

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.306 of 2009

Muhammad Akbar ----- Plaintiff

Versus

Masood Tariq Baghpati & others -----Defendants

Date of hearing: 01.03.2017

Date of Judgment: 01.03.2017

Plaintiff: In Person.

**Defendants: Through Mr. Khadim Ali Metlo,
Advocate.**

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit for Recovery of Compensation for Damages and Losses amounting to Rs.70,00,000/- and the following relief(s) have been sought:-

- A) Decree for an amount of Rs. 70,00,000/- (Rupees seventy lac) in favour of plaintiff against defendants being compensation for damages and losses which the defendants have caused the plaintiff unemployed while keeping his original documents in their custody and also not issued the "Clearance Certificate"/"No Objection" Certificate to the plaintiff, directing the defendants to pay, the aforesaid amount to the plaintiff.
- B) Cost of the suit.
- C) Any other relief or relief(s) as this Hon'ble court may deem fit and proper in view of the circumstances of the case.

2. The plaintiff's case as stated is that he was employed with a Company namely "**TRISTAR SHIPPING LINES LIMITED**" ("Company") at a salary of Rs.22,000/- per month. The plaintiff worked in this Company from 1996 to 1998. Whereas, the said Company went into liquidation and in certain proceedings before this Court the

Official Assignee was appointed as Liquidator, and the Company has now been wound up. It is the case of the plaintiff that the management of the said Company did not pay his dues against which a case was filed under Section 12 of the Shops and Establishment Order, 1969 before the Court of Commissioner for Workman Compensation at Karachi, which was allowed by directing the said Company to pay an amount of Rs.1,25,639/-, out of which, the Company offered a settlement and an amount of Rs.51,000/- was paid against his claim on 23.06.2008. The present case is for damages and compensation on the ground that his original documents were retained at the time of engaging him in the employment and he was not issued a No Objection Certificate as well as a Clearance Certificate depriving him from any further employment, hence this Suit.

3. Summons and Notices were issued and after filing of written statement by the defendants vide Order dated 14.12.2010, the following Issues were settled:-

- i. Whether the suit is maintainable under the law?
- ii. Whether the removal of plaintiff is in violation of service rules and law?
- iii. Whether the plaintiff is entitled to for the damages claimed in the Suit.
- iv. What should the decree be?

4. The plaintiff has appeared in person and submits that the defendants, who are Directors, owners and/or Managers of the Company in question unlawfully retained his original documents, which deprived him from earning any further livelihood, hence instant Suit has been filed for damages and compensation. He has also referred to J.M. No.58/2002 and submits that instant Suit was filed subsequently for the reason that he was pursuing his remedy in the said J.M as an intervener, and therefore, the Suit is very much maintainable. He has referred to the evidence so led by him in support of his contention.

5. On the other hand learned Counsel for the defendants submits that the plaintiff's claim was against the Company, which is no more in existence and stands wound up through Official Assignee of this Court in the aforesaid J.M. He submits that the plaintiff was even paid certain amount out of the proceeds available with the Official Assignee in proportion to his entitlement. He has also referred to the cross-examination of the plaintiff and submits that no case is made out by the plaintiff for judgment and decree.

6. I have heard the plaintiff as well as the learned Counsel and perused the record. Admittedly, the plaintiff's employment was with the Company, which was limited by shares and notwithstanding the fact that it was under liquidation or had been wound up, the plaintiff was required to array the said Company as a defendant through the Official Assignee. The present defendants may be directors, owners and/or managers of the said Company but in no manner they can be held liable for any amount owed by the Company as alleged except to the extent of their share. Since admittedly the Company stands wound up, there could not be any claim against the said directors and/or managers. Learned Counsel for defendant has rightly placed reliance on the case of ***Anjum Rashid v. Shehzad & Others (2007 CLD 1210-DB-SHC)***. Moreover, in the entire evidence the plaintiff has not been able to establish his case as to what damages and losses were suffered by him against the alleged act of retaining certain documents by the Company. Even otherwise, he himself has stated that in 1998, he left the Company, whereas, instant Suit has been filed in the year 2009. No explanation is on record, neither in the plaint nor in the evidence, as to how instant Suit is within time. Merely for the fact that he made certain attempts to become an intervener in a winding up petition and was unsuccessful, the limitation would not enlarge in his favour.

6. Even otherwise in his cross-examination he states that ***"It is correct I was employee of the Tri Star Shipping Company Ltd. and I was not personally employee of the defendant. It is correct that Tri Star Shipping Company Ltd. has been wounded up as per the order dated 21.05.2007 in J.M.***

No.58/2000[2002]. It is correct that the claim filed by me in J.M. No.58/2002 was dismissed by the Hon'ble High Court. It is correct that I filed the claim before the Official Liquidator and the Official Liquidator paid the amount as per order of the Hon'ble High Court. It is correct that the entire record of Tri Start Shipping Company Ltd. was taken over by the Official Liquidator in J.M. No.22/98".

7. In view of hereinabove facts and circumstances of the case, I am of the view that the plaintiff has failed to make out any case, whereas, even otherwise, the Suit appears to be not maintainable against the present defendants and is also apparently time barred. In the circumstances, the Issues are answered as follows:-

<u>ISSUE No.1:</u>	-----	In Negative.
<u>ISSUE No.2:</u>	-----	Not proved.
<u>ISSUE No.3:</u>	-----	In Negative.
<u>ISSUE No.4:</u>	-----	Suit dismissed.

8. Accordingly Suit stands dismissed, however, with no order as to cost(s)

Dated: 01.03.2017

JUDGE

Ayaz