

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

+ **R.S.A. No.36/2015**

Decided on : 4th February, 2015

NAROTTAM SINGH BAKSHI Appellant

Through: Dr.M.Y.Khan, Adv.

versus

CORPORATE PERSONNEL MANAGER ENGINEER INDIA LTD
AND ANR Respondent

Through

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI
V.K. SHALI, J. (ORAL)

C.M. No1387/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

R.S.A. No.36/2015

1. This is a regular second appeal filed by the appellant against the judgment dated 24.09.2014 passed by the learned ADJ in RCA No.10/2013 by virtue of which the order dated 14.03.2013 passed by the learned Civil Judge in Suit No.1293/06/85 was upheld.

2. The contention of the learned counsel for the appellant is that the appellant has been non-suited after a lapse of 28 years on the preliminary ground that the appellant is not protected by Article 311 of the Constitution of India or under the industrial laws or that his termination is not in breach of any express provision of the statute and, therefore, he is not entitled to protection under the civil law. It has also been observed by the learned court that the contract for personal service cannot be specifically enforced and consequently the appellant has been left remediless. It is contended that on account of the delayed decision passed by the two courts below, the appellant cannot be made remediless and, therefore, the matter needs consideration.

3. Before dealing with the submissions made by the learned counsel for the appellant, it will be pertinent to give the brief background of the case.

4. The appellant was employed with M/s Engineers India Limited. His services were allegedly terminated on account of absenteeism as he had failed to report for duty after availing leave. The appellant filed a suit for declaration challenging his termination and seeking the

relief that he should be deemed to be in service. The aforesaid suit of the appellant was dismissed by the learned Civil Judge on 14.03.2013 holding that the appellant in fact was seeking specific performance of a contract of personal service which cannot be specifically enforced in view of Sections 14 & 41 of the Specific Relief Act, 1963. Accordingly, the suit of the appellant was dismissed. The appellant feeling aggrieved by the aforesaid order preferred an appeal which was also unsuccessful as the same was also rejected by the first appellate court vide order dated 24.09.2014.

5. Still not feeling satisfied, the present appeal has been filed. Second appeal is permissible only if a substantial question of law is involved. The submission which has been made by the learned counsel for the appellant does not involve any question of law much less a substantial question of law.

6. The submission made by the learned counsel for the appellant that in a situation like this where the suit of the appellant is dismissed on the ground that he is trying to seeking enforcement of a contract of personal service, the appellant does not become remediless. As a matter of fact, the appellant ought to have availed the alternative

remedy of seeking damages where by establishing that he services had been illegally terminated, he would have got damages. This relief, incidentally and curiously, has not been claimed by the appellant. The appellant also had to keep in mind that Order 2 Rule 2 CPC specifically lays down that unless and until permission to seek part of relief is granted in a suit, the party must necessarily seek all the reliefs in the first suit failing which they will be deemed to have been given up.

7. In the instant case, since the relief of damages was not claimed by the appellant in the suit itself, therefore, the prayer of the appellant for grant of payment of damages could not be considered assuming that his termination was illegal.

8. For the reasons mentioned above, I am satisfied that there is no substantial question of law involved in the matter.

9. Accordingly, the appeal is dismissed.

V.K. SHALI, J

FEBRUARY 04, 2015/dm