Counsel for the plaintiff submitted that the plaintiff was entitled to restrain the defendant from serving anywhere else. Such an agreement is in my opinion a total restraint of trade.

23. Counsel on behalf of the plaintiff relied on the decisions of V.N. Deshpande v. Arvind Mills Co. Ltd., Ahmedabad reported in AIR 1946 Bom 423 and Bum and Co. v. Macdonald, ILR 36 Cal 354, in support of the contention that if the agreement stipulated that a person was to serve for 20 years and during the continuance of that employment he was not to serve anywhere else the agreement would not be in restraint of trade. The servant, it was contended, would be free to work during the 20 years and therefore the agreement was in furtherance of trade. If the agreement means that since the servant is during the period of employment free to serve the employer or the master then in no case will there be a question of restraint of trade or operation of a negative covenant. A negative covenant means a restraint. Therefore the agreement in its entirety consists of first, the agreement to serve the employer for a specified time and secondly, a negative covenant not to serve anyone else during that specified period. The question is whether that negative covenant is in restraint of trade or not. In deciding whether there is a restrains or not the court will have to decide first, whether there is in fact a restraint and secondly, whether the restraint is justified. It was thus held in the Deshpande's case AIR 1946 Bom 423 that the question whether a particular covenant was unreasonably wide has to be decided by the nature of the agreement, the qualifications of the employee and the service he is to render along with the places where the employee can get alternative service of the same nature. Applying the test the agreement was held in Deshpande's case AIR 1946 Bom 423 not to be unreasonably wide. Reasonableness is one of the tests for the validity of a restraint. If the test of reasonableness were eliminated and if all agreements stood by the single test as to whether the servant or employee was given the opportunity to work during the period of employment then there could be no instance of restraint of trade for in each case the employee would be free to serve during the period of employment. Under Section 27 of the Indian Contract Act reasonableness is one of the tests in regard to restraint imposed in the sale of business. In the case of master and servant any agreement by which any one is restrained from exercising a lawful profession is to that extent void. The words "to that extent" in Section 27 of the Indian Contract Act imply a determination by the court as to whether the agreement is vitiated as being in restraint of trade. It is stated in the Pollock and Mulla's Contract Act 8th edition at page 232 that if by eliminating objectionable phrases, though without adding or altering any words, there remains a covenant which is reasonable this will be enforced.

24. The doctrine of severance in contracts between master and servant will be permitted if there is really a combination of several distinct covenants and the elimination of objectionable phrases does not alter the entire scope and intention, of the agreement. In the case of Attwood v. Lament, (1920) 3 K. B. 571, Lament covenanted not to carry on the trade of tailor, dress maker, general outfitter, milliner, haberdasher, gents, ladies or children's outfitter within 10 miles. The blue pencil test was applied by the Divisional Court and the only word which was allowed to remain was 'tailor'. The Court of Appeal reversed that decision and refused severance as the contract would then be altered.

A covenant has to be applied in its unaltered form. Younger, L. J. said that the agreement in that case was nothing more than an agreement not to trade in opposition with the employers in any part of their business. As to the doctrine of severance Lord Moulton in the Mason Case, 1913 A. C. 724 said, "I do not doubt that the court may and in some cases will, enforce a part of a covenant in restraint of trade, even though taken as a whole the covenant exceeds what is reasonable. But, in my opinion, that ought only to be done in cases where the part so enforceable is clearly severable, and even so only in cases where the excess is of trivial importance or merely technical, and not a part of the main purpose and substance of the clause. Ill would, in my opinion, be pessimi exempli if when an employer had exacted a covenant deliberately framed in unreasonably wide terms the courts were to come to his assistance, and by applying their ingenuity and knowledge of the law carve out of this void covenant the maximum of what he might validly have required."

Lord Shaw also said in the Mason case 1913 AC 724, that 'Courts of law should not be astute to disentangle such contracts and to grant injunctions Or restraints which are not justified by their, terms." It is, therefore clear that the doctrine of severability means that a contract can be severed if the severed parts are independent of one another and can be severed without the severance affecting the meaning of the part remaining. If the severance of a part of the agreement gives it a meaning and object different in kind and not only in extent the different parts of it cannot be said to be independent. On this principle the agreement in Attwood's case (1920) 3 K. B. 571, by which the employee agreed that he would not any on in any of the trades or businesses, that is to say, the trade or business of a tailor, dress-maker, general outfitter, milliner, haberdasher etc. was held to be not seyerable.

25. In Attwood's case (1920) 3 KB 571, it was held that if all the trades were exercised except that of tailoring the result would be not merely to remove one of several distinct promises but fundamentally to alter the meaning and effect of the original contract. The real test is whether the obnoxious promise forms the whole or only part of the consideration. In the present case the offending promise is that the defendant will not give his services or advise to any person or any company in any business or trade. In my opinion the present agreement is incapable of any severance. The main purpose of the contract is unalterable and unseverable. The entire agreement is bad.

26. In Deshpande's case, AIR 1946 Bom 423, the employee was a weaving master and the agreement contained a clause that the weaving master shall not during the continuance of the agreement or thereafter divulge any of the secret processes or informations etc. and further that the weaving master agreed not to leave the services and not to serve or engage himself to work for any other person in the same capacity. An injunction was sought restraining the defendant from serving elsewhere in breach of the negative covenant, It was contended on the evidence in Deshpande's case, AIR 1946 Bom 423, that it was difficult to get weaving master during the time of the war. Though the injunction was asked to restrain the defendant from serving elsewhere the injunction was granted restraining the defendant from working only as a weaving master or under any title discharging substantially the same duties as a weaving master. The nature of the servant's employment was an important ratio in that case. A greater measure or protection is allowed to the master against the subsequent activities of a superior servant. Furthermore, in Deshpande's case,

AIR 1946 Bom 423, the agreement restrained the employee from working anywhere else in the same capacity. As to the contention in Deshpande's case, AIR 1946 Bom 423, that the restriction, preventing the employee from taking up service elsewhere being unreasonable and void it was held that the restraint applied to his activities as a weaving master. The area of operation of the restraint throughout India was held to be reasonable according to the conditions of textile trade in India. In the Macdonald case, ILR 36 Cal 354, an employee was brought out from England and the company paid the expenses of his passage to India. Macdonald was to serve Burn and Co., for a period of five years and during the period of the agreement the plaintiff was entitled to terminate the same without assigning any reason in which event Macdonald was entitled to get one month's salary and a second class passage to England. There was no express negative covenant in the agreement restraining the defendant from taking service elsewhere. Injunction was granted on the principles of equity, justice and good conscience and it was observed that assistants brought out to India at considerable expense by the employers could not treat their employers in the high handed fashion. In Macdonal's case, ILR 36 Cal 354, there were special circumstances to justify the exercise of an injunction. He was a person with special technical skill and was brought out to India for that purpose. The defendant ire the present case is a science graduate and there is no dearth of such persons. The defendant here after he would serve out the apprenticeship period would get a remuneration of Bs. 125/- per month and would at the end of 20 years get a salary of Rs. 300/- per month. The defendant stated that he had no intention of seeking employment in a rival firm. The defendant has received no special knowledge of any trade secret or of any process or manufacture. It was contended that the defendant was trader a scheme of training and if the defendant committed a breach of the agreement the plaintiff was entitled in furtherance of such a trade scheme to on injunction restraining the defendant from working elsewhere. This contention to my mind is designed to prevent the defendant from using his personal skill and knowledge in the service of another person. In the case of Kores Manufacturing Co. Ltd. v. Kolok Manufacturing Co. Ltd., 1959 Ch. 108, it was held that the maintenance of a constant supply of labour is not a proprietary interest not is capable of protection in a contract between one master and another and a restraint having this and in view will be void notwithstanding that it may Be reasonable in the interest both of the parties and of the public. In the Kores' case, 1959 Ch. 108 (SIC) rival manufacturers agreed that neither would employ a servant who had been employed by the other during the previous five years. The principle laid down in that case applies equally, in my opinion, in contracts between masters and servants if the agreement is designed merely to prevent the servant from entering the employment of another person. A restraint against competition is a restraint in gross and is not entitled to be protected

27. The agreement in the present case states that the defendant shall during the continuance, of his employment according to the best of his ability employ himself in the service of the plaintiff and shall not give his services or advice to any other, person or company in any business or trade. The Bombay decisions Charles Worth, v. Macdonald, ILR 23 Bom 103 and Deshpande's case, AIR 1946 Bom 423, state that an agreement whereby a man agrees to work for a certain period does not restrain him from doing any work and therefore such an agreement is not in restraint of service. To my mind, that Is not a complete reading either of the decisions or of Section 27 of the Indian Contract Act.

The restraint lies, obviously, not in the fact that the employee will work with the employer during a certain period but that he will not work with another person during that period. To suggest that since an employee is free to work for a certain period with a certain employer he is not restrained from working elsewhere is tautologous. If the question rested merely on a determination that an employee was free to serve an employer for a certain period and therefore there was no restraint during that period no agreement of such a type would be in restraint of trade. Similarly that part of the agreement which stipulates that a person shall not during the period specified in the agreement serve any other person would in all cases be in restraint of trade.

Therefore the question always: remains to decide whether in fact there is a restraint and if so what it is for which the restraint is imposed and secondly, what it is against which protection is required. The two tests laid down by Lord Macnaghten, namely, first, that the restraint must be reasonable in the interests of the parties and secondly, that it must be reasonable in the interests of the public are therefore important. The interests of the parties must afford no more than adequate protection of the party in whose favour it is imposed, Apart from the question of trade secrets and confidential information which require protection an employer has in my opinion, no legitimate interests la preventing-

an employee from entering the service even of a competitor on the ground that the new employer is a competitor. As Jakins L. J. said in the Kores case, 1959 Ch. 108 at p. 125, "The danger of the adequacy and stability of his complement of employees being impaired through employees leaving his service and entering that of a rival is not a danger against which he is entitled to protect himself by exacting, from, his employees covenants that they will not after leaving his service, enter the service of any competing concern."

28. Lord Parker in Attorney General of Commonwealth Australia v. Adelaide Steamship Co. Ltd. 1913 A. C. 781 said that it was necessary to consider in each case two questions ; (1) what was it for which protection was required and (2) what was it against which protection was required. In the present case it has been contended that protection is required to provide for unimpaired 'service of employees and stability in the complement of employees of the plaintiff company. In other words the plaintiff's contention is that the employees should not be allowed secession from the Employment of the plaintiffs. The agreement in, the present case, in my opinion, is not designed against (Sic) protection of trade secrets or confidential information or employment with any rival firm. In shore the question is whether the plaintiff company is entitled to protection against continuity in service by employees. Such protection can be adopted by an employer by paying good wages and making their employment attractive. It would, in my opinion, be against public policy to compel parties to be forced to any employment simply because the agreement provides that the person shall serve X Company and shall not serve any other person during a fixed period. Section 56 (f) of the Specific Relief Act enacts that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. An injunction would be granted in instances where there is in the first place a negative covenant and secondly, where the court thinks fit and proper to grant an injunction. In the present case, I am of opinion that the restrictive covenant is too wide in terms and is unreasonable and is not for the protection of any proprietary interest of the plaintiff. The plaintiff company has no proprietary interest in the bare

service of an employee. There is no enforceable negative covenant.

29. In view of my decision that there is no enforceable covenant preventing the defendant from being employed at another place the plaintiff is not in my opinion entitled to an injunction. It is true that though a plaintiff may not obtain specific performance of a contract for personal services the plaintiff may in certain circumstances obtain an injunction under Section 57 of the Specific Relief Act. The pre-requisite for an injunction is that there must be an agreement not to serve at another place. In the present case there is no such enforceable agreement. The remedy is extraordinary and discretionary. The facts and circumstances of this case and specially the terms of the agreement which I have already discussed are sufficient consideration to hold that the grant of an injunction is not only (sic. not ?) warranted but will also be hardship on the defendant. Younger, L. J. in Attwood's. case (1920) 3 K.B. 571 said that the system of printed covenants prepared beforehand for signature by every future employee, irrespective of the nature of his employment of his personal qualifications, is to be deprecated in the interest of fairplay, and the system is only likely to disappear, if it be thoroughly understood by employees that such covenants will not be assisted in cases where in their integrity they are found to be oppressive. I have already held that the agreement is oppressive. Ordinarily a person knows that he is bound by the terms ho agreed to Counsel for the plaintiff relied on the decision of G.W. Davis v. Maung Shwe Co. 38 Ind App 155 (PC) and the observations appearing at pp.168-69 that a bargain may be onerous but not unconscionable. I am of opinion that the agreement in the present case if it could be enforced by injunction would also give the plaintiff an unfair advantage over the defendant. To my mind this is not a case where an injunction can be granted.

30. Counsel on behalf of the defendant raised certain questions as to the conduct of the defendant with regard to correspondence. In cross-examination of the defendant it was, suggested that he was working with Ravisons and he was yet writing to the plaintiff company asking for further leave. It was further suggested that the defendant was describing himself as an Apprentice of the plaintiff company at a time when the defendant was working with Ravison. The defendant in answer stated that if he informed the plaintiff that he had been working with any particular organisation he might be injured. I do not see anything unnatural on the part of a young boy of 21 or 22 in taking the attitude he did in the correspondence. There is nothing wrong in describing himself as Apprentice for a might be easier for the plaintiff company to locate the particular person by designation that he append ed to the letter.

31. Counsel On behalf of the defendant contended that there was no concluded agreement with regard to 17 years inasmuch as the clause showed that after the apprenticeship period was over If the defendant was found to be efficient there would then be an employment for the period of 17 years.

The period of Apprenticeship has just been over.

The defendant left within 3 or 4 months of his commencement of Apprenticeship period. Counsel on behalf of the plaintiff contended that the agreement in its entirety was for the period of 20 years and it could not be divided to spell two agreement.

The plaintiff's contention, was that there was concluded contract for 20 years. The clause providing for 17 years after the expiry of the apprenticeship period was construed by the plaintiff to be similar to clause for renewal of an option. As to whether there has been concluded agreement with regard to 17 years I am of opinion that it is not necessary in the present case to give any decision on that aspect of the matter.

32. The question of jurisdiction was not really pressed by counsel for the defendant. The main question is whether the agreement is in restrained of trade and whether the plaintiff is entitled to an injunction. Counsel for the plaintiff conceded that the plaintiff was not asking for any damages in addition to or in lieu of injunction. It is therefore not necessary to go into it at all. The main question being whether the agreement was in restraint of trade and as I have already indicated that the agreement is bad the suit fails. The suit is dismissed with costs. Certified for two counsel.