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

+ **CS(OS) 1352/2013**

RITA SOLOMON & ORS. Plaintiffs

Through: Mr. Gopal Sankaranarayanan,
Advocate with Mr. Abhimanyu Garg,
Ms. Preety Makkar and
Ms. Aishwarya Kane, Advocates.

versus

THE REPUBLIC OF ITALY & ANR. Defendants

Through: Mr. Jaiveer Shergill, Advocate with
Mr. Gaurav Gupta, Mr. Jaspal Singh,
Advocates.

Reserved on: 11th March, 2019

Date of Decision: 01st May, 2019

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J

I.A. 25904/2015

1. The present application has been filed under Order VII Rule 11 Code of Civil Procedure (CPC) for rejection of the plaint by the defendants.

2. It is pertinent to mention that the present suit has been filed seeking declaration that the defendants have violated Article 157 of the Italian Presidential Decree No. 103 dated 7th April, 2000 and have discriminated against the plaintiffs in the determination of salaries on the basis of

nationality and for recovery of consequential damages and due payments. The gravamen of the plaint is that there can't be pay disparity between Italian citizens and citizens of host country employed in the same class of jobs. The prayer clause in the plaint is reproduced hereinbelow:-

“It is therefore, most respectfully prayed that this Hon'ble Court be pleased to:-

- a. Declare that the Defendants have violated Article 157 of the Presidential Decree No.103 of 7.4.2000 of Defendant No.1;*
- b. Declare that the Defendants have discriminated against the Plaintiffs in matters of employment;*
- c. Direct the payment of full wages due to the Plaintiffs, i.e. arrears of salary amounting to 2,11,14,964/- (Rs Two Crore Eleven Lakhs Fourteen Thousand and Nine Hundred and Sixty Four Only) along with interest at 9% till the pendency of the present suit as detailed in paragraph 33 of the plaint along with damages and equitable compensation.*
- d. Grant Mandatory Injunction against the continuance of the discriminatory salary structures based on nationality;*
- e. Direct the payment of compensation for the mental injury and distress caused to the Plaintiffs by the actions of the Defendants;*
- f. Direct the defendants to provide for parity on service conditions and benefits on par with those being granted to the Italian nationals including specifically with regard to leave, pension and insurance.*
- g. Direct costs of the litigation to be borne by the Defendants;*

- h. Any such other and further orders that may be deemed fit and proper in the circumstances of the case.”*

ARGUMENTS ON BEHALF OF DEFENDANTS

3. Learned counsel for the defendants submitted that the object of Section 86 of CPC was to protect foreign states from frivolous litigations. He submitted that Section 86 of CPC did not confer absolute immunity on foreign states, but recognized the need to protect the autonomy of sovereign entities by laying down a preemptory and exhaustive list of criteria under Section 86(2) of CPC.

4. Learned counsel for the defendants contended that the defendants did not fall in any of the clauses (a) to (d) of Section 86(2) of CPC. He stated that the consent to sue under Section 86 of CPC must comply with and disclose which of the condition(s) under Section 86(2) of CPC was fulfilled while granting such consent. He contended that the Executive could not trifle with such immunities by issuing a non-speaking sanction order without hearing the affected party.

5. Learned counsel for the defendants emphasised that the Consent Certificate issued by the Central Government did not discuss or make a reference to any of the conditions mentioned in Section 86(2) of CPC and this, according to him, itself made the consent, given by the Central Government, *void ab initio*. In support of his submissions, the defendants' counsel relied on the following judgments which are reproduced hereinbelow with the relevant portions thereof:-

A. VEB Deutfracht Seereederei Rostock (D.S.R. Lines) A Dept. of the German Democratic Republic Vs. New Central Jute Mills Co. Ltd. & Anr., (1994) 1 SCC 282

“5. One of the principles of International Law is that every sovereign State respects the independence of every other foreign State. This absolute independence and the international comity underlines the relationship between sovereign States. The object of Section 86 of the Code is to give effect to the principles of International Law. But, in India it is only a qualified privilege because a suit can be brought with the consent of the Central Government in certain circumstances. Just as an independent sovereign State may statutorily provide for its own rights and liabilities to sue and be sued so can it provide rights and liabilities of foreign States to sue and be sued in its Courts. It can be said that effect of Section 86 thus is to modify the extent of doctrine of immunity recognised by the International Law. If a suit is filed in Indian Courts with the consent of the Central Government as required by Section 86, it shall not be open to any foreign State to rely on the doctrine of immunity. Sub-section (1) of Section 86 says in clear and unambiguous terms that no foreign State may be sued in any court, except with the consent of the Central Government certified in writing by the Secretary to that Government. Sub-section (2) prescribes that such consent shall not be given unless it appears to the Central Government that the case falls within any of the clauses (a) to (d) of sub-section (2) of Section 86. Sub-section (6) enjoins that where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard. On a plain reading of different sub-sections of Section 86, it is apparent that no foreign State may be sued in any court in India, except with the consent of the Central Government which has to be certified in writing by the Secretary to that Government. In view of the provisions aforesaid, before any action is launched or a suit is filed against a foreign State, person concerned has to make a request to the Central

Government for grant of the necessary consent as required by sub-section (1) of Section 86 and the Central Government has to accede to the said request or refuse the same after taking into consideration all the facts and circumstances of the case. In a sense it amounts to a bar on the power of court itself which is entitled to try all suits of civil nature in view of Section 9 of the Code. But, Section 9 itself recognises the limitation on such courts to try any suit the cognizance whereof is either expressly or impliedly barred. As such whenever a relief is sought against a foreign State, the court before which such claim is lodged has to examine whether the person concerned has got the consent of the Central Government in terms of Section 86 of the Code.

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7. This Court in the case of Mirza Ali Akbar Kashani v. United Arab Republic[(1966) 1 SCR 319 : AIR 1966 SC 230] pointed out in respect of Section 86:

“Section 86(1) proceeds to prescribe a limited liability against foreign States. The limitation on the liability of foreign States to be sued is twofold. The first limitation is that such a suit cannot be instituted except with the consent of the Central Government certified in writing by a Secretary to that Government. This requirement shows the anxiety of the Legislature to save foreign States from frivolous or unjustified claims. The second limitation is that the Central Government shall not give consent unless it appears to the Central Government that the case falls under one or the other of clauses (a) to (d) of Section 86(2).”

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12. In the present case, the appellant having been held to be a foreign State within the meaning of Section 86 and the plaintiff-respondent not having obtained the consent of the Central Government, as required by Section 86, the suit filed on its behalf was not rightly entertained by the trial court. The question whether a suit should be entertained, cannot be deferred, till the stage of the final disposal of the suit, because

that will serve neither the interest of the plaintiff nor of the defendant. The object of Section 86 is to save foreign States from being harassed by defending suits in which there are hardly any merits. If the foreign State is required to file written statement and to contest the said suit and only at the stage of final disposal, a verdict is given whether in the facts and circumstances of the particular case, such foreign State is entitled to the protection of Section 86 of the Code, the very object and purpose of Section 86 shall be frustrated. The bar of Section 86 can be taken at the earliest opportunity and the court concerned is expected to examine the same.”

B. *K.S. Dhondy vs. Queen of Netherlands & Anr., (2013) 4 Mh. L.J. 64*

“4. Now, insofar as the first defendant is concerned, a suit against the sovereign head of the State of Netherlands could not have been instituted without the permission of the Union of India under section 86(1) of the Code of Civil Procedure, 1908. Section 86(1) reads as follows:

“86. Suits against foreign Rulers, Ambassadors and Envoys.— (1) No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property.”

The provisions of section 86 have been held to be mandatory in the judgment of the Supreme Court in Veb Deautfracht Seereederei Rostock (D.S.P. Lines) a Department of the German Democratic Republic v. New Central Jute Mills Co. Ltd., (1994) 1 SCC 282: AIR 1994 SC 516. In that view of the matter, the dismissal of the suit as against the first defendant for want of compliance with the provisions of section 86 was correct. Where permission of the Union of India has not been obtained to institute a suit against a foreign State, the plaint would be liable to be rejected under Order 7, Rule 11(d) on the

ground that the suit appears from the statements in the Plaint to be barred by any law.”

6. Learned counsel for the defendants submitted that the sanction order could be challenged by way of an application under Order VII Rule 11 CPC only, as the infirmities present in the sanction order strike at the very root of such a suit and render it non-maintainable at the very threshold. He stated that if the said issue was not decided at the preliminary stage and the defendants were directed to undergo the entire trial in the suit to prove their case, then the protection accorded under Section 86 of CPC would become inconsequential and the said provision would lose its relevance.

7. Learned counsel for the defendants submitted that while deciding an Order VII Rule 11 application in ***Ramesh Kumar Sharma v. Ambassador, Royal Netherlands Embassy, 2001 SCC Online Del 1027***, a coordinate bench of this Court had taken a *prima facie* view that the condition under Section 86(2)(d) of CPC had not been satisfied. The relevant portion of the judgment is reproduced hereinbelow:-

“13. As regards the defendants' contention that the permission/consent under Section 86 CPC could be assailed in these circumstances collaterally since the same was void and nullity, I prima facie find merit in the submission since ex facie the condition under Section 86(2)(d) of their being an express or implied waiver has not been satisfied. Besides, as recognised in the Govindram Gordhandas Sek-saria and another (supra) by the Privy Council itself, normally the courts are not to go behind the certificate and investigate the facts. However, special circumstances may exist when the Courts could go behind the certificate. In the instant case, I find that it is not even necessary to go into, this question and the matter can be decided de hors the question of validity of the consent or permission under Section 86 CPC. This is because the present

suit is barred by the principles of res judicata and the plaint is liable to be rejected under Order 7 Rule 11 (d) CPC, as hereinafter discussed.”

8. Learned counsel for the defendants further submitted that as the present suit is premised on Italian law, in particular, the Italian Presidential Decree and the jurisdiction of a municipal court is defined by the domestic law, this Court has no jurisdiction to decide the present suit.

9. Learned counsel for the defendants also submitted that the present suit was barred by limitation as the plaintiffs were aware about the alleged discrimination when they first entered into the contract with the defendant. He stated that the earliest contracts that were entered into by the plaintiffs dated back to 1997, while the suit was filed, at a belated stage, after a period of almost sixteen years.

ARGUMENTS ON BEHALF OF PLAINTIFFS

10. Per contra, learned counsel for the plaintiffs submitted that the scope of judicial inquiry in an Order VII Rule 11 CPC application was limited to examining the statement in the plaint. He submitted that for the present application, the court should assume all facts stated in the plaint to be true and then determine whether the plaint is barred by law. In support of his submission, the plaintiffs’ counsel relied on the following judgments:-

A. *Mayar (H.K.) Ltd. &Ors. vs. Owners & Parties, Vessel M.V. Fortune Express &Ors., (2006) 3 SCC 100*

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the

plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

B. *Kanwal Kishore Manchanda & Anr. vs. S.D. Technical Services Pvt. Ltd. 2005 (81) DRJ 715*

“59. For purposes of Order 7 Rule 11 CPC, it is a meaningful and not a formal reading of the plaint which is required to be done. A plaint which is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue and taking care that the grounds mentioned in Order 7 Rule 11 of the Code of Civil Procedure are attracted, would require such plaint to be thrown out at the threshold for the reason no person would be entitled to inconvenience a defendant through the medium of the process of law. Irresponsible law suits are the ones to which Order 7 Rule 11 of the Code of Civil Procedure is directed against.”

11. Learned counsel for the plaintiffs contended that the Courts should not inquire into the validity of the decision taken by the Central Government

under Section 86 of CPC except when the permission was refused by the Central Government. He stated that a refusal of permission must be placed at a higher pedestal because a refusal effectively decides the substantive rights of the parties. He further stated that the only consequence which ensued upon a grant of sanction was that the foreign state would have to appear in Court to defend the suit and therefore a grant of permission had no grave or prejudicial consequence for the foreign state, and did not warrant any interference by the Courts.

12. Learned counsel for the plaintiffs contended that a bare reading of Section 86(2) of CPC showed that the said provision required the subjective satisfaction of the Central Government as to the existence of one of the conditions mentioned in clauses (a) to (d) of sub-section (2) of Section 86 of CPC. He stated that the said provision left no scope for interference by courts in what was a purely political decision.

13. Learned counsel for the plaintiffs emphasised that in terms of Section 9 of The Diplomatic Relations (Vienna Convention) Act, 1972, a certificate issued by or under the authority of the Secretary to the Government of India was conclusive evidence as regards the question as to whether a person was entitled to any privilege or immunity under the said Act. He stated that therefore the consent received from the Ministry of External Affairs in the instant case was valid and the defendants were not entitled to challenge it.

14. Learned counsel for the plaintiffs contended that in a case concerning Section 86 of CPC, which requires the prior permission of the Central Government, the Court was required to only check whether the plaint states that the requisite permission had been obtained or not. He contended that

the legality and validity of the permission letter was irrelevant to the proceedings under Order VII Rule 11 CPC.

15. Learned counsel for the plaintiffs clarified that the plaintiffs have not relied on Article 14 of the Constitution of India or any other provision of the Indian law whilst filing the suit and that they have only relied on the Italian Presidential Decree No.103 of 07th April, 2000 (hereinafter to referred as “**Italian Presidential Decree**”) issued by the Republic of Italy. Learned counsel for the plaintiffs emphasised that the present suit had to be decided under the Italian law and not Indian law as the former was the governing law between the parties. He pointed out that prayers (c) to (g) were consequential prayers to declaration being granted in accordance with prayers (a) and (b) of the plaint. He contended that each of the contracts entered into with the plaintiffs were governed by the Italian Presidential Decree and the same was evident from the preamble to each of the contracts. He relied on Articles 154 and 157 of the Italian Presidential Decree and submitted that in terms of Article 157 of the Italian Presidential Decree all persons recruited to homogeneous category have to draw equal salary. He contended that contrary to the mandate of Article 157 of the Italian Presidential Decree, the defendants have discriminated against the plaintiffs as the defendants were paying much higher salary to Italian citizens than citizens of the host country for the same job. The relevant portion of one such employment contract and the relevant Articles of the Italian Presidential Decree are reproduced hereinbelow:-

*“CONTRACT GOVERNED BY THE LOCAL LAW
(PREAMBLE)*

*In compliance with the dispositions of part II heading VI,
paragraph 1 of Presidential Decree 5.1.67, no.18, and*

subsequent modifications and integrations – in particular the Legislative Decree of the 7.4.2000, no. 103 – as well as Law No.39 of 1972 and the subsequent modifications and integrations, the Embassy of Italy in New Delhi hereby employs Ms._____, Indian citizen, born in _____ on _____, resident of _____, on the following conditions and that Ms. _____ declares to accept integrally.

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**ART. XVII
(CONTROVERSIES)**

Taking into consideration the general and conventional international rights in this regard, eventual controversies, if any, will be dealt by the local forum.

ITALIAN PRESIDENTIAL DECREE

“Art.154 (System of Contracts) – For anything not expressly covered by this title, the contracts are governed by local law. Without prejudice to the provisions of the rules of general international law or of convention, the jurisdiction to settle any disputes that may arise from the application of this contract is that of the local forum. Diplomatic missions, or, failing this, the consular offices of the first class shall mandatorily ensure the compatibility of the agreement with the local regulations, and in any case, the application of the rules most favorable to the employee in lieu of the provisions of this title. The contractual conditions are to be checked to ensure the recruitment of the most qualified.

Art.157 (Remuneration) – The annual total base remuneration is fixed in the individual contract taking into consideration the local employment conditions, the cost of living and principally the remunerations paid in the same city by other Diplomatic Missions, Consular Offices, Cultural Institutions of other countries, in the first place of those of the European Union as well as by International Organizations. In addition, the eventual

indications in this direction provided annually by the Employees Unions shall also be considered. The remuneration should be consistent and adequate to guarantee recruitment of more qualified persons.

The annual remuneration is subject to revision in accordance with variation of the terms of reference in the above paragraph and in accordance with the variation of the cost of living.

The annual base remuneration is determined in such a way that in a country all persons recruited to homogeneous category should draw equal salary. A different remuneration can be granted as a very exceptional case in the same country but in different cities that exhibit different costs of living.

As a rule the remuneration is fixed and paid in the local currency, excluding the possibility of applying other currency in the presence of specific reasons. In such specific cases where the remuneration is paid in lire, the conversion to local currency is calculated by the exchange rate as determined by Article 209”.

16. He submitted that Article 11(1) of the UN Convention on Jurisdictional Immunities of States and Their Property, 2004 (‘the Convention’) deals with Contracts of Employment [signed by India on 12.01.2007 and Italy on 06.05.2013] and shows that the Republic of Italy enjoys no immunity from any legal proceeding, the subject-matter of which is a contract of employment concerning work to be carried out on Indian soil.

17. Learned counsel for the plaintiffs lastly contended that the suit was not barred by limitation as the cause of action in the present suit was a recurring cause of action inasmuch as the discrimination subsisted till the date of filing of the suit in 2013.

18. He further submitted that the plea of limitation is always a mixed question of law and fact and therefore the present suit could not be dismissed on the ground of limitation without proper pleadings, framing of an issue and recording of evidence. In support of his submission, the learned counsel for the plaintiffs relied on the judgment of the Supreme Court in **Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors., (2006) 5 SCC 638** wherein it has been held as under:-

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words “barred by law” occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in Balasaria Construction (P) Ltd. v. Hanuman Seva Trust [(2006) 5 SCC 658, below] it was held: (SCC p. 661, para 8)

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC.”

COURT'S REASONING

IN AN APPLICATION UNDER ORDER VII RULE 11 CPC, THE AVERMENTS IN THE PLAINT AND DOCUMENTS ANNEXED THERETO HAVE TO BE BELIEVED TO BE TRUE AND IN THE ABSENCE OF CENTRAL GOVERNMENT IN THE PRESENT SUIT, THE LEGALITY AND VALIDITY OF THE SANCTION UNDER SECTION 86(2) OF CPC CANNOT BE TESTED AND/OR EXAMINED.

19. Having heard learned counsel for the parties, this Court finds merit in the plea of the defendants-applicants that the power given to the Central Government under Section 86 of CPC must be exercised in accordance with principles of natural justice and in consonance with the principle that reasons must appear from the order. The Supreme Court in **Harbhajan Singh Dhalla vs. Union of India, (1986) 4 SCC 678** has held as under:-

“26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under Section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under Section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that the decision must be expressed in such a manner that reasons can be spelt out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered. There is no claim of any privilege that disclosure of reasons

would undermine the political or national interest of the country.”

(emphasis supplied)

20. Further, though Section 86(6) CPC specifically stipulates that the Central Government before refusing permission shall give a hearing to the person making the request only, yet to save the constitutionality of the provision, it shall have to be read to provide an opportunity of hearing to the foreign ruler, Ambassador and envoy also. It is open to the foreign ruler, Ambassador and/or envoy not to make use of such an opportunity.

21. Further the submission that the Courts should not inquire into the validity of the decision taken by the Central Government under Section 86 of CPC except when the permission is refused by the Central Government is untenable in law. This Court is of the view that the Central Government is bound to follow the standards they themselves had set in Section 86(2) CPC on the pain of their action being invalidated. Consequently, the consent letter of the Central Government must refer to any of the conditions mentioned in Section 86(2) CPC.

22. However, in an Order VII Rule 11 CPC application wherein only the averments in the plaint and documents annexed thereto have to be examined and believed to be true and correct and in the absence of Central Government in the present suit, the legality and validity of the sanction under Section 86(2) of CPC cannot be tested and/or examined.

23. In ***VEB Deutfracht Seereederei Rostock (D.S.R. Lines) A Dept. of the German Democratic Republic*** (supra) and ***K.S. Dhondy*** (supra), the plaints were rejected under Order VII Rule 11(d) CPC on the ground that the

suits were barred by law as the mandatory permission of the Central Government had not been obtained to institute a suit against a foreign State.

24. Further, the defendants' reliance on the decision of this Court in **Ramesh Kumar** (supra) bears no significance, as the observations made in Paragraph 13 (thirteen) of the said decision were only "*prima facie*" in nature. The Division Bench in appeal did not even address the question of the rejection of the plaint on the ground of invalidity of the consent given under Section 86 of CPC. Keeping in view the '*Doctrine of Merger*' the decision of the Single Judge stood effaced. The relevant portion of the Division Bench judgment in **Ramesh Kumar Sharma vs. Royal Netherlands Embassy in India & Anr.**, MANU/DE/0927/2012 is reproduced hereinbelow:-

"8. Since, the order, styled as a judgment pursuant to Section 8.54 of the General Administrative Law Act in Netherland held that the appellant had the remedy before a Civil Court, the suit was filed by the appellant, ignoring that as per his contract of service, he had to sue in Netherlands and could not sue in a Court in India, for the reason the contract of employment, as noted hereinabove, was governed by the Foreign Service Regulations 1951 promulgated by the Government of Netherland which confers remedy only in the Courts in Netherland. The civil procedure for the trial and the substantive law of Netherland would hold the field.

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10. The appeal accordingly stands disposed of modifying the impugned order and holding that the suit is not barred by res-judicata, but the plaint is liable to be returned on account of Courts in India not having any jurisdiction to entertain the claim. It would be open to the appellant to pursue the remedy at an appropriate court in Netherland."

25. Consequently, this Court, in the absence of Central Government in the present suit, cannot reject the plaint under Order VII Rule 11 of CPC against a foreign State on the ground that the consent under Section 86 of CPC, although obtained in writing, is substantively invalid.

THOUGH THE PRESENT SUIT IS PREMISED ON ITALIAN LAW, IN PARTICULAR THE ITALIAN PRESIDENTIAL DECREE AND THE JURISDICTION OF A MUNICIPAL COURT IS DEFINED BY THE DOMESTIC LAW, YET IN VIEW OF ARTICLE 154 WHICH CONFERS JURISDICTION ON THE LOCAL FORUM TO SETTLE ANY DISPUTE AND THE CONTRACT BETWEEN THE PLAINTIFFS AND DEFENDANTS NOT BEING OPPOSED TO PUBLIC POLICY, THIS COURT IS OF THE VIEW THAT IT HAS THE JURISDICTION TO DECIDE THE PRESENT SUIT.

26. Though the present suit is premised on Italian law, in particular the Italian Presidential Decree and the jurisdiction of a municipal Court is defined by the domestic law, yet in view of Article 154 which confers jurisdiction on the local forum to settle any dispute, this Court is of the view that it has the jurisdiction to decide the present suit.

27. In *Vishaka and Others Vs. State of Rajasthan and Others*, (1997) 6 SCC 241, the Supreme Court has held that in the absence of a suitable legislation in any sphere, international treaty, convention and norms so far as they are consistent with constitutional spirit, can be relied upon. Certainly the courts of this country will not enforce a contract contrary to the public policy of this country. It is settled law that an agreement in restraint of trade, even made abroad and to be performed in India, is void in India, though it may be valid by the *lex loci contractus*.

28. Since Article 157 of the Italian Presidential Decree is in conformity with the Indian law and is not opposed to public policy, this court is of the view that it is competent to decide the present suit.

PRESENT SUIT IS NOT BARRED BY LIMITATION AS THE SAME IS BASED ON A RECURRING CAUSE OF ACTION

29. This Court is in agreement with the submission of learned counsel for plaintiffs that the present suit is not barred by limitation as the same is based on a recurring cause of action.

30. Even if a part of the relief, i.e., payment of wages, sought in the present plaint is barred by limitation, the Court can always mould the relief and grant recovery to the extent that is within limitation. Accordingly, the present plaint is not liable to be rejected on the ground of limitation.

HOWEVER, BELIEVING ALL THE AVERMENTS IN THE PLAINT TO BE CORRECT, THIS COURT IS OF THE VIEW THAT ARTICLE 157 OF ITALIAN PRESIDENTIAL DECREE IS NOT A COVENANT WHICH GRANTS ABSOLUTE PAY PARITY BETWEEN ITALIAN CITIZENS AND CITIZENS OF HOST / LOCAL COUNTRY

31. However, believing all the averments in the plaint to be correct, this Court is of the view that Article 157 of Italian Presidential Decree is not a covenant which grants absolute pay parity between Italian citizens and citizens of host / local country.

32. In the opinion of this Court, the aforesaid Article 157 grants pay parity between citizens of host/local country employed by the defendants as it uses the expression “*in a country all persons recruited to homogeneous category should draw equal salary*”. Article 157 itself contemplates “*the annual total*

base remuneration is fixed in the individual contract taking into consideration the local employment conditions, the cost of living and....”

Surely, the cost of living of a local citizen and an Italian citizen would not be the same. In any event, the Italian citizens and citizens of host country locally employed are two different categories / streams.

33. Further, it is settled law that Courts are not empowered to re-write or create a new agreement/contract between the parties.

34. Consequently, this Court is of the view that the defendants have neither violated Article 157 of the Presidential Decree No.103 of 07th April, 2000 of defendant No.1 nor the defendants have discriminated against the plaintiffs in matters of employment. It is also pertinent to mention that prayers (c) to (g) are admittedly consequential prayers to declaration being granted in accordance with prayers (a) and (b) of the plaint. Accordingly, this Court is of the view that the present plaint is liable to be rejected as it discloses no cause of action.

RELIEF

35. Keeping in view the aforesaid findings, I.A. 25904/2015 filed by the defendants under Order VII Rule 11 CPC is allowed and the present plaint is rejected, without any order as to costs.

MANMOHAN, J

MAY 01, 2019

js/rn/rs