Marius A.M.D. v IBL Ltd

2025 IND 15

Cause Number 229/18

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Anne Marie Doreen Marius

Plaintiff

v.

IBL Ltd

Defendant

Ruling

In this plaint, Plaintiff has averred in a gist that-

(a) She had been in the continuous employment of Defendant since 11 July 1994.

(b) In July 2013, following the acquisition by Ireland Blyth Limited of Engitech Limited, Plaintiff was informed that her original contract of employment namely all the clauses, terms and conditions were being maintained.

(c) As from August 2013, Plaintiff's monthly remuneration was paid by Ireland Blyth Limited (now Defendant). She was in receipt of a monthly basic salary of Rs 61,950 and was entitled to bonus, commission, car benefit, all paid by Defendant.

(d) During a meeting held on 16 February 2016, she was informed of the future closure of Engitech Limited and the transfer of the Street Lighting department to the Electrical Division of another subsidiary of Defendant and of the Bearing's Department being removed from her responsibility which would lead her to no longer obtaining commissions for sales of those products.

(e) By way of a letter dated 3 June 2016, she informed Defendant, through Engitech Limited, that she did not agree to the transfer which was decided unilaterally and in breach of the provisions of the Employment Rights Act.

Thus, she has claimed that the alleged acts and doings of Defendant amounted to a serious breach of contract and to "constructive dismissal" and therefore, Defendant was indebted to her in the sum of Rs 9,216,376.

Defendant, on the other hand, in its plea has essentially averred that-

(i) Plaintiff was not employed by Defendant but by Engitech Limited, a subsidiary of the Defendant. Ireland Blyth Limited was merely acting as a processing agent for Engitech Limited with the payment of remuneration being contractually outsourced to Ireland Blyth Limited head office for administrative reasons.

(ii) Plaintiff sent a letter dated 3 June 2016 to Engitech Limited, in which she formally stated that she did not accept the transfer. Again, in that letter, she maintained that she was an employee of Engitech Limited.

(iii) Defendant is not indebted to her in any sum claimed or in any sum whatsoever.

After the close of the case for the Plaintiff, learned Counsel for the Plaintiff stated that the whole case of the Plaintiff was that she was employed by Defendant's company. Defendant's contention is that she was not employed by it but by Engitech Limited hereinafter referred to as "Engitech".

In the meantime, he has obtained information of a verifiable nature which he verified as regards the payroll at the Defendant's company and Engitech. He has those documents with him but he will need to call the Mauritius Revenue Authority hereinafter referred to as "MRA" to establish that fact which was not known to him at the time when the matter was heard on the last occasion.

He has formally moved to reopen the case of the Plaintiff since:

1. He has information which he needs to present to the Court through the witness of the MRA which tackles with the Defendant's case namely that Engitech did not have a payroll;

2. This evidence was not available at the time when the case was lodged since it was only in possession of the Defendant company and the MRA; and

3. It only became available to him recently after the close of the Plaintiff's case.

In these circumstances, he has stated that it would be prejudicial to the Plaintiff if such evidence is not adduced and it does not cause prejudice to the Defendant because the Defendant has not opened its case yet.

The Defendant has objected to the reopening of the Plaintiff's case on two grounds:

1. There are no new facts that the Plaintiff just became aware of;

2. Plaintiff is trying to adduce confidential information before the Court without seeking a Court order.

The stand of learned Counsel for the Plaintiff is that the only issue why he wants to reopen the Plaintiff's case is simply to ask the MRA whether or not Engitech has a payroll. The answer will be whether it has a payroll or not. He does not want to ask more information as he does not need more information. He does not want to go against the confidentiality clauses by calling for information belonging to individuals who are not parties to the present case. He referred to the plea of Defendant dated 5.3.2019 at paragraph 11(b) wherein Defendant *"denies the other averments set out in the said paragraph, puts the plaintiff to the proof thereof, and repeats that the Ireland Blyth Ltd was only the processing agent for the payment effected to plaintiff as it had a payroll system which Engitech did not have. (…)"* **(emphasis added)**

Here, in the plea, it is said that Engitech did not have a payroll. Now the only purpose for him to call that witness is to ask the MRA whether Engitech has a payroll and if the MRA is aware that it had a payroll. Because normally to have a payroll, the company has to be registered there. The whole purpose of reopening the case for the Plaintiff is to answer that paragraph. That's all. He wants the MRA to come and tell the Court whether Engitech was registered and had a payroll. Nothing more and nothing less.

However, the Defendant has objected on the ground that these are not new facts that the Plaintiff has become aware of, since the Court will see in Defendant's plea from the start, it has been the Defence of Defendant that Plaintiff was not employed by Defendant but was an employee of Engitech. So, the point is that it has been averred since March 2019 that the Defendant was only the processing agent for the payment effected to Plaintiff, as it had a payroll system which Engitech did not have. So, these are not new evidence.

Arguments were accordingly heard.

The main thrust of the argument of learned Counsel for the Defendant in relation to the reopening of a case after it has been closed, rested essentially on the case of **Seeruttun v Moosun** [1973 MR 193] in order to highlight that there is no element of surprise in the present civil case. The plea has been filed since 2019 and the Plaintiff was fully aware what case she has to meet.

In the present case, it would appear that if a party is taken by surprise or misled or that for some reason did not produce it because that evidence was not available, the Court retains its discretion to allow the Plaintiff to reopen her case. The Plaintiff knew from day one what was the contention of the Defendant. The latter stated that it has never employed Plaintiff and that Engitech did not have a payroll. It was outsourced. The Defendant also stated that compensation or remuneration of the Plaintiff was paid by Defendant but charged back through Engitech afterwards. So, Plaintiff was fully aware what case she has to meet. In fact, she stated in chief that she had entered a previous case against Engitech employer. Therefore, there is nothing new. The Defendant stated in its plea that Engitech does not have a payroll. It will be for the Defendant to prove that in evidence. The Plaintiff should not be allowed to reopen her case as there is no new evidence. Whatever has been averred in the plea of Defendant will have to be sustained by the Defendant. There is no new element of surprise.

The main thrust of the argument of learned Counsel for the Plaintiff is that what Defendant is saying is that since Defendant held the payroll, Engitech does not have a payroll, but Plaintiff's employer was Engitech and she should have sued Engitech. Plaintiff is saying that her employer was Defendant because her pay slip at the MRA and her pay slip that Defendant gave her wrote that the employer was Defendant. In response, Defendant has said no, it had a contract for administrative purposes for it to take care of the payroll. That is all. Since, Defendant says that Engitech does not

have a payroll, that is why Defendant took care of that. Nothing more and nothing less. That is what Defendant says.

Now, he has made a motion to reopen the case of Plaintiff before the Defendant opens its case. The MRA which is an independent body will come and say whether or not there is a payroll under the name of Engitech. This answer will tell us the truth. Given that the case has not been started by the Defendant yet, there is no prejudice that could be caused to it. The only prejudice that could be caused to the Defendant is if the MRA comes and say that Engitech has a payroll and the MRA says that paragraph 11(b) of the plea is not true. That could be the prejudice caused to it. But it is in the interests of justice for the Court to know the truth.

The learned Counsel for the Defendant has submitted in reply that the Human Resource Manager will be called as a witness for the Defendant and he will have to sustain every averment of the plea and learned Counsel for the Plaintiff will be at liberty to cross examine him. If the Plaintiff is allowed to reopen its case, the Plaintiff will have to go for a judge's order because these are confidential information kept with the MRA although Plaintiff's case is limited only to whether Engitech has a payroll or not. That would be at a later stage for arguments should the Court allows the Plaintiff to reopen her case.

Learned Counsel for the Plaintiff has further replied that since the issue of confidentiality has not been made a ground of objection as it was dropped, we are not there yet and we will cross the bridge when we come to it. The Court has a discretion to reopen the case for the Plaintiff and can do so in the interests of justice.

I have given due consideration to the arguments of both learned Counsel for the Plaintiff and Defendant and the authorities cited. As regards the objection taken in relation to the second ground by the Defendant namely the confidentiality issue warranting a Judge's order, it is abundantly clear that it has not been pressed at this stage, as it will be argued in due course should the Court grant the reopening of the case of the Plaintiff as conceded by learned Counsel for the Defendant.

Now as regards the first ground of objection namely that there are no new facts that the Plaintiff just became aware of, it was in the sense that there was no new element of surprise. True it is that learned Counsel for the Defendant is right when she highlighted that there is no element of surprise as the issues are apparent from the pleadings and therefore, the Plaintiff knows the case she has to meet.

However, the contention of learned Counsel for the Plaintiff is not that the evidence sought to be produced was because Plaintiff was taken by surprise or that she was misled or that she sought to meet a particular point which arose *ex improviso* in rebuttal and for that reason she did not produce it in the first instance. But that it is relevant to the issue as to whether Plaintiff was employed by Defendant or Engitech which pertains to the real issue in controversy between the parties for which evidence was not available from the MRA at the close of the Plaintiff's case. Such evidence from an independent source which is the MRA is now available to shed light on such an issue and which is also relevant to paragraph 11(b) of the plea of Defendant and which was not available to Plaintiff before, in contrast to the Human Resource Manager of the Defendant who will be called to establish the averments of the plea of Defendant by the latter.

At no point, learned Counsel for the Defendant addressed the issue of non-availability of such evidence prior to Plaintiff having closed her case and there was no contention that the reopening of the Plaintiff's case before the opening of Defendant's case will cause prejudice to the Defendant.

At this stage, I find it relevant to quote an extract from the case of **Seeruttun v Moosun** [1973 MR 193] relied upon by both learned Counsel for the Plaintiff and Defendant and which reads as follows:

"The general rule as to the admissibility of further evidence, is that the judge has a discretion at any stage of a trial to allow a party to produce further evidence, even if such evidence could have been produced in the first instance, if it considers that is necessary in the interests of justice to admit such evidence. The judge will generally allow further evidence to be produced where the party who seeks to produce it has been taken by surprise or misled and for that reason did not produce it in the first instance. The rule applies in both civil and criminal proceedings. The discretion enjoyed by the judge is one that should be exercised with great caution." **(emphasis added)**

Indeed, learned Counsel for the Defendant conceded that if for some reason Plaintiff did not produce such evidence because that evidence was not available, the Court retains its discretion to allow the Plaintiff to reopen her case.

For all the reasons given above, in view of the fact that it is a case where evidence could not have been made available earlier which fact has remained

uncontested and undisputed by learned Counsel for the Defendant and that it is relevant in the interests of justice(see- **Moosun**(supra)) in order for the Court to be enlightened as to the real question in controversy between the parties, I allow the reopening of the Plaintiff's case confined to the extent pressed by learned Counsel for the Plaintiff. Any resulting prejudice if any being caused to the Defendant (let alone that the same has not been pressed by learned Counsel for the Defendant), can be cured by an amendment of its plea.

The matter is accordingly fixed *proforma* to 21 March 2025 at 9.30 a.m. for both learned Counsel to suggest common dates for continuation.

S.D. Bonomally (Mrs.) *(Vice President)*
14.3.2025