

\$~49

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

%

Judgment delivered on: 27.09.2019

+ C.R.P. 215/2019

INTERTEK INDIA PVT LTD

..... Petitioner

versus

PRIYANKA MOHAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Haripriya Padmanabhan, Mr. Suraj and Mr. Shrutanjaya Bhardwaj, Advocates

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.43411/2019 (Exemption)

Allowed, subject to all just exceptions.

C.R.P. 215/2019 & CM APPL.43410/2019 (stay)

1. Petitioner impugns order dated 21.08.2019 whereby the application of the petitioner under Order 7 Rule 11 (d) of the CPC has been dismissed.

2. Subject suit was filed by the respondent seeking declaration and

damages.

3. Respondent/Plaintiff is an ex-employee of the petitioner and was employed as a Business Development Manager with the petitioner-company. Her services were terminated on 25.02.2011.

4. Being aggrieved by the termination of the services, she filed the subject suit, *inter-alia*, claiming a declaration that termination of her services by letter dated 25.02.2011 was null and void and further sought a decree of damages on account of mental harassment, loss of reputation, etc.

5. Subject application under Order 7 Rule 11 (d) was filed contending that the contract of services being a terminable contract, no Suit would lie for re-instatement of services.

6. The trial court by the impugned order noted the contention of learned counsel for the respondent/plaintiff that respondent had merely sought a declaration that her termination being illegal be declared as void and had not sought enforcement of contract of personal services i.e. re-employment with the petitioner company, however, damages had been prayed for.

7. Learned counsel for the petitioner submits that the relief sought by the respondent in prayer (a) is declaration that termination is null and void which really amounts to a declaration that the termination is *non-est* and respondent is liable to continue in services; which relief

cannot be granted in a case of termination of a service contract.

8. Further it is contended that prayer (a) and prayers (b) to (d) which seek a decree of damages are mutually exclusive. However, prayers (b) to (d) flow from prayer (a) and at the time of inception of the Suit the plaintiff had to elect as to which relief she was seeking and not having done so, the plaint was liable to be rejected.

9. Learned counsel for the petitioner submits that since the respondent/plaintiff had sought re-instatement which is not permissible and prayers (b) to (d) flow from prayer (a), even these prayers could not be granted and as such the Plaint is liable to be rejected as a whole.

10. I am unable to accept the contention of learned counsel for the petitioner. Respondent had filed the subject Suit claiming that termination is illegal. In paragraph 1 of the plaint respondent had described herself as an ex-employee which indicates that respondent had accepted that she is no longer in services. The respondent throughout the plaint has made averment that her services were terminated illegally. Reference in particular may be had to paragraphs 1, 24 and 27 where she has categorically stated that the notice of termination is illegal.

11. No doubt, the expression '*null and void*' would imply *non-est*, however, if prayer (a) were to be interpreted in the manner in which learned counsel for the petitioner contends, the same would imply that

the termination is *non est* and respondent/plaintiff continues in services, but that is not what the Respondents seeks.

12. A meaningful reading of the Complaint shows that the respondent has not sought any re-instatement in service but had claimed that the termination is illegal and hence null and void.

13. Learned counsel for the respondent before the trial court categorically stated that the respondent did not seek any re-instatement.

14. Even if prayer (a), as framed, could not be granted, respondent could claim damages etc. for wrongful termination in case respondent is able to establish that the termination is illegal or contrary to any settled principles and that is what the respondent has sought in prayers (b) to (d).

15. In case the contentions of learned counsel for the petitioner were to be accepted, then respondent/plaintiff would be left remediless. On the one hand, as an employee, she cannot claim the relief of reinstatement and on the other hand the employee she is stated to be barred from claiming any damages. That can never be the intention of the law.

16. It is also a settled position that under order 7 Rule 11 CPC, a complaint cannot be dissected and rejected in part. The complaint has to be rejected as a whole or not at all.

17. Further contention of the learned counsel for the petitioner is that trial court has erred in holding that all reliefs, claimed by the respondent are maintainable and as such prejudice is likely to be caused to the petitioner at the final stage.

18. The apprehension expressed by learned counsel for the petitioner is misplaced.

19. The Advocate for the respondent has very categorically made a statement, as is recorded by the Trial Court, that respondent has not sought a contract for personal service, i.e., re-employment in the petitioner company.

20. Even otherwise under Order 23 CPC, a plaintiff can abandon any part of claim. The unequivocal stand on behalf of the Respondent is that respondent has not sought any re-instatement. Even if assuming respondent had indirectly sought reinstatement in prayer (a), said relief would be deemed to have been abandoned in view of the statement of counsel for the respondent before the Trial Court.

21. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 27, 2019

'rs'