

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3789 of 2019

M/s. Jet Inks Private Limited,
Represented by its Authorized Signatory,
22, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

... Petitioner

-Vs-

1. M/s. KGK Jet India Private Limited,
Plot No. A-29, Sipcot Industrial Growth Center,
Oragadam, Sriperumbudur Taluk,
Kancheepuram District - 602 105.

2. Rajesh Rai

3. Nikunj Panchal

4. Pradeep Jha

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the docket order dated 09.09.2019 in an un-numbered suit O.S. SR. No. 1468 of 2019 in CNR No. TNKP120014272019 on the file of the District Munsif Court, at Sriperumbudur.

For Petitioner : Mr. G.B. Sabari Das

ORDER

This Civil Revision Petition has been filed seeking for a direction from this Court to the District Munsif Court at Sriperumbudur, to number the Suit in O.S. SR. No. 1468 of 2019 in CNR No. TNKP120014272019.

2. Before the trial Court, the revision petitioner filed a suit with the prayer for permanent injunction and mandatory injunction and also for seeking damages against the defendants.

3. In the said suit, the first defendant who was not the employee, the second, third and fourth defendants who were the erstwhile employees of the plaintiff were arrayed as party defendants. When such a prohibitory order was sought by way of permanent injunction in the main prayer in the suit, the trial Court have questioned the wisdom of the said prayer, as the trial Court thought of that, the prayer has not been maintainable and that plaint has to be returned and after the explanation given by the learned counsel appearing for the revision petitioner, ultimately the learned Judge by

order dated 09.09.2019 returned the plaint as the earlier direction dated 27.06.2019 since has not been complied with till date.

4. The earlier direction on 27.06.2019 was that, the prayer for injunction restraining the other defendants from employing at the first defendant company whether to be maintainable or not.

5. Only in that circumstances, the present revision petition has been filed by the plaintiff stating that, the said prayer is also maintainable and for the said reason, the suit should not be rejected or returned and it should have been numbered and hence, he seeks a direction from this Court to number the suit.

6. I have heard Mr. G.B. Sabari Das, learned counsel appearing for the revision petitioner / plaintiff, who drew the attention of this Court, to certain clauses mentioned in the appointment order given to the fourth defendant, one Pradheep Jha dated 12.02.2014, where he drew the attention of this Court in Clause No. 12 which reads thus:

"12. You shall unconditionally and irrevocably agree as follows:

(a) To undertake such duties as assigned to you by the company from time to time.

(b) To follow all the company rules and regulations, procedures and systems, as may be in force from time to time.

(c) Not to enter into contractual obligation on behalf of the company or commit to third parties or otherwise incur any liabilities for the company without prior consent of the company.

(d) Not to do anything or engage in any illegal or immoral activity.

(e) Not for a period of 12 months after resignation / termination of employment herein be employed, engaged or interested, whether carried on for your own account or as partner, director, consultant or in any manner whatsoever in any trade, business or occupation whatsoever which is directly or indirectly in competition with the trades or business or products of the company."

7. By relying upon the said Clause No. 12 (e), the learned counsel would submit that, though the defendants 2 to 4 have already resigned and left the plaintiff company, they have not supposed to join

in any similar company as that of the first defendant for the period of 12 months, in view of Clause No. 12 (e) of the appointment order, as those defendants had agreed upon this condition also, therefore in order to execute the said Clause against the defendants, the said prayer i.e., for permanent injunction was sought for, therefore the said prayer is maintainable and for want of maintainability, the suit should not have been rejected.

8. I have considered the said submission made by the learned counsel appearing for the revision petitioner / plaintiff and also have gone through the materials placed before this Court including the prayer sought for in the plaint, relevant Clause/condition namely, Clause No. 12 (e) of the appointment order pertaining to the employees i.e., defendants 2 to 4.

9. In this regard, this Court wants to state that, the law is well settled in this regard as negative covenants cannot be put against the employee by any employer. If at all any condition is imposed against the employee to work for a particular period, before which, if

any premature termination is made by the employer or resignation is made by the employee, some monitory compensation can be imposed, beyond that, the employee cannot be restrained from employing elsewhere, of course in any similar company, factory or unit as that kind of restriction if is put against the employee, that could be construed only as negative covenant, which is impermissible in law.

10. Nevertheless insofar as the prayer sought for i.e., permanent injunction against the defendants is concerned, the same can be decided on merits after let in evidence by the parties before the trial Court, therefore at the threshold, the trial Court cannot expect that, such kind of prayer cannot be asked for and therefore, this Court feels that, the suit can be numbered and admitted with the present prayer, but only rider is that, Clause No. 12 (e) of the appointment order made by the plaintiff to and in favour of the defendants 2 to 4, being a negative covenant, cannot be enforced against the defendants.

11. With these observations, there shall be a direction to the trial Court to number the suit and to proceed in accordance with law.

Accordingly, the Civil Revision Petition is disposed of. No costs. The Registry is directed to return the original plaint to the petitioner after getting proper acknowledgment.

21.11.2019

Index: Yes / No

Speaking order / Non speaking order

vji

To

1. The District Munsif Court,
at Sriperumbudur.
2. The Authorised Signatory,
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