

Vydelingum v Medine Limited

2022 IND 21

CN176/2020

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Selvinah Vydelingum

Plaintiff

v/s

Medine Limited

Defendant

RULING (NO. 1) (PARTICULARS)

The Plaintiff is claiming from the Defendant Company the total sum of **Rs3 614 681/- together with Interests at the statutory rate of 12% per annum, as from the date of the Plaintiff's constructive dismissal until the date of payment, with costs**, by way of Praeclipe.

The matter is still at the Formal Stage, and the Defendant Company is insisting on Particulars asked for as per the Demand of Further And Better Particulars.

The matter was therefore fixed for Arguments.

On the day of the Arguments, Learned Counsel for the Plaintiff informed the Court that a Ruling would only be required in relation to question 1 of the Demand of Further And Better Particulars.

Each Party was assisted by Learned Counsel and the Proceedings were held in English.

Case For The Plaintiff

Learned Counsel for the Plaintiff submitted in essence that question 1 of the Demand of Further And Better Particulars was in the nature of an interrogatory, as it was in the nature of cross-examination, and this was a matter of evidence which would be given in due time.

Learned Counsel for the Plaintiff further submitted that it had not been averred by the Plaintiff that her involvement was required in the transactions referred to in answer to question 10 of the Demand Of Particulars.

In Reply, Learned Counsel for the Plaintiff submitted that the expected involvement of the Plaintiff had been amply answered in the Praeclipe, in particular in relation to paragraphs 2 to 5 thereof, where the responsibilities of the Plaintiff have been set out.

Learned Counsel for the Plaintiff referred to the Authority of **Gujadhur v Gujadhur [1962 MR 491]** in support of his Submissions that the Particulars sought were in the nature of an interrogatory.

Case For The Defendant Company

Learned Counsel for the Defendant Company submitted to the effect that the averments in paragraph 7 of the Praeclipe were made under the title “The Plaintiff’s exclusion from her contractual responsibilities”, and it is therefore an important grievance against the Defendant Company on which the Plaintiff is relying in her claims as repudiatory breach of her contract of employment.

Learned Counsel for the Defendant Company went on to submit that it was, in the light of the above, essential for the Defendant Company to know the reasons for the claim that the Plaintiff’s involvement was required, as only then would the Defendant Company know precisely what case it had to meet under those averments.

Learned Counsel for the Defendant Company also submitted that the Defendant Company was not asking for evidence, nor was it asking the Plaintiff to furnish evidence that her involvement was actually required in the 02 transactions referred to in answer to question 10 of the Demand Of Particulars, that the said Particulars would narrow down the issues, and that given the Plaintiff had not, according to Learned Counsel for the Plaintiff, averred that her involvement was required

in the said 02 transactions, the more so that the Plaintiff should clarify by providing the necessary Particulars to avoid any ambiguity on this aspect.

Learned Counsel for the Defendant Company concluded her Submissions by submitting that the Particulars were not in the nature of an interrogatory.

Learned Counsel for the Defendant Company also relied on the Authority of **Gujadhur (supra)** in support of her Submissions that the Particulars sought were not in the nature of an interrogatory.

Analysis

The Court has given due consideration to the Submissions of each Learned Counsel, and to the Authority of **Gujadhur (supra)** referred to by both Learned Counsel.

The following extract from the case of **Emtel Limited v The Information And Communication Technologies Authority & Ors [2014 SCJ 288]** is found of particular relevance to the issue at hand, i.e. whether question 1 of the Demand Of Further And Particulars is in the nature of an Interrogatory or not:

It is also common ground that the guiding principles governing the question of particulars are authoritatively set down in the case of **Gujadhur and Ors v. Gujadhur & Sons Ltd. [1962 MR 49]** where the Court reaffirmed the general principle laid down in **Rassool and Ors v. Francois [1914 MR 26]** which is as follows:

“The object of particulars is to prevent surprise at the trial by informing the opposite party what the case which he has to meet, to explain and limit the pleadings which are vague or require limitation, and generally to define and narrow the issue to be tried and to save unnecessary expenses.”

In the same case of **Gujadhur**, the Court explained the “clear line of demarcation” which must be drawn between particulars and interrogatories. Particulars are confined to averments in the pleadings and as stated above, the object of particulars is to give to the other party information which the latter reasonably require to defend himself.

It is also explained in the case of **Gujadhur** that the object of interrogatories is two fold: firstly to obtain admissions to facilitate the proof of a case and secondly, to ascertain

so far as may be done, the case of the opponent. Interrogatories are generally directed to the evidence on which the interrogating party relies to establish his case.

Whilst applications for particulars are allowed, interrogatories are not. In the case of **Gujadhur**, the case of **Lister Company Ltd. v. Thompson [7 TLR 107]** is referred to as indicating the demarcation line which should be drawn between applications for particulars and interrogatories and also how the Court may refuse an application for further and better particulars as being a series of interrogatories and as being oppressive.

The Court has duly considered question 1 of the Demand of Further And Better Particulars, which is worded as follows:

The Defendant insists in the full and details particulars of Plaintiff's expected involvement was required in each of the said transactions.

Applying the abovementioned principles to the present matter, whilst being of the considered view that the said question does not seek to obtain an admission from the Plaintiff, it does appear to be directed at getting the Plaintiff to disclose the reason/s on which she will be relying to substantiate her averment made at paragraph 7 of the Praecepce that "[i]n early March 2020, [she] learnt that certain transactions were under progress without her involvement and completely unknown to her".

Also, given "[t]he objects of particulars are to prevent surprise at the trial by informing the opposite party what the case is which he has to meet, to explain and limit pleadings which are vague or require limitation, and generally to define and narrow the issue to be tried and to save unnecessary expenses." (**Rassool (supra)**), the Court is of the considered view that paragraph 7 of the Praecepce cannot be read in isolation, and must be read as being part of the whole Praecepce, in which the Plaintiff has detailed how she considers she has been excluded from her contractual responsibilities, but also what she considers to be repudiatory breaches on the part of the Defendant Company.

In light of all the above, the Court is of the considered view that the said question goes beyond the scope of the governing principles as to Particulars (**Emtel (supra)**) set out above, it being in the nature of an interrogatory.

Conclusion

In light of all the above, the Court finds that question 1 of the Demand Of Further And Better Particulars goes beyond the scope of the governing principles as to Particulars (**Emtel (supra)**) set out above, it being in the nature of an interrogatory, and it is therefore not allowed.

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

[Industrial Court]

[Date: 22 April 2022]