

Analysis of judgment in suit arising out of contractual obligations

Judgment Text-

(Disclaimer:-Text of Judgment is taken from website of Courts which is a public domain. Every effort is made to omit names of parties and Judge. The analysis of Judgment is for academic purpose to assist the law graduates and entry level Judges to learn the skill of writing Judgment. I analyse the Judgment on the basis of my experience but do not claim that my analysis is perfect. There may be another view different from my analysis.)

IN THE CIVIL COURT

SUIT No. OF 2000

Exhibit 27

| | | |
|----------------------------|---|-------------------------------|
| Institute of -----, |] | ... <u>Plaintiff.</u> |
| V/s. | | |
| 1S.S, |] | |
| 2. The Principal, |] | ... <u>Defendants.</u> |

Adv. plaintiff. Adv. for defendants.

CORAM :
Court Room No.1
DATED :

ORAL JUDGMENT

The plaintiff, "Institute -----", a registered partnership firm, engaged in imparting education in computers, has filed the present suit for recovery of sum of Rs.1 lac alongwith compensation of Rs.50,000/- from the defendants. The defendant No.1 is an educational institute (in short defendant society). Defendant No.2 is the Principal of the School which is run by the defendantsociety.

2. It is the case of the plaintiff that in pursuance to the agreement executed between the plaintiff and the defendant society on 17.05.1995, they imparted computer education to the students of the defendant society by installing the computer equipments costing Rs.4 lacs approximately. That, as per the agreement, the defendant society was required to provide a minimum strength of 1000 students per year for the computer courses to be run by the plaintiff. That, the fees of Rs.360/- per student was fixed. The training syllabus was to be decided by the State Department of Education. The plaintiff, by way of said agreement, agreed to pay sum of Rs.60/- per student per year to the defendant society towards service charges. The plaintiff also agreed to pay Rs.300/- per month to the defendant society towards the room rent and Rs.50/- per month towards the cleaning charges of the computer laboratory. The contract was for 3 years i.e., from 17.05.1995 to 30.04.1998. That, in the first year, the defendant society provided only 971 students for the computer courses, to whom the plaintiff imparted computer education. That, as per the said agreement, they were entitled to receive the sum of Rs.3,49,560/- towards the fees from 971 students. Though the defendant society have recovered the said fees from the students, the same was not paid in its entirety to the plaintiff. That, only amount of Rs.47,870/- was paid by the defendant society to the plaintiff. As per the plaintiff, while paying the said amount, the defendant society assured them that the balance would be paid in short period, but they did not pay. The plaintiff, by way of notice dated 01.04.1996, called upon the defendant society to pay the balance amount of fees of Rs.3,49,560/- alongwith interest at the rate of 24%p.a. thereon. The defendant society approached the plaintiff and again assured that the balance fees would be adjusted in the next year, but failed and neglected to pay the said amount. That, the defendant society started finding it difficult to keep their word and provide the agreed strength of students for the computer courses run by the plaintiff. That, on the request of the plaintiff, the defendant society accepted modification in the agreement dated 17.05.1995, whereby, the plaintiff were to conduct the computer courses only for the students studying in V to X standard of English Medium and not others. That, the plaintiffs completed the computer courses for the year 1995-96,

1996-97, but were not paid the amount of fees by the defendant society. That, therefore, the plaintiff by way of letter dated 23.04.1997 requested the defendant society to pay the due mount of Rs.3.60 lacs, which was not replied by the defendant society. That, surprisingly, on 16.07.1997, the plaintiff received a letter from the defendant society with several allegations on them. That, the plaintiff found that the defendant society has unilaterally terminated the said agreement and asked the plaintiff to remove the computer equipments etc. from their premises. That, in the first week of August 1997, a meeting between the plaintiff and defendant society was held, wherein, the defendant society admitted their liability to pay the amount of fees collected by them from the students and expressed their inability to continue with the said contract for the last academic year i.e., 1997-98. That, even at the time of vacating of the computer room, the defendant society, though assured, did not pay the amount of computer fees collected by them from the students. That, the plaintiff issued a legal notice through their Advocate to the defendant society on 09.06.2000 and thereby demanded sum of Rs.5,10,430/- alongwith interest at the rate of 24% p.a. towards the amount of unpaid fees and compensation which was also not replied by the defendants. The defendant society, as per the plaintiff, have committed breach of the contract and therefore liable to pay the amount of Rs.2,95,800/- towards the computer fees and Rs.1,99,800/- towards the compensation for the breach of contract. However, the plaintiff restricted their claim to the amount of Rs.1.50 lacs only.

3. The defendant society, by way of their written statement Exh.10, contended that the suit is not maintainable, as this Court has no jurisdiction to entertain the present suit. They also contended that the alleged amount, as per the plaintiff, was due from 31.03.1996, whereas the present suit is filed on 15.07.2000, therefore, the suit is barred by law of limitation. It is, further, contended by the defendant society that though the plaintiff agreed for minimum of two school periods of 35 minutes each for each week, did not conduct the regular classes as per the agreement. That, it is only the plaintiff who had collected the fees from the students for the year 1995-96 and have not received any other amount of any nature from the plaintiff, as agreed in the agreement. That, due to the latches and delay on the part of the plaintiff to pay the remuneration to their staff and teachers, who conducted the classes, the classes could not be conducted as per the schedule and therefore, there was irregularity and no continuity in conducting the said computer classes on the part of the plaintiff. That, there is no amount due and payable by the defendants on any count. On the contrary, the plaintiff, is liable to pay the defendant society the sum of Rs.2,24,640/- under the said contract towards the service charges, room rent and cleaning charges. The defendant society also denied that they paid the sum of Rs.47,870/- only to the plaintiff in the first year or any assurance made by them or the modification of the contract in good faith as alleged by the plaintiff. As per the defendant society, no meeting was held in the first week of August 1997 and there is no breach or violation of the promises by their side. As per the defendant society, they have not terminated the contract, on the contrary the plaintiff themselves have closed down the computer classes and the contract was mutually terminated. By denying any liability to pay any amount to the plaintiff, defendant society has prayed for dismissal of the suit with costs.

4. On the basis of rival contentions Issues vide Exh.11 were framed. To substantiate their respective contentions, plaintiff and defendant society examined one witness each. The plaintiff examined their partner Mr. LN, who by way of evidence affidavit (Exh.3) reiterated the pleadings in the plaint. The defendant society authorised by way of their resolution (Exh.24) dated 23.11.1997 Mr. KS, Honorary Secretary of the defendant society and then Principal of the defendant society, who by way of evidence affidavit (Exh.22) reproduced the contention of defendant society in their written statement.

5. Apart from the oral evidence, the plaintiff placed their reliance on the following documents.

| Exhibit | Description of the Documents |
|----------------|---|
| 14 | Letter dated 16.07.1997 sent by the defendants to the plaintiff. |
| 15 | Agreement dated 17.05.1995 between the plaintiff and defendants. |
| 16 | Copy of notice dated 01.04.1996 sent by the plaintiff to the defendants. |
| 17 | Letter dated 23.04.1997 sent by the plaintiff to the defendants. |
| 18 | Letter dated 25.07.1997 sent by plaintiff to the defendants. |
| 19 | Legal notice dated 09.06.2000 issued by plaintiff's Advocate to the defendants. |

6. Heard arguments advanced by Advocate for the defendants and Advocate for the plaintiff.

Advocate for the defendants contended that defendant society is a registered co-operative educational society. That, no notice was issued by the plaintiff to the defendant u/sec.164 of the Maharashtra Co-operative Societies Act and therefore, the suit is not maintainable. He, further, submitted that the cause of action for the plaintiff to file the present suit arose on 01.04.1996, when the plaintiff issued first letter (Exh.16) to the defendant society, and therefore, the suit filed in the month of July 2000 is time barred. He, further, submitted that the plaintiff has not prayed for declaration that the contract is terminated or for other reliefs and therefore the suit is not maintainable. He, further, submitted that the amount is to be recovered from the students by the plaintiff and not by the defendant society. He submitted that there is contradictory version of the plaintiff in their notice at Exh.16 and Exh.19. He submitted that the plaintiff has also not paid the amount to the defendant society as per the contract, which they were liable to pay. He, further submitted that the plaintiff has failed to prove as to what amount they have collected from the students as there was no responsibility of the defendant society to collect the amount from the students. Therefore, he prayed for dismissal of the suit with costs.

7. As against this, Advocate for the plaintiff contended that the defendant society is educational society registered under the Societies Registration Act and not under the Maharashtra Co-operative Societies Act and therefore the bar u/sec.164 of the Maharashtra Co-operative Society Act will not be applicable. He, further, submitted that the contract was for 3 years. It was terminated by the defendant society by way of letter dated 16.07.1997. Therefore, the suit is well within limitation. He submitted that the defendant society has also not replied to the letters issued by the plaintiff and therefore adverse inference is required to be drawn against the defendants. He further submitted that though it was the responsibility of the defendant society to collect the amount from the students, the amount was not paid by the defendant society to the plaintiff and therefore, the suit is required to be decreed with costs.

8. After hearing the rival contentions and on the basis of evidence on record, I record my findings on the following issues for the reasons discussed there under.

| | <u>I S S U E</u> | <u>FINDINGS</u> |
|-----|---|-----------------------------------|
| 1. | Whether this Court has jurisdiction to entertain the present suit ? | In the Affirmative. |
| 1A. | Whether the suit is maintainable against the society without notice ? | In the Affirmative. |
| 2. | Whether the suit is within limitation ? | In the Affirmative. |
| 3. | Whether defendant proves that the plaintiff did not comply with the terms and conditions of the agreement dated 17.05.1995 ? | In the Affirmative. |
| 3A. | Whether plaintiff proves that defendant illegally terminated the contract dated 17.05.1995 ? | In the Negative. |
| 4. | Whether plaintiff proves that he is entitled for the sum of Rs.1 lac being the amount of fees payable by the defendant society to the plaintiff for the academic year 1996-1997 ? | In the Negative. |
| 5. | Whether plaintiff proves that he suffered loss due to the illegal termination of contract by the defendant ? | In the Negative. |
| 6. | Whether plaintiff is entitled for the amount of compensation of Rs.50,000/- ? | In the Negative. |
| 7. | What order and decree ? | Suit stands dismissed with costs. |

R E A S O N S

AS TO ISSUE No.1 AND RECASTED ISSUE No.1A :

9. The defendant society has filed on record their registration certificate. The said registration certificate (Exh.23) specifically shows that the defendant No.1 is a society registered under the Societies Registration Act, 1860. Apart from the said certificate there is no other document to show that the defendant No.1 is a registered co-operative society. DW-1 has testified that they are registered under the Maharashtra Co-operative Societies Act, 1960, but has categorically testified that the certificate of the said registration is at Exh.23. Therefore, the defendant's contention that they are registered as co-operative Society seems to be under misconception of the fact and against the documentary evidence placed by them on record. Having regard to the fact that the defendant No.1 is an education society

registered under the Societies Registration Act, 1860, the provisions of the Maharashtra Co-operative Societies Act will not be applicable to them. Therefore, no notice is required to be served by the plaintiff to the defendants under the Maharashtra Co-operative Societies Act. Therefore, sec.91 or sec.164 of the Maharashtra Co-operative Societies Act will not be applicable in the present matter. Unless the defendants prove that the suit filed for recovery of the amount is barred by any other provision of law, the contention of defendants, in view of sec.9 of the Code of Civil Procedure, cannot be taken into consideration. Therefore, I am of the view that this court has jurisdiction to entertain the present suit and the suit is maintainable against the defendant society without any statutory notice. As such, my answer to Issue No.1 and Issue No.1 A are in the affirmative.

AS TO ISSUE No.2 :

10. Admittedly, the agreement (Exh.15) was for 3 years i.e., from 17.05.1995 to 30.04.1998. It is also admitted fact that meanwhile agreement was terminated. As per the plaintiff, only after the receipt of letter dated 16.07.1997 (Exh.14), sent to them by the defendant society, the agreement was terminated. As per the defendant (Para 20 page 15 of the written statement), the agreement was mutually terminated by and between the plaintiff and defendants. However, no date is mentioned. Therefore, apparently termination of agreement, even as per the pleadings of the parties and as admitted by the defendant society, was post 25.07.1997 itself, as the plaintiff has replied vide letter dated 25.07.1997 (Exh.18) to the alleged letter of termination of agreement dated 16.07.2007 (Exh.14) by the defendant society to the plaintiff. Therefore, the suit for the recovery of amount due in pursuance to the agreement filed in 3 years of termination of the agreement is well within limitation. As such, I answer Issue No.2 in the affirmative.

AS TO ISSUE No.4 :

11. The entire case of the plaintiff is based on contract Exh.15. It is contended by the plaintiff that the 1000 number of minimum students was the condition precedent in the agreement. No doubt that agreement (Exh.15) speaks that the defendant society shall provide minimum strength upto 1000 students to operate the computer classes, but the conduct of the plaintiff, in continuing and imparting with the computer education to the less number of students for the academic year 1995-96, by itself shows that it was not the condition precedent. So also, the plaintiff themselves have come with the case that for the second academic year i.e., 1996-97, it was agreed between the plaintiff and defendant society that the computer education will be imparted to the students of English medium of V standard to X standard, which itself shows that it was not the condition precedent agreed between the parties, that the defendant society should provide minimum strength of 1000 students. In the agreement Exh.15 no consequences are mentioned for the non fulfillment of the said condition. Therefore, the contention of the plaintiff in this regard cannot be accepted.

12. The basic dispute between the plaintiff and defendant society lies on the point as to who was supposed to collect the amount. The plaintiff has admitted the receipt of amount of Rs.47,870/- alleged to have been collected by the defendant society towards the fees. The defendant has specifically denied that they were supposed to collect the amount from the students. In this regard there are inter-alia contrary versions and testimony of both the sides. However, on perusal of the documentary evidence i.e., agreement Exh.15, it seems that as per para 3A, it was for the plaintiff to collect the yearly sum of Rs.360/- from each student in two or suitable installments. Therefore, as per the agreement (Exh.15) the first responsibility to collect the amount of fees from the students was on the plaintiff. Agreement Exh.15 further speaks that it will be the sole responsibility of the defendant society for the recovery of the fees from the students enrolled for the computer classes. The two words i.e., "collection of fees" and "recovery of fees" by itself shows that it was for the plaintiff to collect the fees at the first instance and on failure of the plaintiff to collect the fees from the number of students, it was for the defendant society to recover the same and pay the same to the plaintiff. However, the oral contention of plaintiff is quite contrary to what is being agreed between both the parties in agreement Exh.15. Though defendant society has denied that they have paid only sum of Rs.47,870/- to the plaintiff for the first year, the plaintiff has admitted receipt of the said amount towards the computer fees. In such situation, it was for the plaintiff to substantiate by leading cogent evidence as to what was the number of students who have paid the fees and the number of students who have not paid the fees for the first academic year and then calling upon the defendant society to recover the fees from the remaining students, who have not paid the fees, by giving the details about the recovery. Having regard to the correspondence made by the plaintiff with defendant society, it seems that no such details are given. The defendant society has specifically denied the fact that it was their responsibility to collect the fees. Unless such details are given, there is no possibility of recovery of fees from the remaining students who have not paid the fees. How one would know as to who has paid the fees and who has not. Therefore, without there being details of the students, the defendant society is not supposed to recover the fees. When the initial burden under the agreement (Exh.15) was on the plaintiff to collect the fees, that too in installments, then it was for the plaintiff to either collect the fees or to maintain record of such collection of fees from the students. The plaintiff has not filed any document to substantiate that either they have collected the fees or they have kept the record of such collection of fees.

13. Even assuming for the sake that the defendant society might have collected the said fees. In that

case, it was for the plaintiff to ask the defendant society to give details of the students who have not paid the fees so that they could have performed their part of the contract by collecting the fees from the remaining students which was their responsibility. And only thereafter, it would be the responsibility of the defendant society to get the outstanding fees recovered and pay it to the plaintiff. Except the correspondence by the plaintiff to defendant society, which is filed on record, without there being such details, it cannot be concluded that the plaintiff has proved beyond all reasonable doubt that there was collection of fees by them to the tune of Rs.47,870/- for the first academic year or it was received by them from the defendant society. Had it been the fact that it was defendant society who collected the fees from the student, as a prudent person, they would have first deducted their due amount payable by the plaintiff as per the agreement Exh.15, which is not the case in hand. Under such circumstances, I am of the view that the plaintiff has failed to prove that they are entitled for the sum of Rs.1 lac being the amount of fees payable by the defendant society to the plaintiff for the first academic year. Therefore, my answer to Issue No.4 is in the negative.

AS TO ISSUE No.3 & 3A :

14. The defendants contended that the plaintiff has not complied with the terms and conditions of the agreement (Exh.15). As per the defendants, plaintiff has collected the fees from the students for the year 1995-96, but has not paid the agreed amount under the agreement (Exh.15) to the defendant. As per the agreement, collection of fees was the responsibility of the plaintiff and its recovery that of defendant society. The plaintiff has admitted receipt of amount of Rs.47,870/-. However, the plaintiff has not produced any document to show that he has paid any amount to the defendant society. As per the agreement, the plaintiff was supposed to pay the amount of yearly compensation of Rs.60/- per student as service charges, Rs.300/- per month towards the room rent of Rs.300/- and Rs.50/- per month towards the cleaning charges of computer lab. As per the agreement (Exh.15) the amount of payment of room rent or the amount of payment of cleaning charges are not subject to collection or recovery of fees from the students. Therefore, it was the responsibility of the plaintiff to pay the said amount. The plaintiff has neither pleaded nor testified that such amount was recovered. The plaintiff has also not disputed non payment of the said amount in their last correspondence, when it was specifically averred by the defendant in their letter dated 16.07.1997. Therefore, I am of the view that the defendant society has proved that the plaintiff has not complied with the terms and conditions of the agreement. On the contrary these are the grounds for the defendant society to terminate the contract. The plaintiff has not satisfied that the termination was otherwise illegal. Therefore, without going to the other allegations regarding the breach of the contract, I am of the view that the plaintiff has failed to show that the termination was illegal. As such, my answer to the Issue No.3 is in the affirmative and Issue No.3A in the negative.

AS TO ISSUE Nos.5 & 6 :

15. The plaintiff has pleaded and testified that they are entitled for the amount of compensation of Rs.50,000/-. However, there is no iota of evidence to show as to how the plaintiff has calculated the said amount of Rs.50,000/- and what was the actual damage caused. Under such circumstances, the plaintiff is not even entitled for the said amount of compensation as claimed. So also, it was the responsibility of the plaintiff to collect the fees and then it was the responsibility of the defendant to recover the same. The plaintiff, at the first instance, cannot escape from his liability of the collection of fees. He has to substantiate by leading cogent evidence as to what efforts he has taken for collection of fees. In the case in hand, the defendant is abruptly coming with the case that it was the responsibility of the defendant to collect the fees, which is against the written agreement between the parties. Therefore, the plaintiff, without there being bonafide efforts on his part, which are to be proved, cannot shift their responsibility on the shoulder of the defendant society. Hence, I answer Issue No.5 and Issue No.6 in the negative. In the result, the suit is required to be dismissed with costs. Hence, following order.

ORDER

1. The suit stands dismissed with costs.
2. Decree be drawn up accordingly.

Judge, Civil Court,

Date :

Analysis:-

As mentioned in para no. 1 the suit is for recovery of Rs. 1,00,000/- under the contract and Rs. 50,000/- as compensation. On reading the entire judgement it is not very clear as to what were the terms of the agreement between the parties and what ground the amount of recovery is calculated and claimed. The plaintiff is a computer institute providing teaching services to educate pupil in computers and defendant no. 1 is an educational institution and defendant no. 2 is Principal of defendant no. 1.

As mentioned in the para no. 2 of the judgement plaintiff and defendants entered into contract on 17 May, 1995 for installation of computer equipment worth Rs. 4,00,000/-. It is not very clear from the pleadings but it seems that the plaintiff has to impart computer education to the students of the plaintiff by getting fees of Rs. 360/- per student. It is not very clear whether the fees were per annum or per month. Out of said fees amount Rs. 60/- was to go to the defendant. The plaintiff was required to pay Rs. 300/- per month for using premises of defendant and Rs. 50/- per month as cleaning charges of said premises. It is grievance of the plaintiff that defendant received fees from student but didn't pay to the plaintiff and plaintiff is entitled to recover Rs. 3,49,560/-. It is also mentioned in same para that the parties modified the agreement in year 1995 itself and the plaintiff was to impart education to students from Class 5 to 10 of English medium. It is also mentioned that in year 1997 in joint meeting defendant agreed to pay the amount. The figures of demand and compensation mentioned at the end of para no. 2 concluding the plaintiff's case is way different from the amount mentioned in para no 1, however it is clarified that claim is restricted to Rs.1,50,000/-.

The defendant has raised issue of maintainability on the ground that it is a society registered under the Societies Registration Act suit is untenable without statutory notice and because of bar under Maharashtra Co-operative Societies Act. Plea of bar by law of limitation is also raised. The defendant contended that the plaintiff under the agreement was entitled to collect the fees from students and defendant was not required to collect fees and provide it to the plaintiff. Defence is also raised that plaintiff has not paid rent and cleaning charges but no counter claim or set off is raised.

Issues of maintainability of a suit are framed as issue no. 1, 1a and 2. Issue no 3 surprises me because burden is cast upon defendant to prove that the plaintiff committed breach of terms and conditions of contract. Issue no. 3a is also a surprise because it asks plaintiff to prove illegal termination of contract by defendant which is not the case of the plaintiff. Issue no. 4,5,6 are regarding the relief of recovery and compensation.

The whole problem seems to be the case of lengthy and defective pleadings which led to inappropriate framing of issues. In the attempt of summarising this pleading without going to crux of the matter the required question of fact did not emerge. Further in order to answer inappropriate issues reasons also went weird. The only question of fact in the suit is what were the contractual arrangements between the parties about imparting computer education, recovery of service charge, payment fees, rent of premises and cleaning charges. For the contractual liability it was necessary to look into the contract and after demarking contractual liabilities look into the accounts of the parties to give a finding as what is due to the plaintiff.

Here it is necessary to mention that whole of the judgment is confined to the things placed before the Court and no efforts are made to look into things which apparently hidden from it. The role of the judge is to try to give as far as possible final word of justice by unearthing the real dispute between the parties and deciding the said dispute. In the present judgement or to say in the present civil trial this attempt has not been made.

From the pleadings of the plaintiff it appears that real dispute is of making available number of students for computer education by the defendant institution. When we consider plaintiff's grievance with practical aspect it will emerge that the plaintiff may have acquired resources, trainer, equipment and also consumables to impart the training to the students for which he must have estimated some budget and accepted the contract when he was assured that he will get particular returns. It seems from pleadings

and evidence that the defendant struggled to give this strength of students to the plaintiff and for that purpose the contract was amended. Students of some category were removed from training and students from other standard were inducted. Finally, it seems that the plaintiff was not able to make desired profits and contract was put to an end. It is not clear from the pleadings as to whether there was any clause in the contract indemnifying the plaintiff from the losses he will incur if less no. of students were made available for the training.

Issue of maintainability is answered in negative on the ground that defendant institution is registered under societies act but it was not a co-operative society. Issue of limitation is answered on the ground that suit is filed within 3 years from termination of contract. Other issues were answered in negative as the advocates particularly the advocate for plaintiff did not place proper facts before court.

The above discussed flaws ought to have been avoided and if have to decide such suit consider the terms of the agreement to find out liabilities arising from its terms instead of denying relief on the basis of technicalities.
