

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.53 of 2017

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1. Cadila Health Care Limited, Proprietor of German Remedies Division, Zydu Tower, Satellite Cross Road, in the Town of Ahmedabad, Pin- 380015 through its authorized signatory, The President Operations
 2. M/s German Remedies Specialities Ltd situated at A- Shiv Sagar Estate, Dr. Annie Besant Road, Worli Mumbai, Pin- 400018.
 3. M/s German Remedies Specialities Ltd., Subsidiary of German Remedies Ltd situated at Dr. Annie Besant Road, Worli Mumbai, Pin- 400018 in the State of Maharashtra.

.... Appellant/s

Versus

Sri Bipin Bihari, S/o Shri Biswanath Tiwari, resident of Flat No.- 405 A, Hope Narayani Apartment, near Patel Nagar Chowk, Vijay Nagar, Bailey Road, P.S.- Rupaspur, in the Town and District of Patna, Pin- 800014.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pandey Sanjay Sahay

For the Respondent/s : Mr. Bipin Bihari (in person)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL JUDGMENT

Date: 27-01-2017

Heard the learned counsel, Mr. Pandey Sanjay Sahay for the petitioners and the respondent Shri Bipin Bihari in person.

2. Perused the impugned order dated 17.9.2016 passed by the learned Senior Civil Judge 3rd, Patna in Title Suit No. 457 of 2008 whereby the learned Senior Civil Judge 3rd, Patna has rejected the application filed by the defendants-petitioners under Order VII Rule 11 C.P.C.

3. The application under Order VII Rule 11 of the C.P.C. has been annexed as Annexure-3 to this Civil Miscellaneous application. From perusal of this application, it appears that the ground for dismissal of the suit has been raised firstly that the claim of the plaintiff in the suit can be decided only under the Industrial Dispute Act, 1947 and that the plaintiff has not stated about arising the



cause of action. The court below in the impugned order considering the definition of “Industrial Disputes” and the “workmen” has held that since the plaintiff is not the workmen and dispute raised by the plaintiff is not the industrial dispute, therefore, the suit is maintainable before the civil court.

4. The learned counsel for the petitioners submitted that that, in fact, the respondent is workman and he had been terminated from service of the petitioners, after giving him three months salary and, therefore, the suit before the civil court is not maintainable. Any dispute raised by the petitioners can only be decided under the Industrial Dispute Act, but the learned court below, without considering this aspect of the matter that the nature of the job, which was allotted to the plaintiff- respondent is in the capacity of workman has held that he is not the workman. The learned counsel further submitted that the plaintiff nowhere in the plaint has stated that when the cause of action arose. According to the learned counsel, the termination letter is of the year 2008 and the present suit has been filed after so many years. Therefore, the plaintiff had not got the cause of action for filing the suit, but the learned court below has not considered this aspect of the matter also.

5. The learned counsel for the petitioners in support of his above contention has relied upon a decision reported in **AIR 1977 SC 2421, T. Arivandandam vs. T.V. Satyapal and Anr.** The learned counsel submitted that the suit is, in act, frivolous and vexatious suit filed by the plaintiff- respondent and if such type of suit is allowed to continue, then it will prejudice the petitioners and others also to harass the petitioners.

6. On the other hand, the respondent, appearing in person, submitted that, in fact, the respondent is claiming the dues which are payable by the petitioners to the plaintiff- respondent. The respondent is not claiming re-



instatement in the company i.e. the petitioners. The dues which are payable by the petitioners to the plaintiff- respondent can be claimed by instituting a civil suit and, therefore, in view of Section 9 of the Code of Civil Procedure, the civil court has the jurisdiction to decide the suit for recovery of the dues i.e. 11, 27, 418 rupees for which the plaintiff has paid the ad valorem court fee.

7. As stated above, so far the provision as contained in Order VII Rule 11 C.P.C. is concerned, the first question raised by the plaintiff is with respect to maintainability of the suit before the civil court. The court below by the impugned order has held that the plaintiff is not a workman as, according to the plaintiff, he was appointed as Area Business Manager initially and subsequently, he was promoted to the post of Business Manager. The court below also considered the definition of the Industrial dispute and the workmen provided under the Industrial Dispute Act, 1947.

8. So far the question raised by the petitioners that the plaintiff nowhere in the plaint has mentioned about the cause of action is concerned, in my opinion, it is not a ground for rejection of the plaint as provided under Order VII Rule 11 C.P.C. Order VII Rule 11 clause (a) provides that if from reading of the plaint itself it will appear that the plaint does not disclose cause of action, then the plaint can be rejected. Moreover, the cause of action is bundle of fact, which entitles the plaintiff to claim the relief. For deciding an application under Order 7 Rule 11 CPC at that stage, the statement made in the plaint is to be accepted as true. The Hon'ble Supreme Court in the case of **LIVERPOOL & LONDON S.P. & I. ASSOCIATION LT. Versus M.V.SEA SUCCESS I AND ANOTHER** [(2004) 9 Supreme Court Cases 512] has held that whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said



purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated question of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.

9. In the said decision the Supreme Court has also held that the cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence. In the present case, from perusal of the plaint it appears that the plaintiff- respondent has described a bundle of fact and on adjudication of the bundle of fact, the plaintiff is claiming 11, 27, 418 rupees.

10. The Hon'ble Supreme Court in the case of **P.V. GURU RAJ REDDY V. P.NEERADHA REDDY AND OTHERS [(2015) 8 SCC 331]** has held that rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement



or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. In the present case, as stated above, from perusal of the plaint I find that the plaintiff has clearly made out a case. Whether the facts alleged by the plaintiff is true or whether it can be relied upon or not that is the matter to be decided during the course of trial and it can be prejudged at the time of consideration of application under Order 7 Rule 11 C.P.C.

11. So far the jurisdiction of the civil court is concerned, the Hon'ble Supreme Court in the case of **Ramesh Gobindram vs. Sugra Humayun Mirza Wakf [A.I.R. 2010 SC 2897]** has held that the jurisdiction of the civil court to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Court. Any such exception cannot be readily inferred by the Courts. The Court would, lean in favour of a construction that would uphold the retention of jurisdiction of the civil Courts and shifts the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted. Even if a statute grants finality to decision of Tribunal it has to be considered whether Tribunal has jurisdiction to grants relief which the Civil Court would normally grant.

12. In the present case at the time of hearing of this Civil Miscellaneous application, no provision of Industrial Dispute Act has been shown barring the jurisdiction of the Civil Court for the grant of compensation or the money due which is claimed by the plaintiff- respondent in the present suit.

13. In view of the above facts and circumstances and law settled by the Supreme Court, I do not find any reason to interfere with the impugned order



in exercise of supervisory jurisdiction and accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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CAV DATE	
Uploading Date	31-01-2017
Transmission Date	

