

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.6016 of 2015

Date of decision: 15.09.2015

Anshum Agrawal

...Petitioner

versus

**M/s Tower Research Capital India Pvt. Ltd. Company and another
...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ferry Sofat, Advocate,
for the petitioner.

RITU BAHRI, J.

Challenge in this petition is to the order dated 13.08.2015 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Gurgaon, whereby application filed by the defendants-respondent under Order 7 Rule 11 CPC has been allowed and plaint of the plaintiff-petitioner has been rejected.

Plaintiff-petitioner filed a suit for declaration with consequential relief of permanent and mandatory injunction directing the defendants-respondents to release the monthly salary till the plaintiff recovers from his health. The plaintiff was hired by respondent No.1-M/s Tower Research Capital India Pvt. Ltd. Company. On 14.06.2012, he met with an accident in the course of his employment and suffered severe head injury, splenectomy and had undergone immense trauma. He joined his service after 7/8 months and on account of injuries suffered by him, he could not participate in any performance evaluation conducted by the respondent-company. In this regard, he sent various notices through email. The respondent-company

acknowledged the medical certificate of the plaintiff-petitioner vide letter dated 08.10.2014 (Annexure P-6), but thereafter stopped paying him any salary. He was informed that unpaid medical leave would start from 08.10.2014. He was further informed to procure a medical certificate from the doctors/hospitals mentioned in the letter, before joining on 08.11.2014. He was told that if, he would not return to work and attend regular duties, the company would be constrained to take appropriate action, which may include termination of his employment. Aggrieved by the letter (Annexure P-6), the plaintiff-petitioner filed the present suit on 10.11.2014.

However, the services of the plaintiff-petitioner were terminated on 17.11.2014 and an application was filed by the defendants-respondent under Order 7 Rule 11 CPC for rejection of the plaint. This application was allowed vide order dated 13.08.2015 and the plaint was rejected by making reference to a judgment passed by this Court in **M/s Denso Haryana Pvt. Ltd. Vs. Anshu Mishra and another**, 2007 (1) PLR 541. In the facts of the above case, the plaintiff had been served with the charge sheet and was facing an enquiry. The suit had been filed restraining the defendants from proceeding with the enquiry and to abstain the enquiry officer to prepare the enquiry report and further restraining the company from terminating the services of the plaintiff. The proceedings in the enquiry were dropped and therefore, there was no cause of action to proceed with the suit. At the same time, after dropping the enquiry, services of the plaintiff had been terminated. The company filed an application under Order 7 Rule 11 CPC for dismissal of the suit as after dropping of the enquiry, there was no subsisting cause of action to pursue with the suit. The trial Court dismissed the application under Order 7 Rule 11 CPC. However, this Court allowed the revision and

observed as under:-

“It cannot be disputed that it is a settled law that in order to decide an application under Order 7 Rule 11 of the Code the averments made in the plaint are only required to be seen and not defence raised by the defendant nor it is open to the Court to reject the plaint merely by forming an opinion that on the averments made in the plaint, there was no chances of plaintiff's succeeding in the said suit. Thus, prima facie argument raised by Mr. Amar Vivek, learned counsel for the plaintiff-respondent looks to be attractive. However, when the matter is considered in depths the same cannot be accepted in view of the special facts and circumstances of this case. It is not in dispute between the parties that after the termination of the services of the plaintiff-respondent, an application under Order 6 Rule 17 of the Code was filed for amending the suit to challenge the order of termination by claiming it to be subsequent event. The said application was dismissed. In the revision filed against the said order this Court was pleased to specifically held that the passing of order of termination on different grounds gave a distinct cause of action to the plaintiff. In the absence of challenge to the order of termination it cannot be said that there is any subsisting cause of action with the plaintiff. The Hon'ble Supreme Court in **T.Arivandandam Vs. T.V.Satyapal and another AIR 1977 SC 2421** has been pleased to lay down as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful – not formal-- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O.VII R.11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O.X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi “it is dangerous to be too good.”

6. The trial Court in this case will remind itself of S.35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.”

In the facts of the present case, after dropping the enquiry proceedings, the plaintiff-petitioner had been terminated. Hence, in the present suit, the proceedings, if they are allowed to be continued, would be meaningless and would merely result in wastage of time of the Court without there being even remote chances of success of the plaintiff. In the meantime, the plaintiff-petitioner has sufficient remedy to challenge his termination order appropriately.

In view of the above, no ground is made out to interfere in the impugned order.

Dismissed.

(RITU BAHRI)
JUDGE

15.09.2015
ajp