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

+ **CS(OS) 2802/2000**

R.D.TAYAL

..... Plaintiff

Through: Mr. Rakesh Agarwal and Mr. Pulkit
Agarwal, Advs.

Versus

I.T.C. LTD.

..... Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Vikram Bajaj and Mrs. Namrata
Kapoor Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.08.2016

IA No.9303/2016 (of defendant for recall of order dated 11th July, 2016)

1. This order is in continuation of the previous orders dated 3rd August, 2016 and 11th August, 2016.
2. The counsel for the plaintiff/non-applicant has been heard.
3. For the reasons stated, the application is allowed. The order dated 11th July, 2016 is recalled. OA No.123/2016 and accompanying applications are restored to their earlier position.
4. The application is disposed of.

OA No.123/2016 & IAs No.7871/2016 (u/S 65 of Evidence Act), 7872/2016 & 7873/2016 (both for condonation of 330 & 75 days delay in filing and re-filing of OA)

5. The senior counsel for the defendant / appellant / applicant and the counsel for the plaintiff / respondent / non-applicant have been heard.

6. In this suit for declaration that the termination by the defendant of employment of the plaintiff is bad and for recovery of damages, the defendant, after the evidence of the plaintiff stood concluded and at the stage of leading its evidence filed IA No.10563/2014 for filing an additional document. The said application was dismissed vide a detailed order dated 22nd December, 2014 of the learned Joint Registrar. This chamber appeal along with applications for condonation of 330 days delay in filing and 75 days delay in re-filing the chamber appeal has been filed impugning the said order.

7. I have, after some hearing, enquired from the counsel for the plaintiff, as to how this suit for declaration of termination as bad and for recovery of damages is maintainable against the defendant qua whom it is not the plea that it constitutes a State within the meaning of Article 12 of the Constitution of India. *Prima facie* it appears that without any plea of the plaintiff being a workman, such a suit against a private employer would not be maintainable.

8. The senior counsel for the defendant has also drawn attention to Ex. D-1 being the letter dated 20th May, 1980 of the defendant of employment of the plaintiff with the defendant and Clause 11(ii) whereof also provides that the employment of the plaintiff with the defendant was subject to termination at any time by either party serving to the other notice in writing of one month or pay in lieu of such notice. It thus appears that the only claim of the plaintiff against the defendant could be for one month's notice period pay and no more.

9. The counsel for the plaintiff states that there have been several changes in the counsel, he has not looked into the matter from the said aspect.

10. Though the order dated 22nd December, 2014 of the Joint Registrar is a well reasoned one but the senior counsel for the defendant has stated that though the document sought to be filed now was not referred to at any earlier point of time but the terms thereof were pleaded in the written statement.

11. The counsel for the plaintiff argues that not only did the defendant not confront the plaintiff during the cross-examination with the said document but the defendant, along with the affidavit by way of evidence filed earlier, also did not file the said document or refer thereto and only when filing the affidavit by way of evidence of another witness filed the application which has been dismissed by the Joint Registrar.

12. The senior counsel for the defendant states that the plaintiff in its reply to IA No.10563/2014 did not deny the existence of the said document.

13. Considering all the aforesaid aspects and most so for the reason of being of the view that such issues are a non-issue, if what I have *prima facie* observed were to be correct, it is deemed appropriate to allow the said document to be taken on record subject to payment by the defendant to the plaintiff of costs of Rs.50,000/- before the next date of hearing before the Additional District Judge (ADJ) to whom the suit already stands transferred in accordance with the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice under Section 4 of the Delhi High Court (Amendment) Act, CS(OS) 2802/2000

2015 and further subject to the condition that allowing the said document to be taken on record at this stage would not tantamount to the existence or genuineness or admissibility of the document into evidence having stood concluded and the said aspect shall remain open for consideration at the time of recording of evidence.

14. Accordingly, the delays in filing and re-filing the chamber appeal are condoned and the chamber appeal is allowed and disposed of.

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15. Though it appears that the issue as has been raised by me above should be decided as preliminary issue but since the trial of the suit is at fag end and the senior counsel for the defendant states that the defendant, besides the witness whose affidavit has already been filed, does not have to examine any other witness, I refrain from issuing any such direction.

16. The suit file be sent back to the Court of Sh. Pooran Chand, ADJ-06 (South East), Saket Courts, New Delhi.

17. The parties to appear before Sh. Pooran Chand, ADJ-06 (South East), Saket Courts, New Delhi on 8th September, 2016.

18. The said date be communicated to the learned ADJ before whom the matter is listed tomorrow.

RAJIV SAHAI ENDLAW, J.

AUGUST 16, 2016

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