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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 3625 of 2008

SYED ASHRAF HASNAIN RIZVI Petitioner
Through: Mr. Anil Sapra, Senior Advocate with
Mr. Sumant, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Madan Gera, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether reporters of local paper may be allowed to see the judgment? | No |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the judgment should be referred in the digest? | Yes |

ORDER
05.04.2010

1. The Petitioner challenges an order dated 4th April 2008 passed by the Ministry of External Affairs ('MoEA'), Government of India refusing him permission under Section 86(3) of the Code of Civil Procedure ('CPC'), 1908 to execute a decree dated 14th November 2007 in Suit No. 59 of 2004 in his favour against the Embassy of Islamic Republic of Iran.

2. Aggrieved by the termination of his services by the Embassy of Islamic Republic of Iran, Respondent No.3 (R-3) herein, the Petitioner approached the Respondent No.1, MoEA with an application under Section 86 (1) CPC for permission to institute legal proceedings against R-3 for getting his dues. This he did by a letter dated 20th April 2003 in which inter alia he prayed:

"It is, therefore, once again prayed that Ministry of External Affairs, Government of India be pleased to take appropriate

action against the Embassy of the Islamic Republic of Iran and direct them to settle the matter amicably with me, which I am very keen to do. However, should the Embassy be unwilling to do so within a period of 15 days, I earnestly pray to the Ministry of External Affairs to grant me consent under Section 86 of the Code of Civil Procedure, 1908 to move the competent Court for redressal of my grievances and recovery of the compensation and other amounts due to me on account of the illegal termination of my service.”

3. In response to the above letter, on 23rd January 2004, the MoEA granted permission to the Petitioner under Section 86 CPC for initiating legal proceedings. However, for some reasons, the permission was worded as under:

“Now, therefore, government of India, the Ministry of External Affairs, hereby accord and certify their consent under Section 86 Code of Civil Procedure, 1908 for institution of legal suit against the Embassy of the Islamic Republic of Iran, New Delhi in a court of competent jurisdiction for getting the retirement benefits.”

4. On the basis of the above permission, on 2nd April 2004 the Petitioner filed Suit No. 59 of 2004 in the court of the learned District Judge against R-3. The suit was contested by R-3 which was arrayed as Defendant No.1. By judgment dated 14th November 2007, the learned Additional District Judge (‘ADJ’) decreed the suit for the sum of Rs.7,89,600/- with 10% per year increase on the wages drawn for the last seven years with proportionate costs and pendente lite and future interest @ 9% p.a. till the date of payment.

5. On the basis of the above decree, the Petitioner on 12th February 2008 applied to the MoEA under Section 86 (3) CPC for permission to execute the said judgment and decree.

6. By the impugned order dated 4th April 2008, the permission was refused by the MoEA on the ground that the permission to sue R-3 had been only for “getting retirement benefits” whereas the Petitioner had instituted the suit for “compensation for the illegal termination of his employment.”

7. The submissions of Mr. Anil Sapra, learned Senior counsel for the Petitioner and Mr. Madan Gera, learned counsel for the Respondents have been heard.

8. Mr. Sapra refers to the judgment of the Supreme Court in *Harbhajan Singh Dhalla v. Union of India AIR 1987 SC 9* and states that the very object of Section 86 CPC is to ensure that the cause of justice is not defeated and that a person who has a legitimate claim against a foreign government is entitled to realise such claim in accordance with law.

9. Mr. Gera, on the other hand, submits that the precise wording of the permission granted to the Petitioner by the MoEA by its letter dated 23rd January 2004 would have to be adhered to. That permission was only for the Petitioner to get “retirement benefits”. He also adverts to the fact that the suit, as filed by the Petitioner was captioned as a suit for “recovery of compensation/retirement benefits on account of the illegal and unlawful

termination...” He accordingly submits that the decree passed by the learned trial court cannot be permitted to be executed as it is not in conformity with the permission granted by the MoEA under Section 86 (1) CPC.

10. Having considered the submissions of learned counsel for the parties, this Court is of the view that the writ petition should succeed. Section 86 of the CPC reads as under:

“86. Suits against foreign Rulers, Ambassadors and Envoys.

(1) No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that the foreign State-

(a) has instituted a suit in the Court against the person desiring to sue it, or

(b) by itself or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to it by this section.

(3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.

(4) The preceding provisions of this section shall apply in relation to-

(a) any Ruler of a foreign State;

(aa) any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff of the foreign State or the staff or retinue of the Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf, as they apply in relation to a foreign State.

(5) The following persons shall not be arrested under this Code, namely:-

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order specify in this behalf.

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.”

11. As explained by the Supreme Court, the very purpose of the above Section is to enable persons who may have a legitimate claim against a foreign government to realise such claim in accordance with law. It was observed by the Supreme Court in para 22 of the above judgment under as under (AIR @ p.14):

“It is true that these provisions both of Sections 86 and 87 are intended to save the foreign states from harassment which would be caused by the institution of a suit but except in cases where the claim appears to be frivolous patently, the Central

Government should normally accord consent or give sanction against foreign states unless there are cogent political and other reasons. Normally, however, it is not the function of the Central Government to attempt to adjudicate upon the merits of the case intended to be made by the litigants in their proposed suits. It is the function of the courts of competent jurisdiction and the Central Government cannot under Section 86 of the Code usurp that function. The power given to the Central Government must be exercised in accordance with the principles of natural justice and in consonance with the principle that reasons must appear from the order.”

12. It is difficult to appreciate the objection taken by the MoEA in this case particularly when R-3 itself appears to have accepted the judgment and decree of the trial court in the suit which it contested on merits. The Petitioner on his part had sought permission from the MoEA to sue R-3 “for recovery of compensation and other amounts due to him on account of the illegal termination of his services.” For some reason, in its letter dated 23rd January 2004, the MoEA granted him permission for getting the “retirement benefits”. In fact, there is no question of the Petitioner having retired. Consequently, his claim was essentially for the compensation due to him on account of the illegal termination of his services. The permission under Section 86(1) CPC has to be read consistent with the permission that was sought by the Petitioner in his letter dated 20th April 2003.

13. A reading of the plaint also shows that the Plaintiff was essentially claiming compensation for the illegal termination of his services.

Schedule A to the plaint listed out the claims. This Court is, therefore, unable to appreciate the refusal by the MoEA to accord permission to the Petitioner under Section 86(3) CPC.

14. The writ petition is accordingly allowed. The impugned order dated 4th April 2008 is hereby set aside. The Respondent Union of India is directed to issue a letter to the Petitioner within a period of four weeks under Section 86(3) CPC permitting him to execute the decree dated 14th November 2007 (Suit No.59 of 2004). It is made clear that if such letter is not formally issued, then it will be deemed that the UOI has granted such permission under Section 86(3) CPC and on the strength of the present judgment it will be open to the Petitioner to apply to the executing court for execution of the decree in question.

15. The writ petition is allowed with costs of Rs.5,000/- which will be paid by the UOI to the Petitioner within four weeks.

S. MURALIDHAR, J.

APRIL 05, 2010
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