

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 242/2004**

% **15th March, 2012**

MEHKAR SINGH Appellant

Through: Mr.S.K.Rungta, Sr. Adv. with
Ms. Pratibha Rungta, Adv.

versus

RAJINDER KUMAR SHARMA Respondent

Through: Mr. P.N.Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 30.1.2004 dismissing the suit of the appellant/plaintiff for recovery of salary and damages of ₹3,80,000/- on account of having been caused injuries during the course of employment because of attack by persons who had disputes with the respondent/defendant.

2. The facts of the case are that the appellant/plaintiff claimed

that he was employed with the respondent/defendant with effect from March, 1998 for ploughing his field including leveling of the earth as the same land was earlier used for a brick kiln. It was further pleaded in the plaint that the respondent/defendant paid salary of ₹10,000/- per month only upto January, 1999 and thereafter did not pay the salary. It was further pleaded that on 16.5.1999, the appellant/plaintiff was beaten by some persons because of which he had to be hospitalized. The respondent/defendant is stated to have got signed some blank papers from him under the pretext of using the same for proper investigation of the case. The subject suit came to be filed alleging non-payment of salary and for recovery of medical expenses incurred in the treatment. It transpired that the injuries were caused to the appellant/plaintiff by one Sh.Badle Ram who was claiming that the subject agricultural land, for which the appellant/plaintiff was appointed as an employee, did not belong to the respondent/defendant but belonged to said Badle Ram.

3. A sum of ₹2,30,000/- was claimed towards salary, ₹50,000/- towards medical expenses and damages on account of mental and physical agony at ₹1,00,000/-. Thus, a total amount of ₹3,80,000/- with interest at 24% per annum was claimed in the suit.

4. The respondent/defendant contested the suit and denied that

the appellant/plaintiff was employed at a salary of ₹10,000/- per month. It was pleaded that the appellant/plaintiff was employed by the respondent/defendant as a daily wager for about 40 to 45 days for harvesting of crops alongwith other daily wage labourers. It was denied that the appellant/plaintiff was appointed on a salary of ₹10,000/- per month. It was further alleged that the subject suit was a malafide suit inasmuch as it was filed in collusion with said Sh.Badle Ram and his sons and the appellant/plaintiff had turned hostile in the criminal case. It was further stated in the written statement that the subject land belonged to the respondent/defendant and Sh.Badle Ram after being unsuccessful in obtaining an interim injunction in a bid to stop the crop harvesting on the subject agricultural land, had attacked the daily wage labourers of the respondent/defendant including the appellant/plaintiff. This incident took place on 16.5.1999. It is also pleaded that the respondent/defendant paid for medical expenses/treatment and also took back the appellant/plaintiff to his residence at Meerut after his discharge from the hospital. It was pleaded that the suit was malafide because the appellant/plaintiff was won over by Sh. Badle Ram and appellant/plaintiff had changed his statement in the criminal case and had become a hostile witness.

5. After the pleadings were completed, the Trial Court framed

the following issues:-

- “1. Whether there was no relationship of employer and employee between the parties as alleged in P.Q.A. of WS? OPD
 2. Whether the suit is not maintainable under the provisions of Specific Relief Act, 1963, as alleged in P.O.(F)? OPD
 3. Whether the plaintiff is entitled to a decree for ₹3,80,000/- along with interest, if so, at what rate? OPP
 4. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed in Clause-B? OPP.
 5. Relief.”
6. With respect to the relevant issue no.1, Trial Court has held as under:-

“ISSUE No. 1

The defendant has categorically testified in his evidence that there has been no relationship of employer and employee between him and plaintiff. It was testified that he used to cultivate the said land and he used to engage only temporary, casual, daily wage labours for harvesting the crops saroning and terra; and that plaintiff had been kept by him as casual labour on daily wage of Rs.100 p. Day w.e.f. 1.4.1999. Ex.DW-1/2 was the letter of introduction written by Sh. Ved Prakash Sharma, District Merrut who was also examined as DW1 and testified that he was an advocate and taking the case of the plaintiff and also remitted the plaintiff to the defendant for labour. Plaintiff denied his signatures on the said exhibit at point-G. However it is seen that the these documents have been proved by the DW2 as actually having been written by him to the defendants. He also testified that he had conducted the case of the plaintiff and had also remitted him to the defendant who was related to him. Not only this defendant has also placed on record the receipt and vouchers about the daily wage paid by him to the plaintiff Ex.PW-1/D1 to PW-1/D6. The said receipt and vouchers are dated 8.4.99, 15.4.99, 22.4.99, 30.4.99, 8.5.99 and 14.5.99, for having made the payment of wages for 7 days each. All these receipts/ bills bears the thumb impression of the plaintiff in token of having received the said amount. The plaintiff has merely denied his thumb impressions.

On the other hand, plaintiff testified that he was appointed as tractor Driver with the defendant since 1998. He had testified that he had been brought by the defendant from his Village in U.P. on salary of Rs.10,000 p.m. for the purpose of converting the brick-klin into agriculture land. The defendant was cross-examined at length by the plaintiff when he appeared as DW1 in the witness box wherein incident of beating on 16.5.99 of the plaintiff was admitted. The plaintiff was confronted with Ex.PW-1/2 and certified copy of the FIR as Ex.PW-1/3. The said FIR had been lodged on the complaint of the defendant on 16.5.99 wherein he specifically stated that he earlier had brick-klin in the said land. But now he used to look after his land and grow crops therein. Sh. Badle Ram in the neighbourhood had been litigating with him in respect of the some of his land, on that particular day while he was present at his land around 11.00 A.M. the said Badle Ram had come to his land along with his sons armed with lathies they had pulled out his servant Sh. Makar Singh (plaintiff) from the room and had assaulted him. Besides this certified copies of the statement made by the defendant in the criminal court as Ex.PW-1/2 wherein he stated about the said incident and had mentioned about only by his name, and stated that Mehkar Singh was his employee and used to harvest in the farm house. However, using the work employees loosely in the said statement does not mean that the plaintiff became the employee (workman) and was entitled to benefits under the Industrial Disputes Act.

It is the case of the defendant that plaintiff had worked with him at his farm house as casual labour for 40-45 days assisting him in his harvesting. The nature of work itself is of a seasonal character. There is nothing on record, i.e. the plaintiff has not cross-examined this witness to produce on record that the work of the defendant could be considered as an Industrial establishment, nor has the plaintiff produced anything on record to show that he was in continuous employment of the defendant. Thus, the plaintiff has failed to show that defendant was his employer as defined in Industrial Disputes Act nor has he been able to show that defendant was running an Industry in which he was working. Thus, it is held that plaintiff has failed to show the employee and employer relationship as understood under the Industrial Disputes Act. But the averments of the plaintiff himself and of the defendant show that he employee and employer relationship was otherwise there in the general sense of the word. The employer-employee relationship as it was, exists between the parties as reflected from pleadings itself and evident from the evidence also. Though only for 45 days, the defendant had employed the plaintiff and thus was his employer in that sense. This issue is decided accordingly.” (underlining added).

7. I completely agree with the aforesaid findings and conclusions inasmuch as the onus of proving that the appellant was the employee of the respondent/defendant was on the appellant, who was the plaintiff, and admittedly, except a self-serving statement no documentary evidence was filed to prove the alleged employment. In fact, the respondent/defendant proved the daily wage vouchers as Ex.PW1/D1 to PW1/D6. These vouchers contained the thumb impressions of the appellant/plaintiff. Though, the appellant/plaintiff denied these vouchers, however, no evidence was led of any expert witness of the appellant/plaintiff that the thumb impressions were not of the appellant/plaintiff. Since the issue was not of signatures but of thumb impressions, the appellant/plaintiff could have very easily proved the thumb impressions, on the vouchers as not to be his, if really the same were not his thumb impressions. Signatures can be forged but not thumb impressions. I may, at this stage, state that the appellant/plaintiff in the plaint had stated that the respondent/defendant had taken his thumb impressions on blank documents during the time he was in hospital, and obviously this plea was taken in the plaint to cover up the factum with respect to possibility of the respondent/defendant filing the payments made to the appellant/plaintiff towards the daily wages. This Court also cannot ignore the fact that the respondent/defendant had

contended that the appellant/plaintiff has become a hostile witness in the criminal case filed against Sh. Badle Ram and his sons.

8. A civil case is decided on balance of probabilities. The onus to prove that the appellant/plaintiff was an employee, was on the appellant/plaintiff and which onus of proof he failed to discharge, inasmuch as, an oral statement, once the same is denied by the opposite party, cannot be taken as discharge of proof of the factum of employment. The Trial Court has also rightly held that the relationship was not governed under the Industrial Disputes Act, 1947 as agricultural activity is not an industrial activity and nor the agricultural field is an industrial establishment.

9. In view of the above, there is no merit in the appeal. Appeal is therefore dismissed with costs of ₹10,000/-. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MARCH 15, 2012
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