Dassruth R.P. v Satyam Gyanam Anandam Society(SGAS)

2020 IND 18

Cause Number 282/14

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Rajendra Prasad Dassruth

Plaintiff

v.

Satyam Gyanam Anandam Society (SGAS)

Defendant

Ruling

Plaintiff has averred that he is the founder of Defendant which is an association duly registered with the Registrar of Associations bearing registration number No 3734. The Rules of Association of Defendant are hereinafter referred to as the Rules.

Article 11.1 of the Rules as averred reads as follows:

"The Spiritual Master, as appointed by the Managing Committee, will be Swami Paramananda, born in Mauritius under the name of Rajendra Prasad Dassruth enlightened soul and disciple of late Swami Veervasantha and will be the "Guru" of the society."

In that capacity, he alleges that he has the sole authority to approve the admission of a member, maintain or terminate his membership with immediate effect on the ground of his unwillingness to accept his teachings and/or misconduct towards him. He avers that he is also the only one who carries out all spiritual talks and spiritual activities and he imparts his teachings to spiritual seekers at meetings commonly referred to as general *"satsangs"*.

Apart from being the Spiritual Master, Plaintiff is also the adviser to the Managing Committee of Defendant as per Article 11.2 as further alleged.

Plaintiff avers that he has been acknowledged as the *"Guru"* of Defendant and thus, he is the only person who can hold the post of Spiritual Master of Defendant. He has also averred that his duties are for the benefit of all members and Spiritual Master of Defendant.

Plaintiff has averred that ever since 1992 he has been in the continuous employment of Defendant and as at December 2011, he was earning a monthly salary of Rs.50,000. Paragraph 13 of the plaint is reproduced below:

"13. Plaintiff avers that on the 2nd of January 2012, at about 9 p.m. he caused a letter to be handed in person to the then Secretary of Defendant Mr. Ah Chin Ah Song, dated the 1st of January 2012 which reads as follows:-

"Dear Sir,

I wish to inform you that further to the meeting held on 30th December 2011 at Lao Tzu Meditation Centre, with members of the Managing Committee, I have decided to resign from my present function with immediate effect.

I have realized that the Managing Committee does not trust me. I thank you for the support provided in my mission. Should the Managing Committee decide to call me back later, I wish to remind them that I have come on earth for the welfare of humanity and shall always be available for my devotees.

***Blessings Swami Paramananda**"."*

Plaintiff avers that since he is the adviser of the Managing Committee, it stands to reason that the letter which he addressed to that Committee could only be interpreted in respect of his function as adviser of that Committee.

Then, Plaintiff left for the United Kingdom on the 4th of January 2012 and came back on the 5th of April 2012 as alleged.

Plaintiff avers that the Managing Committee purported to have taken a self -serving interpretation to the effect that he has himself resigned as Spiritual Master and that on the 27 February 2012, he received a letter from Defendant dated 8 January 2012 wherein it was stated in relation to his letter dated 1 January 2012 that the Managing Committee has accepted his resignation.

Plaintiff avers that he has never resigned as Spiritual Master of Defendant. On or about 7th of April 2012, Plaintiff requested the President of the Managing Committee of Defendant to call for a *satsang* in the morning of the 8th of April 2012 at Prashant Ashram, Temple Road, Dubreuil and on the latter date, Plaintiff was denied access to the said Ashram. On or about 13th of April 2012, Plaintiff was served with a *"Mise en Demeure"* by Defendant whereby mention is made that Plaintiff has no right of access to the premises of Defendant. Plaintiff did not reply to the *"Mise en Demeure"*.

Plaintiff avers that on or about 27th August 2012, he has lodged a case at the Chambers Division of the Supreme Court to the effect that he be allowed to perform *satsangs* at the Prashant Ashram, Dubreuil namely for the issue of an interim order in the nature of an injunction ordering Defendant and/or its agents and/or its *preposes* not to prevent him from exercising his duties as Spiritual Master and not to prevent him from holding *satsangs* at the Prashant Ashram, Dubreuil. On or about 8th April 2013, the prayer asked for was not granted and his application was set aside. Plaintiff has appealed against the said judgment and the main case has already been lodged before the Supreme Court. Thus, Plaintiff is claiming from the present Court unpaid salaries as from January 2012 inclusive of end of year bonus till to date.

On the other hand, Defendant has raised a plea *in limine* as follows:-

1. This Court has no jurisdiction to entertain the present claim because the Plaintiff is not a worker under the Employment Rights Act and therefore the Defendant moves that the Plaintiff be non-suited with costs.

2. *Ex facie* the plaint at paragraph 13, Plaintiff himself has averred that he has resigned from his "present function".

3. In the alternative, Defendant moves that the present plaint be set aside with costs inasmuch as the issues raised by the Plaintiff have already been decided upon by the Supreme Court of Mauritius so that the present matter is *"res judicata."*

4. Defendant avers that Plaintiff has no *locus standi* to initiate the present plaint on the ground of unjustified dismissal inasmuch as he has already averred in proceedings before the Judge in Chambers that he had resigned his position with Defendant and this is evidenced by two judgments namely SCJ 163 of 2013 in Chambers and SCJ 104 of 2017 which is a judgment of the Supreme Court in its Appellate jurisdiction. The Defendant moves that the present action be set aside with costs.

The matter was fixed for arguments. As agreed by both learned Counsel appearing for the parties, Defendant's witness deposed in Court solely for the purposes of the arguments. The Court Manager of the Industrial Court having been deputed by the Honourable Master and Registrar of the Supreme Court came and deponed on his behalf. He produced a copy of the Court record viz. Doc. AG1 of an application for an injunction by the Plaintiff against the Defendant bearing serial number 586/12 and in which judgment was delivered on the 8 March 2013. He also produced a copy of the appeal record in which judgment was delivered by their Lordships on 23 March 2017 as per Doc. AG2.

The main thrust of the arguments of learned Senior Counsel for the Defendant is that since the Plaintiff has resigned as Spiritual Master as per the impugned Paragraph 13 of the plaint, there is no cause of action because he does not aver unjustified dismissal or constructive dismissal which are the only two possibilities to ask this forum for redress. When one looks at the plaint, it is clear that there is uncontroverted evidence in the two judgments that have been placed before the Court that the Plaintiff did indeed resign from his position and resigned from his function as Spiritual Master. It is not denied that the letter of resignation was sent to the Defendant and that its Managing Committee took note of same. Plaintiff left Mauritius shortly after and came back months later. Then, he has averred that he has never resigned as Spiritual Master of Defendant. Thereafter, there was the injunction case before the Supreme Court and which Plaintiff has mentioned himself in his plaint. The injunction was to order the Defendant not to prevent him from exercising his duties as Spiritual Master. In the proceedings before Mrs.

Justice S. Peeroo, there is sworn evidence on his behalf that he accepts having resigned from his position. His case is that the resignation was not accepted as it were and therefore, he is deemed to have remained as Spiritual Master and which is to be found at paragraph 48 of the judgment of Mrs. Justice S. Peeroo referred to and paragraph 49 of the judgment of the Court of Appeal referred to.

The main contention of learned Counsel for Plaintiff is that this is a plaint whereby the Plaintiff is asking for unpaid wages because he is of the view that he is still in employment and that he says that he is also the adviser of the Managing Committee. Thus, the Plaintiff occupies two posts namely a Spiritual Master and an Adviser. The Plaintiff after having made a clean breath of all the facts leading to the prayer asked for, the Judge in Chambers had no authority or power to adjudicate as to whether or not there is a resignation but on whether to grant or not the injunction and it does not mean that the Judge has ruled on a previous averment. The same argument follows on appeal concerning the failure to grant that injunction and the Appellate Court thought it best not to overturn the ruling of the Judge in Chambers. He is of the view that the primary issue of whether Plaintiff has resigned or not is still hotly debated and that the point has been prematurely taken.

I have given due consideration to the arguments of both learned Counsel. True it is that Plaintiff has averred that he is also the Adviser of Defendant. However, there is no acknowledgment as regards his appointment as Adviser of the Managing Committee of Defendant in the manner it was averred for his appointment as Spiritual Master and he did not give any precision as regards his monthly salary as Adviser of that Committee. Now, the date of his appointment as Adviser has not been averred in the plaint bearing in mind that he is the founder of the Association/Defendant. Hence, it cannot be inferred by any stretch of ones own imagination as per the averments of the plaint itself that his appointment as Spiritual Master was upon his own advice to the Managing Committee of Defendant and furthermore, following the meeting carried out by the Managing Committee, whereby he decided that they did not trust him anymore as per his letter as per paragraph 13 of the plaint above and that was why he was resigning from his present position with immediate effect and moreover should the Committee decide to have him back again despite the fact that the trust did not exist between them, he would be agreeable to come back and that all that was done upon his advice. Thus, it is abundantly clear that the present position necessarily meant to be as Spiritual Master which he resigned as per his letter dated the 1st of January 2012 with immediate effect let alone that he further thanked that Committee in that same letter for the support provided in his mission and

reminding them that should they decide to call him back he would do so despite the fact that the trust did not exist between them, as he has come on earth for the welfare of humanity and will always be available for his devotees by ending that letter not in his capacity as Adviser but as Spiritual Master namely Swami Paramananda. In the same breath, the inescapable conclusion has been averred thereafter that he left the country for about three months without the need to obtain leave from Defendant and that the latter did not give him the right to hold *satsangs* in his capacity as Spiritual Master and which was upheld by the Supreme Court so that his injunction case was set aside.

It is a cardinal principle as a general rule that each case is based on its own evidence and if a previous court record is produced without a specific purpose given, it should be excluded as inadmissible evidence at judgment stage. Vide – **Faridan v Savannah S.E.** [1965 MR 62]; **Soogun v United Bus Service Co. Ltd.** [1973 MR 146]. In the present case for the purposes of the arguments, the two court records of the Supreme Court containing the judgments have been produced before the present Court for the specific purpose of the plea in *limine*.

Now, the admissibility of the evidence and judgments in civil proceedings arising from different civil proceedings cannot be allowed to prove the truth of the facts upon which they are based given that such evidence would be mere evidence of opinion of the previous Court and a judgment so used is in effect hearsay in broad terms. This is because injustice would certainly have been done if a party or witness who had committed his evidence to writing had been allowed to stay away from the civil trial, and leaving the opposing party being confined to shaking his version simply by adducing its own evidence especially where essential facts are in controversy in our adversarial system leaving the Defendant with the risk of being implicated by evidence it has no opportunity to challenge in cross-examination and this is inconsistent with the presumption of innocence. Now, the Plaintiff in the same breath is seeking to use the present proceedings before the Industrial Court in order to call into question the adverse judgment as averred including the forthcoming ones should they be adverse as well namely the non authorisation of his performance of his duties as Spiritual Master of Defendant so as to invoke that he only resigned as Adviser while still remaining in employment as Spiritual Master in order to claim unpaid salaries inclusive of bonus till to date.

At this stage, I find it appropriate to illustrate a clear example of the application of this principle which was applied in the Privy Council case of **Hurnam v Bholah [2010 UKPC 12]**

where the Board prohibited the use of civil proceedings to mount a collateral attack on a decision in a criminal case given by a court of competent jurisdiction namely the Intermediate Court by applying **Hunter v Chief Constable of the West Midlands Police [1982] AC 529**. The Board held that Mr. Hurnam was seeking to use civil proceedings, not to obtain damages, but to restore his reputation by calling into question the guilty verdict in the criminal proceedings. Therefore, the initiating of the civil action constituted an abuse of process in the hope of achieving the result of undermining faith in his conviction which the Board described as "an utterly impermissible tactic". Finally, the Board took the view that the *"collateral challenge"* being *"direct and patent"*, *"plainly it cannot be permitted"* and to allow it to proceed *"would be to imperil the future administration of justice".*

Therefore, it is abundantly clear that as per the averments of the present plaint, the cause of action demonstrably rests on the calling into question the adverse judgment given by the Supreme Court namely the refusal to allow Plaintiff to carry out his duties as Spiritual Master of Defendant or other judgments of the kind to be given still pending before the Supreme Court in order to invoke the non-resignation of Plaintiff in his post as Spiritual Master on the basis of which a claim for unpaid salaries including bonus till to date is sought against the Defendant. This abuse of process on the authority of **Hurnam (supra)** cannot be condoned as it would imperil the future administration of justice as *ex facie* the averments of the plaint, the collateral challenge to a decision of a Court of law is direct, patent and cannot be condoned, because to allow it to proceed would be to imperil the future administration of justice.

At this particular juncture, it is appropriate to quote an extract from the case of **New Beau Bassin Cooperative Store v Juggroo** [1980 SCJ 376]:

"A "cause of action" is constituted by the averment of facts which, if denied, require to be proved to enable a Plaintiff to obtain the remedy he seeks. The nature and extent of the remedy sought is a legal consequence of those facts and, as such, is a matter of law which the Court has to apply. Pleadings, therefore, are designed to aver, not the law, but the facts which constitute the "cause of action"."

It is therefore clear that there is no need for the law to be specifically averred but enough facts for the Defendant to know the case it has to meet by the evidence in Court meaning *"every fact which is material to be proved to enable the Plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment"* (see- **Heera v Ramjan & Ors.**

[1976 MR 220]). It is worthy at this stage to quote an extract of the learned author **Odgers on High Court Pleading and Practice 23 ed. at page 124** in relation to pleadings:

> *"The function of pleadings then is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain this object, it is necessary that the pleadings interchanged between the parties should be conducted according to certain fixed rules(…)."*

Thus, it is plain enough that *ex facie* the averments of the plaint itself, Plaintiff knowing fully well that his case being highly likely to fail concerning his non-resignation as Spiritual Master so that the initiating of the present civil action constitutes an abuse of process in the hope of achieving the result of undermining faith in the rejection of his injunction case by the Supreme Court and in the further other cases to follow in that respect should they not be in his favour in order to strengthen his case before the present Court and obviously the concept of a fair trial as guaranteed by Section 10(8) of the Constitution cannot be overstretched to condone abuse.

In the light of the foregoing, I accordingly set aside the present plaint with costs.

S.D. Bonomally (Mrs.) *(Ag. Vice President)*
29.7.2020