

Chung Chai Man N. v Dry Cleaning Services Ltd

2020 IND 25

Cause Number 714/16

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Mrs. Nathalie Chung Chai Man

Plaintiff

v.

Dry Cleaning Services Ltd.

Defendant

Judgment

The salient averments of this plaint are as follows:

Plaintiff has been in the continuous employment with Defendant since March 1992 when she started as Secretary with an initial monthly salary of Rs. 11,000.

Over the years, Plaintiff was promoted to Administrative Secretary and in or around the year 2000, she was earning Rs.18,500/- and was provided with a company car. She was also given additional responsibilities in or about the same year namely managing six depots throughout the island, handling two textile factories situated in Quartier Militaire viz. Sinotex and Kentex and handling hotels in the East viz. Prince Maurice, St Geran and Touessrok.

In 2002, because of additional responsibilities entrusted to her, her salary was increased to Rs. 24,200.

In January 2011, she was promoted to Customer Care Coordinator with a salary of Rs. 35,426/- plus a company car.

Paragraph 7 of the plaint is reproduced below:

“7. In January 2012, Plaintiff was promoted to Customer Care Manager and her salary was aligned with other Manager with a salary of Rs. 45,000 per month.” (emphasis added)

In January 2013, because of Plaintiff's diligent way of performing her duties, Plaintiff's salary was increased to Rs. 50,000/- and again in January 2014, Plaintiff's salary was increased to Rs. 55,000/- due to her diligent performance at work.

In January 2016, her salary was increased to Rs. 60,000.

She was initially also entitled to travelling allowance of Rs. 50,000/- every two years. For the past five years this was increased to Rs. 75,000/- every year.

On 7th December 2016, she received a without prejudice letter under the signature of the Defendant's General Manager, informing her that she should proceed on “leave” as from the same day.

Some three months prior to December 2016, Defendant's General Manager changed her job from Customer Care to Quality Control.

Some two weeks ago, Defendant's General Manager further requested her to look after the production and technical side of the factory.

She has been requested by the Defendant's General Manager to study the manual of the machines at Dry Cleaning Services, this despite the General Manager knowing very well that she is not a technical person and that she has never done any technical studies.

The General Manager had requested her to wear uniform as the other workers in the factory.

The Human Resource Manager, Mrs. Nuseeb, told the General Manager in her presence that Defendant's request was tantamount to a harassment and that both Mrs. Nuseeb and her have worked at Management level and that they have never been asked to wear any uniform nor do they have any uniform.

Despite being a harassment, this was most humiliating and insulting and clearly constituted a demotion from her managerial status to ordinary staff status.

Some three weeks ago, the General Manager took away her parking slot which she has used for a very long time and gave same to his cousin, Mrs. Mary Adaken, without informing her. Plaintiff replied to the letter dated 7th December 2016 on the 14th December 2016 by registered post and advice of delivery. She also drew the attention of the General Manager and the Human Resource Manager that her name was removed from the Managers' forum on viber as if the Defendant Company had already taken the decision to get rid of her services.

On the 14th December 2016, in the afternoon, Plaintiff received on whatsapp at 19.07 hours a picture of the letter dated 14th December 2016 requesting her to attend a Disciplinary Committee on 23rd of December 2016.

She has been dismissed by the Defendant and such dismissal amounts to constructive dismissal as from 14th December 2016. Prior to her aforesaid dismissal she was earning a monthly remuneration of Rs. 97,000. Hence, she is claiming the sum of Rs. 7,469,000/- comprising of severance allowance, indemnity in lieu of notice, bonuses and other benefits.

Defendant, for its part, has denied liability.

At this stage, I take the view that this present case should be dismissed without the need to go into the merits inasmuch as I find that there is no valid cause of action disclosed *ex facie* the material/essential averments in this plaint for the following reasons.

At no time has it been averred that Plaintiff was promoted to a customer care manager akin to a General Manager or to even a Human Resource Manager. Indeed, as averred, Plaintiff started as a simple secretary and then became administrative secretary and in the latter capacity she was afforded a company car. Then, she was given additional responsibilities and her salary kept on increasing and she became customer care coordinator and then customer care manager and her salary continued to increase even after that because of her diligence at her work which obviously became more demanding. In January 2016, Plaintiff's salary was

increased to Rs. 60,000/- and her entitlement to travelling allowance of Rs. 50,000/- every two years was for the past five years increased to Rs. 75,000/- every year.

Now, Plaintiff gave no precision in her averments more importantly at paragraph 7 of her plaint above as to which specific manager her salary was aligned to and whereby that specific manager was not required to wear uniform, nor to deal with the production or technical aspect or other aspects where he was not versed at all and that his name was not removed from the Managers' forum on viber and lastly that he had a reserved parking slot. Thus, it cannot be inferred that it was a demotion from Plaintiff's managerial status to ordinary staff status let alone that her salary has kept an increasing trend. It is amply clear that her job in the customer care department has been constantly changing with added responsibilities from the status of a mere secretary to a customer care manager and her salary continued to increase even after that obviously because of the increasing responsibilities she had to shoulder or because of her work becoming more demanding in nature and which she handled with diligence. Now to equate her status with a General Manager or another unknown Manager in order to infer that she has been constructively dismissed cannot stand when she failed to attend to the Disciplinary Committee of Defendant on the 23 December 2016 after she had been asked to take leave without prejudice and to explain her version on that day. Obviously, based on those essential/material facts themselves it cannot be concluded that she was constructively dismissed but that she has out of her own free will deprived herself of her opportunity to be heard and has abandoned her work.

At this particular juncture, I find it appropriate to quote an extract from the case of **New Beau Bassin Co-operative Store v Juggroo** [\[1980 MR 320\]](#) which reads as follows:

“A cause of action is constituted by the averment of facts which, if denied, require to be proved to enable a plaintiff to obtain a 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” (underlining is mine).

It is apt to refer to the case of **Gungadin J. v The State of Mauritius Anor.** [\[2015 SCJ 193\]](#) where it was tersely stated that to decide as to whether a plaint discloses a cause of action, the essential averments contained in the plaint with summons will have to be examined closely. After having complied with that exercise, the matter was set aside without recourse being had to particulars in order to render valid or to cure that otherwise invalid cause of action.

This is because, it is not the function of particulars to take the place of essential averments in the plaint in order to fill the gaps to make good an inherently bad plaint (as per Scott L.J. in **Pinson v Lloyds & National Foreign Bank Ltd. [1941] 2 KB 72 at 75**); see also – **Charlie Carter Pty Ltd v. The Shop, Distributive and Allied Employees Association of Western Australia (1987) 13 FCR 413 at 419** and **H 1976 Nominees Pty Ltd v. Galli (1979) 30 ALR 181 at [13] – [23]** which pertain to a Common Wealth jurisdiction namely Australia derived from the English rules of procedure like ours.) - otherwise any bogus or nonsensical plaint will be endlessly cured by way of particulars which is against the overriding principle of procedural fairness ensuring proportional expenses and thus undermining faith in our civil justice system as fundamentally defective plaints would *de facto* be non-existent. This is because the purpose of particulars is to define the generality or vagueness of material facts already pleaded with a sufficient degree of specificity to convey to the other party the case that it has to meet by the evidence ex facie the plaint on the basis of the facts pleaded which if proved, are sufficient to establish the cause of action relied on (see - **Danjoux v Partnership Bangaroo - Danjoux and Cie [2001 MR 64]** ; **Spedding v. Fitzpatrick (1888) 38 Ch.D. 410; 59 I.t.492, C.A. ; Cassim (supra) and Premchand I. & Ors. v. Jagoo A.R. & Ors.[2013 SCJ 184]**).

Thus, particulars form part of the pleadings as a matter of concept only and no more.

Now, the provision of the law regulating the contents of a plaint is provided by **Rule 3(1)**

(b) of the Rules of the Supreme Court 2000 as follows:

“3. Contents of plaint with summons

(1) A plaint with summons shall –

(a) (...)

(b) State the substance of the cause of action;

(...)”

Given that our District, Industrial and Intermediate Court Rules 1992 are silent on that issue, we follow Supreme Court Rules for guidance as no repugnancy whatsoever is being caused to our rules of court (see - **Jhundoo v. Jhurry[1981 SCJ 98]**).

An excerpt from the case of **Mauritius Commercial Bank Limited v The Mauritius Union Assurance Company Limited** [\[2010 SCJ 97\]](#) affords a useful illustration of the term “substance of the cause of action” meaning all material facts necessary for the purpose of formulating a complete cause of action as reproduced below:

“ Having found that the requirement of our relevant **Supreme Court Rule** that the plaint “***shall state the substance of the cause of action***” has been satisfied, (...) *The defendant is entitled to know what it is that the plaintiff alleges against him.....*” in ***Odgers on the Principles of Pleadings and Practice***, under the heading “The function of Pleadings” or “Indeed a plaintiff need not plead law, yet it is his duty to state with precision all the material facts “necessary for the purpose of formulating a complete cause of action””, referred to in **A.Z.A.A. Cassim v The United Bus Service Co. Ltd** [\[1986 MR 242\]](#).”

Moreover, **Rule 13 of the Rules of the Supreme Court 2000** provides that:-

“Every pleading shall clearly and distinctly state all matters of fact that are necessary to sustain the plaint, plea or counterclaim as the case may be.”

Indeed, the cursus of our case law shows a rigorous application of Rule 3(1) (b) because procedural fairness imposes on the Plaintiff an undeniable duty to inform the Defendant in a concise and precise manner what it is that the Plaintiff is alleging against it. It boils down to mean that “a cause of action” comprises of “*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.** [\[1976 MR 220\]](#)) “*so that a plaint which will not aver all material facts would, therefore, not disclose a cause of action*” (see - **Geerjanan P. v The Mauritius Commercial Bank Ltd** [\[2006 SCJ 320\]](#), **Compagnie Mauricienne de Textile Limitée v. Scott Shipping International Ltd.** [\[2015 SCJ 8\]](#), **Metex Trading Co.Ltd. v The State of Mauritius & Ors.** [\[2014 SCJ 219\]](#), **Constantin Roland v Jhuboo Scilla Par Vaty** [\[2014 SCJ 221\]](#) and **Tostee J.Y. v Property Partnerships Holdings (Mauritius) Ltd** [\[2015 SCJ 41\]](#)).

As explained by the learned author **Odgers** on High Court Pleading and Practice 23 ed. at page 124:

“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 (...)” (emphasis added).

Indeed, the case of **Tostee (supra)** has highlighted the importance of pleaded facts which reads as follows:

*“The case of **Ramjan v Kaudeer**[\[1981 MR 411\]\[1981 SCJ 387\]](#) may also be referred to whereby the court had relied upon cases of **Chetty v. Vengadasalon**[\[1901 MR 22\]](#), **Deena v. Malaiyandee** 1940 Pt.II MR 156 and **Ramdharry v. Dhumun**[\[1942 MR 108\]](#) as being examples of judgments which have been quashed on appeal on the ground that the decisions were based on issues which did not appear in the pleadings.*

*The case of **Ramjan v Kaudeer** (supra) further referred to certain passages of Bullen and Leake, and Jacobs Precedents of Pleadings 12th Ed. which were quoted in the judgment of **Jagatsingh and Walter v. Boodhoo** (supra) and explained that once a party has stated the facts on which he relies, these facts are binding and the Court cannot ground its judgment on other facts which may come to light in the course of the trial” (emphasis added).*

The word “material” means those facts, which are necessary for the purpose of formulating a complete cause of action, and if any one ‘material’ fact is omitted, the statement of

claim is bad (see - **Odgers Principles of Pleading and Practice**, 22 ed. at p.98; **Bruce v Odhams Press Ltd [1936 1 KB, at p. 697]**. **Odgers (supra)** at p.100 goes on to state that:

*“Each party must state his whole case. He must plead all facts on which he intends to rely, otherwise he cannot strictly give any evidence of them at the trial. The plaintiff is not entitled to relief except in regard to that which is alleged in the pleadings and proved at the trial (per Warrington J. in **Re Wrightson [1908] 1 Ch. at p. 799**)”.*

The observations of Lord Esher M.R. in **Read v. Brown (1888) 22 Q.B.D. 128** at page 131 cited with approval in the case of **Premchand I. & Ors.v Jagoo A.R. & Ors.**[\[2013 SCJ 184\]](#) further illustrates the meaning of “*material facts*” as reproduced below:

*“It has been defined in **Cooke v. Gill (Law Rep.8 C.P.107)** to be this: every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.”*

This is in line with the reasoning in the case of **Compagnie Mauricienne de Textile Limitée (supra)**.

Therefore, the threshold needed to be reached in order to formulate a complete cause of action cannot be based on a mere subjective assumption nor on a mere reliance on the evidence to be adduced to perfect that lack of precision in the material facts, nor on particulars and nor on the plea of the Defendant to fill those gaps. As pointed out by the learned author **Odgers** on **High Court Pleading and Practice** 23 ed. at page 145 at para. (iv): “*In the first place, material facts must be stated clearly and definitely. (...) Pleadings are useless unless they state facts with precision.*”

In other words, ***l'action est un voie de droit; le titulaire de l'action doit transformer cette faculté en acte; cet acte est précisément la demande en justice which means that la demande est la puissance passée en acte.***

As per **Rép.pr.civ.Dalloz Tome 1**, page 4, notes 1,4: "***L'action en justice***" has been defined as:

1. ***" le fondement de la recevabilité des prétentions.(...) Avoir une action, ou avoir le droit d'agir, c'est donc, pour tout plaideur, demandeur ou défendeur, avoir une prétention recevable.(...)***
4. ***En droit positif, cela doit être souligné d'emblée, la recevabilité des prétentions est subordonnée à plusieurs conditions.(..) En réalité, il convient de distinguer plusieurs sortes de conditions. Selon S.GUINCHARD et F.FERRAND, "on peut, dans cette perspective, distinguer les conditions relatives à la personne qui agit, celles qui concernent l'objet de la demande, enfin celles qui précisent dans quel délai il faut agir." (Procédure civile. Droit interne et droit communautaire, 28e éd., 2006, Précis Dalloz, no. 120). Une formule de G.CORNU et J.FOYER(Procédure civile, 3e éd., 1996, coll. Thémis, PUF, p.322) résume de manière frappante la triple exigence qui préside à l'ouverture de l'action en justice : "N'importe qui n'a pas le droit de demander n'importe quoi, n'importe quand à un juge" (V. égal R. PERROT, Institutions judiciaires, 12e éd., 2006, Précis Domat, Montchrestien, no. 536)." (emphasis added)***

Rép.pr.civ.Dalloz Tome I page 18 & 37 notes 93, 215:

"93. (...) ***L'action est une voie de droit, un simple pouvoir virtuel que son titulaire peut préférer ne pas exercer, soit par souci de conciliation, soit pour ne pas courir les risques d'un procès. Mais si le titulaire de l'action veut effectivement exercer cette voie de droit et saisir les tribunaux compétents, il doit alors transformer cette faculté en acte: et cet acte est précisément la demande en justice[...]*** en un mot la demande en justice est la puissance passée en acte"(R.PERROT, Cours de droit judiciaire privé, op.cit., p.40; S.GUINCHARD et F.FERRAND, op.cit., no.94). ***L'action précède donc la demande. C'est la raison pour laquelle elle peut être l'objet d'actes juridiques alors même qu'aucune demande n'a été formée*** (G.CORNU et J.FOYER, op.cit., p.313; G.WIEDERKEHR, article préc.[Mélanges Simler], spéc.p.905 et s.).

215. L'idée que l'ouverture de l'action est subordonnée à l'existence d'un "intérêt légitime à agir" est traditionnelle. Un adage de l'Ancien droit l'exprime avec force et concision: "**pas d'intérêt, pas d'action**" (V.H.ROLAND et L.BOYER, *Adages du droit français*, 4e éd., 1999, Litec).9.(...)" (emphasis added)

Therefore, it is abundantly clear that all the material facts/elements for a valid cause of action must be averred in the pleadings.

For the reasons given above, it is clear enough that *ex facie* the material/essential facts of the pleadings, it cannot be concluded that the Plaintiff was constructively dismissed by Defendant and under the authority of **Tostee (supra)** adjudicating on the evidence borne on the record would not serve any meaningful purpose because an incomplete cause of action by virtue of the material facts averred in the pleadings cannot be made complete by reliance being made on the evidence adduced at the trial as follows:

"(...) examples of judgments which have been quashed on appeal on the ground that the decisions were based on issues which did not appear in the pleadings.

(...) explained that once a party has stated the facts on which he relies, these facts are binding and the Court cannot ground its judgment on other facts which may come to light in the course of the trial".

Hence, given that no valid cause of action has been formulated against the Defendant, the pleadings are dismissed with costs.

S.D. Bonomally (Mrs.) (Ag. President)

16.10.2020

