

KABC010283052024



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.

DATED: THIS THE 2ND DAY OF DECEMBER, 2024.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru

O.S.NO.7793/2024

PLAINTIFF : Mr.ARUN CYRIL
Age: 55 yrs
S/o Francis Cyril Antoy,
R/AT SOBHA SILICON OASIS,
FLAT NO. 11143 11TH BLOCK,
HOSANGADI ROAD,
PRAGATHI NAGAR,
BASAPURA HOSA ROAD, PRAGATHI
NAGAR, BASAPURA,
BENGALURU-100
(By Sri.ABR., Advocate)

V/S

DEFENDANTS 1. SWIGGY LIMITED,
HAVING ITS REGD;OFFICE AT
NO. 55, SY NO. 8-14,
GROUND FLOOR, I AND J BLOCK,
EMBASSY TECH VILLAGE,
OUTER RING ROAD,
DEVARBISANAHALLI,
BENGALURU, KARNATAKA.
REP BY ITS DIRECTORS

(Sri.P.D., Adv.,for D-1

ORDER ON INTERLOCUTOR APPLICATION No.1 FILED BY THE PLAINTIFF UNDER ORDER XXXIX, RULE 1 AND 2 OF CPC & UNDER SECTION 151 OF CPC:

The I.A. No.1 under Order XXXIX Rule 1 and 2 r/w/section 151 of CPC filed by the plaintiff to pass an ad-interim exparte order of temporary injunction restraining the defendant No.1 company including its Directors from creating any charge, interest or alienating 185.454 vested and unexercised stock options an 24 exercised stock options of the plaintiff which have been granted to the plaintiff vide various grant letters pending disposal of the suit.

2. In support of above interlocutory application, plaintiff has sworn to an accompanying affidavit stating that, he was working as AVP- customer with defendant No.1 company between 10.05.2015 and 18.08.2024. Based on his performance at work he was granted stock options vide grant letters dt:15-06-2015, 01-04-2016, 01-04-2018, 01-04-2019, 01-04-2022 and 01-04-2023 in accordance with the Company's stock option plan 2015 and 2022, between 15.06.2015 and 01.04.2023, he was granted 324.507 stock options. He was

forced to resign from his post and defendant No.1 company served Termination letter and ESOP Notice on his official email ID on 16.8.2024. In the ESOP notice, defendant No.1 Company has terminated 185.454 vested and unexercised options and has reserved its right to buy back 24 exercised options from him. Such an act of defendant No.1 is not only in complete violation of policies of defendant No.1 company but also in contravention of law. The defendant No.1 Company has been preparing for initial public offering [IPO], the company has sent emails to the former employees who had vested options/shares, intimating the same about the sessions conducted to learn about the effect of IPO on their stock option, but they deliberately not addressed any email inviting him to attend sessions to learn about the effect of IPO on stock option despite him having 185.454 vested and unexercised options and 24 exercised options. The act of the defendant No.1 company shows they unlawfully terminated him towards the end of his exit and closer to their IPO to fraudulently withhold his stock. Hence, prayed to allow the application.

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3. The defendant No.1 has files statement of objections submits that, the plaintiff is not entitled to the reliefs in the

interim application. The plaintiff has deliberately failed to disclose the true and correct facts. It is stated the plaintiff was offered the position of Assistant Vice President -Customer Experience Delight the Defendant No.1 company and an Employment Agreement, dt: 10th May 2015 was entered into between the plaintiff and defendant No.1. In January 2024, defendant No.1's Ethics & Integrity Team (Ethics team) received certain allegations against the plaintiff. In accordance with defendant No.1's whistle blower policy, defendant No.1 initiated an internal inquiry into the said allegations. While the said inquiry was pending, the plaintiff tendered his resignation on 20th February 2024. The plaintiff has breached the terms of his Employment Agreement, policies of defendant No.1 and did not offer any valid explanations. The plaintiff had a close relationship with one Mr.Sanjoo Sharma, Director and CEO of Radical Minds Technologies Pvt.Ltd., Mr.Ankit Sanjay Shah, M.D. HRH Next Services, are offshore service providers and the plaintiff was responsible for managing and supervising the commercial relationship between the defendant No.1 and Radical Minds and HRH respectively. The plaintiff has received two separate loans of Rs.5 lakhs from Sanjoo Sharma and Ankit Shah each during the subsistence of the commercial

relationship between the defendant No.1 with Radical Minds and HRH respectively. The plaintiff then proceeded to recommend his then spouse Mr. Indumthi Mohanraj, for employment at Radical Minds. Upon gaining employment she was assigned the account of defendant No.1. The plaintiff shared defendant No.1's confidential data and internal information with his then spouse during her employment with Radical Minds by using his Swiggy assets and his official email. The plaintiff has failed to highlight the existence of a prima-facie case in his favour. The plaintiff was terminated for cause after being granted several opportunities. The balance of convenience lies in favour of defendant No.1. Hence, prayed to dismiss the application.

4. Heard arguments of learned counsel for the plaintiff and defendant No.1 and perused the materials placed on record.

5. The counsel for the plaintiff relied the following citations.

1. (1992) 1 SCC 719
Dalpat Kumar &Anr v Prahalad Singh & Ors
2. (1994) 4 SCC 225
Morgan Stanley mutual Fund v Kartick Das
3. (2024) SCC Online SC 2282

U.P. State Road Transport Corporation and Ors
sv. Brijesh Kumar & Anr.

6. The counsel for the Defendant No.1 relied the following citations.

1. 2023 SC OnLine Bom 1039
Chandra Kouchhar v. ICICI Bank Ltd.,
2. SLP(Civil) Diary No.3133/2023
Chandra Kouchhar v. ICICI Bank Ltd.,
3. 1992 (1) SCC 719
Dalpat Kumar & Anr vs Prahlad Singh
& Ors
4. 2012 (6) SCC 792

Best Sellers Retail (India) Pvt. Ltd. Vs Aditya Birla Nuvo
Limited & Ors.

Perused the above citations.

7. The Points that arise for my consideration is as under.

1. Whether the plaintiff has made out a prima-facie for grant of temporary injunction as prayed in the I.A.No.1 ?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the irreparable loss or injury caused to plaintiff?
4. What order?

8. My answer to the above points are as under:

Point No.1 :- In the Negative,

Point No.2 :- In the Negative,

Point No.3 :- In the Negative,

Point No.4 :- As per final order,
for the following;

REASONS:

9. **POINT NO.1 TO 3:-** Since these points are inter-related with each other and in order to avoid repetition of facts they are taken up together for common discussion.

This present suit is filed by the plaintiff for declaration that the Termination Notice, dated: 16-08-2024, issued by defendant No.1 Company is illegal and not binding on the plaintiff, declare that the ESOP notice, dated: 16-08-2024, issued by defendant No.1 Company is illegal and not binding on the plaintiff, consequently, direct the defendant No.1 to allow the plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the plaintiff, granted to him vide grant letter.

10. This application is filed by the plaintiff seeking the relief of temporary injunction restraining the defendant No.1

company including its Directors from creating any charge, interest or alienating 185.454 vested and unexercised stock options and 24 exercised stock options of the plaintiff which have been granted to the plaintiff vide various grant letters pending disposal of the suit.

The plaintiff relied on his case on the following points.

- i). Admittedly plaintiff is an employee of defendant No.1 company,
- ii) Received loan from vendor of defendant No.1 Company.
- iii) As per the Employment order 184.54 vested and unexercised stock/share stands in the name of plaintiff.
- iv) The termination letter without consent of plaintiff.
- v) Within 24 hours Inquiry to be conducted.
- vi) ESOPS are sold will be put to much hardship and injury.

The defendants relied on their case on the following points.

- i). Admittedly plaintiff received loan from vendor of defendant No.1 company.
- ii) There is no bar to Inquire within 24 hours, no specific time is fixed for retaining of ESOPS.

iii). There is number of Hon'ble Supreme Court Judgments when the damages can be compensated no Interim order can be granted.

iv) Wife of plaintiff is an employee in the customer of defendants company, against to the whistleblower policy hence to reject the same.

11. Admittedly, the plaintiff is the Employee of defendant No.1 Company. As per the bylaws of the Company the plaintiff being an Employee and worked for 10 years in the defendant No.1 company entitled to 185.454 vested and unexercised stock options an 24 exercised stock options, as the plaintiff had participated in bye back remaining stock option from the defendant No.1 Company prior to his exist. Hence, being an employee of defendant No.1 Company he is entitled for the above mentioned shares in the defendant No.1 company. Now at this stage he sought for not to alienate or create any charge over those share which belongs to him has issued by defendant No.1 company.

12. Then the plaintiff also argued that termination notice issued by defendant No.1 company on 16/8/2024 is not binding and it is in accordance with law because of such termination notice is to be conducted within 24 hours from producing that

document. If the accrued share of the plaintiff are alienated or if the defendant No.1 create any charge over the shares as per the Employment Agreement, dt: 10-05-2015 the plaintiff will be put to irreparable loss as he is worked as an employee in the defendant No.1 company for more than 10 years and he is promoted to vice-President.

13. However, he admitted that he obtained loan from the customer of the defendant No.1 company and his wife appoint as an Employee in one of the customer of defendant No.1 Company and he has also submitted that making transactions with the vendor is not a ground for termination. Hence, as per the Employment Agreement he obtained other shares of defendant No.1's company. Hence, to allow the application and prays to grant interim order not to create any charge, interest or alienate the shares belongs to the employee.

14. On the other hand the defendant No.1 Counsel argued that as per whistleblower policy of the Company there is no condition precedent that termination of the Employee and he has also argued that the transaction are admitted by the Employee. Hence, whatever the transaction he did with the vendor is against to the whistleblower policy and the defendant counsel also argued that when the damages can be

compensated the interim order cannot be granted by this Court. In support of his argument he has also produced some of the authorities and also in support of the authority he submitted that ESOPS the Stay cannot be granted by this Court.

15. On perusal of the records, it is clear that the Employee is working under the defendant No.1 for about 10 years. Admittedly, he has obtained loan from the Vendor of defendant No.1 company. The Whistleblower Policy of Defendant No.1 Company is as under,-

Preliminary Review and Investigation

Incident Reporting:

a) After receiving the Complaint, the Ethics Helpline Provider will prepare an incident report, which will be shared with the Ethics and Integrity Team within 24 hours of receiving the Complaint.

Investigation:

a) The decision to investigate taken by Swiggy is by itself not an accusation and is to be treated as a neutral fact finding process. The outcome of the investigation may or may not support the conclusion that an improper or unethical act was committed.

Timelines for closure:

1. *The investigation shall be completed normally within 90 calendar days of the receipt of the compliant.*
2. *Any investigation requiring additional time for inquiry shall be intimated to the Audit Committee at the time of reporting the status of inquiries and actions taken on a quarterly basis, by the Ethics team.*

As per the whistleblower policy in the termination clause there is no time line mentioned by the policy that within 24 hours the Inquiry has to be reported.

The document No.8 is email sent by Ethics& Integrity - defendant No.1 to the plaintiff Sl.No.2 reads thus,-

2. *Your attendance in this meeting is mandatory in order to provide you with an opportunity to be heard and you are expected to provide candid, honest and truthful answers/responses during this meeting.*

In view of the above, pending the completion of the investigation, you will be restricted from participating in any exercise events that the company has/may undertake. You are called upon to confirm your availability for a hearing before the E & I Team on 26 July 2024 at 11 AM IST.

The document No.10 produced by the plaintiff, itself shows that he has borrowed the loan of Rs.5,00,000/- from A.Shah and S.Sharma, who have professional relationship with the defendant No.1 Company and they are the customers of defendant No.1 Company.

The counsel for the defendant No.1 also produced one of the reportable Judgment **2023 SCC OnLine Bom 1039**, in the case of **Chandra Kochhar vs ICICI Bank Limited**, the ratio laid down in the said Judgment makes it clear that, no interim order can be granted with respect to the ESOPS Hence, prima-facie case not proved by the plaintiff.

16. Balance of Convenience & Irreparable loss :

If this application is not allowed, the plaintiff will not put to irreparable loss, in turn if the vested and unexercised stocks detailed in the application is not alienated the defendant No.1 Company will be put to much hardship and inconvenience. With the above discussions I answer Point No.1 to 3 in the **Negative**.

17. **POINT No.4:** In view of my discussions in point No.1 to 3, I pass the following,-

ORDER

I.A. No.1 filed by the plaintiff under
Order XXXIX Rule 1 and 2 R/W/S. 151 of
CPC, is hereby dismissed.

(Dictated to the Steno Gr.II directly on computer, after correction
pronounced by me in open Court on this 2nd day of December, 2024).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU**

