

\$~

\*

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

%

*Judgment reserved on : 19.02.2016*

*Judgment delivered on : 23.02.2016*

+ CM(M) 22/2014 & C.M. No.456/2014

M/S DESIGNWISE INDIA PVT LTD & ORS

..... Petitioners

Through Mr. Prashant Mehra, Adv.

versus

REKHAL CHANDRA NAYAK

..... Respondent

Through Mr.Nitesh Kumar, proxy counsel.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.**

1 The petitioner is aggrieved by the order dated 13.11.2013 vide which his application filed by him under Order VII Rule 10 as also Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') was dismissed.

2 The petitioner before this Court is the defendant in the Trial Court. A suit for recovery of Rs.19,71,945/- had been filed by the non-applicant/respondent. His version was that he was an Assistant

Accountant with defendant No. 1 company since 08.01.2001. He was  
C.M. (M) No.22/2014

serving both defendant No. 1 and defendant No. 2 (defendant No. 2 is the sister concern of defendant No. 1) and this was as per instructions of defendant Nos. 3 & 4 (directors of defendant No. 1 company). This was to meet the requisite assignments which were assigned to the plaintiff from time to time. The defendants had no occasion to have any grievance against the plaintiff. Defendants No. 1 & 2 have their registered offices in Delhi. Defendant Nos. 3 & 4 are their active directors who are responsible for management and affairs of defendant no.1 and defendant no.2. The last drawn salary of the plaintiff was Rs.52,500/-. He used to work as per the instructions of defendant Nos. 3 & 4 with respect to all the affairs/jobs assigned to him. The staff in the company was insufficient and this was reported by the plaintiff to defendant Nos. 1 & 2 but defendant Nos. 3 & 4 requested the plaintiff to perform the jobs assigned to him as an additional responsibility as defendant Nos. 3 & 4 expressed their inability to provide further staff because of financial constraints. The plaintiff was at all time in touch with defendant Nos. 3 & 4; the plaintiff updated them on the various governments sanctions, NOC from the Pollution Department, factory and labour law compliance and all other matters related to the smooth

C.M. (M) No.22/2014

functioning and management of defendant Nos. 1 & 2. The plaintiff was however in the course of time being victimized; he accordingly sent his resignation letter on 29.02.2012. His resignation was thereafter accepted and defendant Nos. 3 & 4 assured the plaintiff that all outstanding amounts would be cleared. Details of the amount claimed by him are detailed in para 16 which includes his unpaid salary, gratuity, earned leave, bonus, incentive, over time, service compensation, conveyance dues and medical reimbursement totaling a sum of Rs.19,71,945 which amounts have been claimed along with interest.

3 The vehement submission of the learned counsel for the plaintiff on the first count is that this Court did not have the jurisdiction to entertain the petition and no cause of action had arisen within the precincts of Delhi. This Court is not in agreement with this submission of the learned counsel for the petitioner. The cause of action has been detailed in para 25. Admittedly the registered offices of defendant Nos. 1 & 2 are in Delhi. The mails addressed by the plaintiff to defendant Nos. 3 & 4 (both residents of Niti Bagh) had also been addressed at their Delhi address asking them to clear the outstandings. The resignation letter sent by the plaintiff was also at the Delhi office and was accepted

by the defendant nos.3 and 4 both residents of Delhi. The submission of the learned counsel for the petitioner that the registered office of the Company by itself would not create jurisdiction in the Delhi Courts is negated in the facts of the instant case where apart from the fact that the registered office of both defendant Nos. 1 & 2 is in Delhi, the mails addressed to defendant Nos.3 & 4 who were active directors of defendant Nos. 1 & 2 were also addressed at Delhi; the resignation letter of the plaintiff was also accepted in Delhi. The jurisdiction of the Delhi Courts is thus adequately answered in terms of clause 20-C of the Code. This part of the order wherein the application of the plaintiff under Order VII Rule 10 of the Code was dismissed suffers from no infirmity.

4 The second submission of the learned counsel for the petitioner that the plaint should have been rejected against defendant Nos. 2 to 4 who have nothing to do with the dues which have been claimed by the plaintiff only against defendant no.1 as all dues are due from the defendant No.1 company as the plaintiff was an employee of defendant No. 1 alone and a company having a distinct legal corporate character, the plaint qua defendant Nos. 2 to 4 is liable to be rejected is also an argument bereft of force.

5        Learned counsel for the petitioner has placed reliance upon a judgment reported as (2012) 8 SCC 706 to support his submission that a piecemeal rejection of the plaint is also admissible. This was a case where the High Court had held that there was no cause of action against one set of defendants and accordingly their names which have been struck off by the High and the Supreme Court has maintained this order. The Apex Court had gone on to hold that there was no averment against the said defendants in terms of the plaint.

6        The ratio of the aforementioned judgment would apply only if the factual matrix permits the ratio to be made applicable. In the instant case, there is no doubt that the plaintiff has alleged that defendant No. 1 had employed him; defendant No. 2 is the sister concern of defendant No. 1 and defendants Nos. 3 & 4 are its active directors and all his instructions qua the management of the company and the over-time which he had to do was at the request of defendant Nos. 3 & 4; his victimization was qua their role. This is apparent from a plain reading of the plaint.

7        The law on Order VII Rule 11 of the Code is clear. It is only the averments made in the plaint which have to be looked into at the time of

C.M. (M) No.22/2014 Page 5 of 6

dealing with such an application. The defence set up by the defendant is not relevant. The averments contained in the plaint do show the role qua defendant Nos. 2 to 4. This Court has also been informed that the counter-claim filed by the defendant is under progress. The counter-claim had been filed along with the written statement.

8 In this factual matrix, this Court is not inclined to pass any order even on the prayer made in the application under Order VII Rule 11 of the Code. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

**INDERMEET KAUR, J**

**FEBRUARY 23, 2016**

**A**