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

+ RSA 269/2017

MOHD RAFAT KHAN

..... Appellant

Through: In person.

versus

TECKINFO SOLUTIONS PVT LTD

..... Respondent

Through: Mr. Rajesh Gogna and Ms. Liu
Gangmee, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.01.2019**

CM No.2494/2019 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

Review Petition No.20/2019 (of the appellant for review of order dated 11th September, 2018).

3. The appellant appearing in person, after withdrawal on 4th January, 2019 of SLP(C) No.29931/2018 preferred against the judgment dated 11th September, 2018 of dismissal of this appeal, with liberty to apply to this Court to file a Review Petition, seeks review of the judgment dated 11th September, 2018.

4. Since the appellant has been appearing in person, it is deemed appropriate to reproduce from the Review Application the grounds for seeking review as contained in paras 3.1 to 3.4 of the Review Application:-

“3.1 **BECAUSE Finding recorded under para 11** of impugned order that ‘Suffice to say that claim of the appellant to the extent claiming declaration and continuation in employment should have ben rejected outright’ is erroneous as apparent from the record of

para 4 of impugned order dated 11.9.2018 that appellant sought relief of declaration that contract has not been terminated and release of dues and compensation.'

It is vehemently clarified that the Ld trial court had declared termination of employment as wrongful and has awarded two months damages for wrongful termination in favour of appellant/petitioner and First and Second appeals were filed by the appellant/petitioner to enhance the damages due to stigmatic termination of contract by the respondent company.

- 3.2 **ALSO Para 15** of the impugned order and conclusion arrived is unwittingly mistaken BECAUSE a clarification/statement was given by the appellant/petitioner after hearing oral dictation under para 11 of the impugned order and the appellant clarified to the Hon'ble court that He is not seeking reinstatement in employment or declaration to the effect that the appellant be treated as continuation in employment after illegal termination but WANTED declaration of termination to be illegal and special damages.

BUT impugned order has misinterpreted that 'He never claimed in the suit that he wanted to continue in the employment of respondent and **never** wanted declaration of termination to be illegal and to recover damages therefor.

- 3.3. Because this Hon'ble Court under para 14 of impugned order has referred the, Hon'ble Supreme Court's judgments ***Surat Singh Vs. Siri Bhagwan*** (2018) 4 SCC 562 & ***Vijay Arjun Bhagat Vs. Nana Laxman Tapkirei*** 2018 SCC OnLine SC 518, But has acted contrary to the manner and the procedure to be adopted by the High Court while deciding the second appeal as per the procedure laid down in Section 100 of CPC and therefore, the Hon'ble High Court should have deeply scrutinized the Second Appeal and questions of law framed on dated 15.5.2018, instead of a mere dismissal without passing a speaking order.

Para 29 of Surat Singh Vs. Siri Bhagwan (2018) 4 SCC 562 is reproduced herein as under;

The scheme of Section 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section (4) of Section 100. It is the framing of the question which empowers the High Court to **finally decide** the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner prescribed therein. Indeed, as mentioned supra, the jurisdiction to decide the second appeal **finally** arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done only after hearing the respondents under sub-section (5).

3.4. That aforesaid omissions caused because of accidental mistakes otherwise the errors, would have been avoided in the records of the case, hence impugned order is liable to review.”

5. I have considered.

6. The prayer paragraph in the plaint, in the suit from which this Second Appeal arose, was as under:-

- “a) declare that there exists subsisting and a valid written employment contract dated 1.5.2006 between the parties which has not been terminated or cancelled till date.
- b) direct the defendant to release the pending dues/arrear salaries of the plaintiff in their possession due to aforesaid, together with 12% p.a. interest in favour of the plaintiff.

- c) *award suitable compensation to the plaintiff on account of acts of the defendant, preventing plaintiff by police pressure to continuing in and discharge duties after dated 17.8.2011.*
- d) *to grant cost and/or further damages/reliefs to the plaintiff against the defendants as may be deemed fit, just and proper in the facts and circumstances of the case.”*

7. Axiomatic result of the declaration sought, of existence of subsisting and valid employment contract, was the continuation of the appellant/review petitioner in employment.

8. Else, I have already in para 5 of the judgment, of which review is sought, already recorded that the contract of employment of the appellant/review petitioner by the respondent was a contract of private employment which as per the terms of the appointment letter was terminable by two months' notice.

9. The appellant/review petitioner in the plaint, as evident from the prayer paragraphs made therein as reproduced above, was seeking a direction to the respondent to release the pending dues/arrears of the appellant/review petitioner and compensation on account of being prevented by Police pressure from continuing in the discharge of duties. The appellant/review petitioner was not seeking any compensation/damages for stigmatic termination of his employment.

10. As far as the tentative questions of law framed vide order dated 15th May, 2018 in this appeal are concerned, the same were held in para 13 of the judgment of which review is sought to be not arising for consideration owing to prayer aforesaid and the issues framed in the suit, none of which

pertained thereto. The substantial question of law could be said to arise only from the pleadings, prayer and the issues and not *de hors* the same.

11. The appellant/review petitioner appearing in person has argued (i) that in para 14 of the judgment of which review is sought, reference is made to ***Surat Singh Vs. Siri Bhagwan*** (2018) 4 SCC 562 & ***Vijay Arjun Bhagat Vs. Nana Laxman Tapkire*** 2018 SCC OnLine SC 518; (ii) however both the said judgments lay down that the Second Appeal has to be heard only on the questions of law which have been framed and the hearing of the appeal on 11th September, 2018 was not on the said substantial questions of law; (iii) that the appellant/review petitioner in the last paragraph of the prayer in the plaint had sought “any other relief to which he may be entitled to”; (iv) that the Court can pass any judgment; (v) that the Suit Court held the termination of the employment of the appellant/review petitioner by the respondent to be illegal and stigmatic but awarded only two months’ salary as compensation; and, (vi) that the appellant/review petitioner in the First Appeal and Second Appeal was claiming more compensation.

12. I have considered the aforesaid contentions. This Court vide order dated 15th May, 2018 did not frame any substantial question of law arising from the appeal and while issuing notice of the appeal, only framed “tentative” questions of law and which “tentative” questions of law on 11th September, 2018 were not found to be arising from the reliefs sought in the suit and the issues framed in the suit.

13. The appellant/review petitioner appearing in person has also drawn attention to the term in the appointment letter and has contended that the termination of employment of the appellant/review petitioner as done was in

contravention thereof.

14. The term at page 191 of the paper book to which attention is drawn have to be read in entirety and clearly provide for a termination of employment by a two months' notice.

15. No ground for review is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

JANUARY 25, 2019

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