

VIVA VOCE LIMITEE VS BIBI AICHAH SOOGREE

2024 IND 43

VIVA VOCE LIMITEE VS BIBI AICHAH SOOGREE

Cause Number: 388/2024

THE INDUSTRIAL COURT OF MAURITIUS

(CIVIL DIVISION)

In the matter of:- 430/2023

BIBI AICHAH SOOGREE

Plaintiff

VS

VIVA VOCE LIMITEE

Defendant

And in the matter of:- 388/2024

VIVA VOCE LIMITEE

Applicant

VS

BIBI AICHAH SOOGREE

Respondent

RULING

Introduction

This is a case where the Plaintiff (in case bearing Cause Number 430/23 and now Respondent) claimed from the Defendant (now Applicant) the sum of Rs 69,833.33/- representing one month's wage as indemnity in lieu of notice, outstanding wages for the period of 23rd March 2020 to 02nd June 2020, end of year bonus for the year 2020 and severance allowance.

On the 14th August 2024, the case bearing CN 430/23 was made out against the Defendant who had left default and a judgment was delivered on the 22nd August 2024.

The Applicant is now applying for a New Trial against the judgment delivered in case bearing Cause Number 430/23 on the following grounds:

- (A) Because the Applicant left default on the 22nd August 2024 as there was never proper service in his matter upon Applicant. The Applicant never received any summons for the 22nd August 2024 to attend this Honourable Court and as such was not present in Court nor legally represented;
- (B) In fact the Applicant was summoned to appear before this Honourable Court on the 5th September 2024 for Make Out;
- (C) The Applicant has a bona fide and serious defence and intends to resist the matter;
- (D) The Applicant further moves for a Stay of Execution of the judgment pending the hearing and determination of the present application.

Observations

THE LAW

The legal basis for an application for a new Trial is couched in sections 62 and 63 of the **DISTRICT, INDUSTRIAL AND INTERMEDIATE COURT RULES** which read as follows:

Every District Magistrate shall have power to grant a new trial of the action (in every case) where fraud, violence, or error has been committed, or where new evidence can be produced, which was not accessible to the party, or was not within his knowledge at the time of the first trial, whether judgment has been given in the presence or in the absence of the opposite party.

The Magistrate shall have power (on such conditions as to security for the amount of the judgment or for damages and as to payment of costs, as he may deem proper), to grant a new trial, in any case where it shall be in his opinion necessary so to do for the ends of justice.

It is to be noted that the rules regulate the practice and proceedings in the Industrial Court in the exercise of its civil jurisdiction.

It is a principle of justice that “when a litigant has obtained a judgment in a Court of Justice ... he is by law entitled not to be deprived of that judgment without very solid grounds” (**RE: BAGUTH VE MOLIERE (1934) MR 19**). It is therefore important for the

Court to consider whether there is any solid ground to deprive the Respondent of a valid judgment and whether it would be in the interests of justice to allow the application.

APPLYING THE LAW TO THE FACTS

The Plaintiff was represented and the Defendant was personally present in case bearing Cause Number 430/23 on the 09th May 2024. The case was fixed for the demand of particulars to be filed by the Defendant on the 04/07/2024 after the Defendant intimated that it would be legally represented. On the 4th of July 2024, the Defendant left default and the case was accordingly fixed for Make Out on the 14th August 2024, on which date the case was made out against the Defendant and judgment was delivered on the 22nd August 2024.

However, it is to be noted that on the 5th July 2024, after the Court has fixed the case for Make Out on the eve, the Registrar of the Court inadvertently sent a letter to the Defendant informing the latter that the case was fixed for Make Out on the 5th September 2024 instead of the 14th August 2024. In the circumstances, the Defendant laboured under the mistaken belief that the case would be called on the 5th September 2024 instead of the 14th August 2024.

Discussions

In view of the above, I find that the Respondent was deprived of a hearing through no fault of his, nor his legal advisors and where a good defence might subsist. (**RE: SAVERETTIAR V SAVERETTIAR 2015 UKPC 25**). I find that this case can be distinguished from the case of **THOMAS J.J. & ORS v AVINASH KISTNA (2015) SCJ 432** where “*neither the appellants nor their Counsel were at any time concerned with the fate of their case following Counsel’s request for postponement*” or the case of **MOHABEER S. K. & ANOR v BEEZADHUR V (2023) SCJ 406** where the Attorney did not follow up on the case status.

On the contrary, in the present case, a letter was wrongly sent to Applicant. Also, the latter’s legal representative sent a letter to Court shortly after judgment was delivered against the Applicant, that is, Defendant in case bearing Cause Number 430/23, as a follow-up and concerned measure.

Conclusion

In view of the above, I find that the application for a New Trial shows sufficient cause to warrant a new Trial in the interests of justice. I grant the application for a New Trial.

Ruling delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court
Ruling delivered on: 11th September 2024