

Lo Kui Soo v China Times Co Ltd

2022 IND 49

CN774/16

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Kui Soo LO KUI SOO

Plaintiff

v/s

CHINA TIMES CO. LTD

Defendant

RULING (NO. 1) (IS DEFENDANT COMPANY EMPLOYER OF PLAINTIFF?)

As per the Procipe, the Plaintiff is claiming from the Defendant Company the total sum of Rs1 977 071/- made up of Rs975 000/- representing Unpaid Salary for the period 2013 to 2015, and Rs1 002 071/- as Severance Allowance for unjustified dismissal, together with Interest on the amount of Severance Allowance as from the day of termination to the day of final payment and Interest on the balance as from the date they fall due, with Costs.

The Defendant Company has denied the said Claim in its Amended Plea.

The Parties were respectively assisted by Learned Counsel.

The Proceedings were held in English for the purposes of the Arguments.

In the course of the Plaintiff's cross-examination, Learned Counsel for the Defendant Company raised the following "Plea In Limine":

Defendant Company avers that in view of the fact that the plaintiff has stated that somebody else was paying him, this indicates that defendant company is not the employer of plaintiff. Defendant company therefore moves that the case be set aside with costs.

Case For The Defendant Company

Learned Counsel for the Defendant Company submitted to the effect that given the Plaintiff's admission in cross-examination that he was being paid his salary by a third Party, and not the Defendant Company, there was therefore no Contract of Employment between the Defendant Company and the Plaintiff, and hence the Defendant Company was not the Plaintiff's Employer.

Case For The Plaintiff

Learned Counsel for the Plaintiff submitted to the effect that the fact that a third Party was willing to pay the Plaintiff's wages did not undermine the fact that the Plaintiff's Employer was bound to remunerate the Plaintiff.

Learned Counsel for the Plaintiff also submitted that although it was admitted that a third Party was paying the Plaintiff, it is to be noted that the said third Party was in charge of the Defendant Company at the time, and the question of whether there was a Contract of Employment or not was to be determined by the Court, bearing in mind that the Plaintiff's evidence was not over yet, and hence the Plaintiff had not yet presented his case fully to the Court.

Learned Counsel for the Plaintiff relied on the Authority of **Phoenix Insurance (Mauritius) Ltd v Moollan** [\[2015 SCJ 170\]](#) and **Rama v Vacoas Transport** [\[1958 MR 184\]](#) in support of his Submissions.

Reply

In Reply, Learned Counsel for the Defendant Company submitted that he read the Authority of **Phoenix Insurance (supra)** in the other way, and that it was for the Plaintiff to prove a Contract with the Defendant Company.

Analysis

The Court has duly considered the Submissions of each Learned Counsel, and the Authorities submitted by Learned Counsel for the Plaintiff.

The Court has noted that the present point in Law was termed as a “Plea In Limine”, and was raised in the course of the Plaintiff’s cross-examination.

It is clear that the present point in Law does not place reliance solely on the Pleadings, and that the evidence which has been adduced so far is far from significantly limited (**Avigo Capital Managers PVT Ltd v Avigo Venture Investments Limited** [\[2019 SCJ 158\]](#)).

Be that as it may, Learned Counsel for the Plaintiff took no objection the said point in Law, and both Learned Counsel offered Submissions on the said point.

In essence, the Defendant Company is contending that by admitting that a Third Party was paying his salary, the Plaintiff had in effect conceded that there was no Contract of Employment between him and the Defendant Company.

And it was the contention of the Plaintiff that his having been paid his salary by a Third Party does not necessarily mean there was no Contract of Employment between him and the Defendant Company.

The Court is of the considered view that the question of whether there was a Contract of Employment between the Plaintiff and the Defendant Company is a question of fact, which is to be determined on the Merits, and that it would be premature for the Court to pronounce itself on the said issue at this stage of the Proceedings, despite the Plaintiff’s admission that his salary was being paid by a Third Party.

Conclusion

In light of all the above, all the factors highlighted above, and for all the reasons given above, the Court does not uphold the “Plea In Limine” raised by the Defendant Company.

The case is to therefore to proceed for Trial (Continuation).

CN774/16 – Industrial Court (Civil Side)

[Delivered by: D. Gayan, Ag. President]

[Intermediate Court (Financial Crimes Division)]

[Date: 07 September 2022]