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

% Judgment delivered on: 13.01.2020

+ C.R.P. 3/2020

U R DUBEY

..... Petitioner

versus

ASSAM COMPANY INDIA LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Kamal Mehta, Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 976/2020 (Exemption)

Allowed, subject to all just exceptions.

C.R.P. 3/2020 & CM APPL. 977/2020

1. Petitioner impugns orders dated 29.11.2019 and 21.12.2019. By order dated 29.11.2019 the suit filed by the plaintiff under Order XXXVII CPC was treated as an ordinary suit. Order dated 21.12.2019 is an order passed after the petitioner filed a review and a detailed order has been passed treating the suit as an ordinary suit.

2. The reason given by the Trial Court for treating the suit as an

ordinary suit is that the petitioner has filed the suit claiming balance amount due to the plaintiff towards salary and that if plaintiff was claiming amounts due which are mentioned at the foot of the statement of accounts, the same could not be treated as falling under Order XXXVII CPC.

3. Since the orders impugned herein were passed prior to the issuance of notice/summons to the defendant/respondent in the Suit, this petition is taken up for hearing without notice to the respondent.

4. The plaintiff has filed the subject Suit based on a letter of appointment dated 08.08.2002 which specifically states that petitioner would be paid a lump sum professional charge of ₹1 lakh per month.

5. It is the case of the petitioner that TDS on the amounts to be paid to the petitioner was also deducted by the Respondent and Form 26AS issued for the financial years 2017-2018 and 2018-2019 show that respondent has deducted TDS on the said amount and shown the said sum of ₹1 lakh per month as paid.

6. In terms of Order XXXVII CPC a suit under Order XXXVII CPC for recovery of a debt or liquidated demand in money would lie on a written contract.

7. Further it may be seen that the provisions of Order XXXVII CPC have to be strictly followed by the Court. Once a suit is filed under Order XXXVII CPC and contains an averments which prima

facie show that the suit falls under Order XXXVII CPC, it is the duty of the Court to issue summons in Form No.4 in Appendix B or in such other form as may be prescribed from time to time.

8. In the subject Suit plaintiff has made an averment that the suit is under Order XXXVII CPC and no relief which does not fall under the ambit of this Rule has been claimed. Plaintiff has claimed a sum of ₹1 lakh per month which as per the plaintiff is the stipulated amount shown in the letter of appointment. Even Form 26AS issued by the respondent shows monthly payment of ₹1 lakh.

9. The reasoning given by the Court in the impugned order that ex facie the Suit claims relief which are beyond Order XXXVII CPC does not prima facie seem to be a correct finding.

10. This Court is only returned a prima facie finding since the respondent is yet to be served and an opportunity is to be given to the respondent to apply for leave to defend. The question as to whether in the Suit petitioner/plaintiff is claiming relief beyond Order XXXVII CPC would be a defence which the respondent may take in its leave to defend and it would be at that stage that the Court would consider as to whether the reliefs claimed by the petitioner are within the ambit of Order XXXVII CPC or beyond the same.

11. In view of the above, the impugned orders dated 29.11.2019 and 21.12.2019 are set aside. The Suit filed by the petitioner is treated

as a suit under Order XXXVII CPC. The Trial Court is directed to issue summons in terms of Form 4 in Appendix B as mandated in Order XXXVII (2)(ii) CPC.

12. It is clarified that this is without prejudice to the defence that the respondent may take. In case defendant/respondent takes a defence that the reliefs claimed are beyond the ambit of Order XXXVII CPC, the Trial Court would consider the said plea without being influenced by anything stated in this order.

13. Petition is allowed in the above terms.

14. Order *Dasti* under signatures of the Court Master.

JANUARY 13, 2020

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SANJEEV SACHDEVA, J.