

BEFORE THE ADDITIONAL LABOUR COURT, COIMBATORE.

Present :- **Thiru. A.MANIMOZHI, B.A., LL.B.,**
Presiding Officer,
Additional Labour Court, Coimbatore.

I.A. No: 2 of 2020

in

C.P. No: 92 of 2018

Tuesday, the 09th day of February 2021

M/s. Sharan Shipping Line,
rep by its Managing Partner Mr.Rajagopal. ... Petitioner / Respondent

..Vs..

V.Gokila Varathan,
S/o.Venkatapathy. ... Respondent / Petitioner

This petition came up for final hearing before me on 27.01.2021 in the presence of Thiru.V.A.Dhana Aravindha Balaji, Advocate for the Petitioner and Thiru.S.Raveendran, Advocate for the respondent and upon perusing the affidavit of petition, counter statement of respondent, and connected records and upon hearing the arguments of both sides and having stood over till this day for consideration, this court passed the following:-

ORDER

1. This petition has been filed by the petitioner under Order XVI Rule 1 of CPC r/w Section 11 of the Industrial Disputes Act 1947, to summon the Branch Manager of IDBI Bank, Main Branch, Avinashi Road, Coimbatore, to depose as a respondent side (Management) witness along with the details of the Account statement, Application Form and other details pertaining to Account No.0006102000076243 and Account No.006102000057187.

2. The brief averments made in the petition and affidavit are as follows:-

a) The petitioner company was started only from 2010 and on the same day a brand office was also started in Coimbatore and the respondent was appointed as a Marketing Executive. His attitude was totally changed and behaved in rude manner and never respond for the calls made by us and refused to furnish the customer details and failed to comply the orders and failed to deposit the pending dues by recovering the same from the customer. On enquiry, the petitioner came to know that the respondent fraudulently created a fake bank account in the name of EMN Shipping Line in A/c No.0006102000076243 in IDBI Bank, Coimbatore and STV Shipping Line and get the amount from customers on several dates in several bills by stating to the customers that as if it is a sister concern of the

respondent company and due to tax issues, they want the amount in this account. He also fabricated the fake invoice in the name of Sharan Shipping Line.

b) It was found that the petitioner is the proprietor in EMN Shipping Line and the petitioner and his wife are the partners in STV Shipping Line and further he also took all the files which includes Export Clearance Files, Office Seal, Letter Pad and Unfilled Cheques and he also used all these materials to grab money from petitioner company customers 1.J.BRIGHT ENGINEERING, 2. VENAD FOOD, 3. KAYAAR ENGINEERING, 4. ANAKKARA FOOD PROCESSING AND EXPORTS PVT. LTD. AND 5. PEARL PACKAGING and made loss to the respondent company to the tune of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only), for which it is exigent upon the petitioner to prefer this instant petition to summon the Branch Manager of IDBI Bank, Main Branch, Avinashi Road, Coimbatore to furnish the details of the Account No.0006102000076243 and other accounts in the name of EMN Shipping Line and STV Shipping Line, since said details and documents are essential to establish the true face of the respondent / applicant and if this petition is not allowed, it would cause serious prejudice to us and such loss could not be compensated at any cost.

3. The brief averments made in the counter statement are as follows :-

a) The respondent denies all the averments in the petition. The contention of the respondent throughout is that the Account No.0006102000076243 and Account No.006102000057187 of EMN Shipping Line and STV Shipping Line were opened at the insistence of the petitioner only. The petitioner knew the operation of the above account from the beginning itself. Therefore, it is unnecessary to examine any witness with regard to the above bank account.

b) Even if the contention of the respondent that the petitioner opened the account and operating the above account on his own, the petitioner is prevented from filing any application to bring the accounts belonging to another through the Bank Manager since it is a breach of privilege and breach of professional communication. The personal and business account of the petitioner is his own personal affair which cannot be brought to light without the consent of the petitioner.

4. No witness was examined and no document was marked on either side. Heard the arguments on both sides. Carefully perused the records.

5. POINTS FOR DETERMINATION:-

- 1) Whether the petitioner is entitled to summon the witness for production of documents and to depose evidence as prayed in the petition?
- 2) Whether this petition has to be allowed?

Answer for the POINTS Nos.1 and 2:-**Submissions:-**

6. The learned counsel for the petitioner / management would contend that the documents mentioned in this petition are essential to prove the fraud committed by the respondent / workman, that the respondent has fabricated fake invoices in the name of petitioner company and got the amount from the customers of the petitioner fraudulently and credited in his bank accounts and caused loss to the petitioner to the tune of Rs.28,00,000/- by fraudulently opening fake bank accounts in the name EMN Shipping Line and STV Shipping Line, and that therefore the Branch Manager of IDBI Bank has to be summoned for production of the statement of account details of the said accounts and to give evidence regarding the details of the accounts.

7. Per contra, the learned counsel for the respondent would contend that the bank accounts were opened at the insistence of the petitioner only,

that the petitioner was fully aware of the transactions in the above accounts, that the bankers are entitled to maintain secret of the accounts, that the Manager cannot be directed to produce the details of those accounts without the consent of the respondent, that the present proceedings is not a criminal case, that already the respondent has clearly answered on these aspects for the questions put to him by the petitioner during cross-examination and that therefore this petition is not maintainable.

Discussions:-

8. The respondent, who was employed as a Sales Personnel, in the petitioner company, has filed the above main C.P. No.92/2018 u/s.33-C (2) of the I.D. Act, for computation of arrears of Incentives and Increments due from the petitioner, for the entire period of his service from April 2007 to September 2018. The petitioner has denied the claim of the respondent.

9. In the above computation petition the respondent / workman examined himself as W.W-1 and produced 6 documents and closed his side evidence. Then, the petitioner / management examined one witness as M.W-1 and produced 27 documents. When the matter was pending for further witness on the management side, the instant application has been filed.

10. The petitioner claims that the documents are necessary to prove the true face of the respondent. According to the petitioner, the respondent by playing fraud, created fake bank accounts in the name of EMN Shipping Line and STV Shipping Line, fabricated fake invoices and grabbed money from the customers of the petitioner and caused loss to the tune of Rs.28,00,000/- to the petitioner company. To prove these aspects the Manager of the concerned bank has to be summoned for production of documents and to give evidence about the details.

11. It is to be noted that when the respondent deposed evidence as W.W-1 in the main computation petition, the petitioner cross-examined him at length on these aspects and the respondent has answered for all the questions. The relevant part of the cross-examination of W.W-1 is reproduced below:-

...EMN	Shipping,	STV	Shipping
கேள்விப்பட்டிருக்கிறேனா	என்றால்	கேள்விப்	
பட்டிருக்கிறேன்.	மேற்படி	இரண்டு	
நிறுவனங்களையும்	நடத்துவது	யார்	என்றால்
எதிர்மனுதாரர்	நிறுவன	உரிமையாளர்	
திரு.ராஜகோபால்தான்	நடத்துகிறார்.	EMN	
Shipping	நிறுவனத்தின்	உரிமையாளர்	நான்தான்

என்றால் நான் மட்டுமில்லை, திரு.ராஜகோபாலன் அவர்களும் என்னுடன் சேர்ந்து நடத்துகிறார். **STV Shipping** நிறுவனத்தை நானும் என் மனைவியும் பங்குதாரர்களாக இருந்து நடத்தி வருகிறோம் என்றால் ஆமாம், ஆனால் திரு.ராஜகோபாலன் அவர்கள் **Tax** பிரச்சனைகள் காரணமாக என்னை கேட்டுக்கொண்டதால் அவருக்கு தெரிந்து **STV Shipping** நிறுவனத்தை ஆரம்பித்தோம், அவரும் சேர்ந்துதான் இந்த நிறுவனத்தையும் நடத்துகிறார். இது சம்பந்தமாக எனக்கும் திரு.ராஜகோபாலன் அவர்களுக்கும் இடையில் **MOU** உள்ளதா என்றால் இல்லை, நம்பிக்கையின் பேரில்தான் நடத்துகிறோம். **EMN Shipping** மற்றும் **STV Shipping** நிறுவனங்களுக்கும் எதிர்மனுதாரருக்கும் எந்த சம்பந்தமும் இல்லை என்றும், நான் சொல்வதுபோல ராஜகோபாலன் மேற்படி நிறுவனங்களை ஆரம்பிக்கும்படி என்னிடம் கேட்கவில்லை என்றும் மேற்படி இரண்டு நிறுவனங்களையும் நான் தனிப்பட்ட முறையில்

ஆரம்பித்து ராஜகோபாலன் அவர்களை ஏமாற்ற
வேண்டும் என்ற எண்ணத்தில் நடத்தி வருகிறேன்
என்றும் சொன்னால் அது பொய்...

12. From the above evidence, it is clear that the existence of the disputed two bank accounts are admitted by the respondent and that his only contention was that the said accounts were opened only at the insistence / instance of the petitioner company. Further, during the cross-examination of M.W-1 also, the respondent has put several questions to the witness regarding the alleged fake invoices and also about the transaction between the customers.

13. As rightly pointed out by the learned counsel for the respondent, the present proceedings are instituted only by invoking Section 33-C (2) of the I.D. Act and this is not a criminal proceedings. The scope of Section 33-C (2) of the I.D. Act is very limited. The proceedings are in the nature of execution proceedings and based upon the pre existing right of the workman. The Labour Court is called upon to compute and calculate the monetary benefit only on the basis of pre existing right and the Labour Court cannot entertain and adjudicate upon a petition u/s.33-C (2) when the

entitlement itself is in dispute. The pleadings and the evidence of parties would clearly reveal that there are very many disputed facts on the issue of computation. So, the burden is only upon the respondent / workman to prove his pre existing right and entitlement in seeking computation of arrears of incentives and increments for his entire service period of about 11 years. The issues pertaining to the fraud allegedly committed by the workman (respondent) and operation of fake bank accounts, misappropriation of funds and fabrication of fake invoices, are clearly beyond the scope of Section 33-C (2) of the I.D. Act. The bank manager may not be able to depose anything on these aspects and the production of account statements alone would not be sufficient to prove the contention of the petitioner and so this court is of the view that there is no necessity to summon the manager of the bank to produce certain documents and to give evidence on the same. This court finds no merits in the contention of the petitioner in seeking summons to the bank manager. Even if the bank manager appears and produces the statements of accounts for the two accounts in dispute, it will not help the petitioner in any way either to prove the alleged fraud or to prove the loss. It is admitted that the petitioner has already preferred a complaint to the police against the respondent workman and the same is pending and so the petitioner has to work out his remedy in the said police complaint (or) he may institute civil proceedings for

realization of the amount allegedly due / misappropriated by the respondent. Therefore, viewing from any angle, this court finds no merits in this petition. The petitioner is not entitled to seek summons to the bank manager to produce document and to give evidence. Accordingly, this points are answered as against the petitioner.

RESULT:-

14. In the result, this petition is dismissed. There is no order as to costs.

Dictated to Steno Typist directly and typed by her in computer directly, corrected and pronounced by me in open Court on this 9th day of February 2021.

-Sd.A.Manimozhi-
PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE.

LIST OF WITNESSES AND EXHIBITS

For Petitioner's Side :- NIL

For Respondent's Side :- NIL

-Sd.A.Manimozhi-
PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE.

12/11

I.A. No.2/2020 in C.P. No.92/2018
Dt.09.02.2021

COPY OF ORDER

I.A. No.2/2020 in C.P. No.92/2018

DATE:09.02.2021

ADDITIONAL LABOUR COURT,
COIMBATORE.