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

+ LPA 66/2020

NITYA NAND SINHA

..... Appellant

Through: Mr.K.K.Rai, Senior Advocate with
Mr.Bankey Bihari, Mr.Ramkrishna
Veerendra, Mr.Anshul Rai, Mr.BPS
Rajesh, Mr.Birendra Bikram and
Ms.Sreoshi Chatterjee, Advocates.

versus

M/S H.L PROMOTERS PRIVATE LTD & ANR Respondents

Through: Mr.Neeraj Malhotra and Mr.Saifur R.
Faridi, Advocates for respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **05.02.2020**

CAVEAT 111/2020

1. Caveator has appeared. The caveat stands discharged.

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2. The appellant who was the petitioner in the writ petition, has preferred the present Letters Patent Appeal to assail the order dated 04.12.2019 passed by the learned Single Judge in W.P.(C) 9843/2018. By virtue of the impugned order, the learned Single Judge has upheld the order of the Labour Court, which rejected the appellant's Statement of Claim on the ground that he was not a 'workman' and therefore, the claim was not maintainable. The appellant had raised the industrial dispute against the respondents on the ground that he was in continuous employment since 01.12.2014. He was designated as General Manager and was drawing a salary of Rs. 4 lacs per

month. He claimed that despite his designation and high salary, he never performed managerial, supervisory or administrative duties during his tenure. He claimed that the basic, primary and dominant nature of his duties was to generate regular reports, preparation of sketches, preparing request of quotation with drawings to call the contractors to get quotations and then preparing comparative statement, analysis of rates, preparing note for record of approvals, preparing “Letter of Intent”, preparing contractors agreement technical portion for approval and submitting the same to the Supervisor Head of Engineering, taking of measurements at site and other miscellaneous jobs. Learned Single Judge rejected the appellant’s submission and held that the Labour Court correctly concluded that the appellant could not claim that he was a workman on account of his designation, salary and the nature of responsibilities.

3. The submission of the learned senior counsel for the appellant is that the issue as to whether the appellant was a “workman” under the Industrial Disputes Act, 1947 was essentially an issue of fact, and both the Labour Court and learned Single Judge failed to appreciate that without leading of evidence in a trial, the said issue could not be determined. It is further submitted that the fact that the appellant was drawing a salary of Rs.4 lacs per month was not enough to conclude that he was not a “workman”. So also, his designation as “General Manager” was not sufficient to reach the conclusion with regard to the nature and scope of the responsibilities of the appellant, and to conclude that he was not a “workman”.

4. Mr. Rai, learned Senior Counsel appearing on behalf of the Appellant has

placed reliance on the decision of the Supreme Court in the case of ***Nirmal Singh vs. State of Punjab and Ors. (1984) Supp SCC 407*** wherein the Supreme Court observed as follows:

“7. The grievance of the appellant is that the Bank did not raise any contention before the Labour Commissioner that he was not a workman within the meaning of the Act with the result that, he had no opportunity to meet that case. The parties have included in the paperbook before us some material bearing on that question but it will be unsatisfactory to decide that question without proper evidence. After all, the question as to whether the appellant is a “workman” is basically a question of fact. That is why, on the basis of the stray material before us, we do not consider it advisable to decide that question.”

(Emphasis supplied)

5. This decision has been followed in the case of ***Management of Aashlok Nursing Home Pvt. Ltd. vs. Ms. Usha Panicker (2009) SCC OnLine Del 2212*** delivered by a learned Single Judge of this Court. He also draws our attention to the order passed by the learned Single Judge while issuing notice in the writ petition on 18.09.2018, wherein this Court recorded its *prima facie* view that the issue as to whether the petitioner was a “workman” was essentially an issue of fact and could not be decided by the Labour Court in a summary manner without even calling for evidence.

6. We have heard learned senior counsel and perused the impugned judgment passed by the learned Single Judge as also the order passed by the Labour Court. No doubt, the issue whether the appellant was a “workman” as covered under the definition provided in the Industrial Disputes Act is essentially an issue of fact. At the same time, it does not necessarily follow that to determine every question of fact in every situation, the Labour Court

is bound to undertake the entire process of conducting a trial. The learned Single Judge while passing the impugned judgment has carefully examined the scope of the responsibilities and duties assigned to the appellant as a Project Head. Some of the functions that appellant may have performed in his capacity as a General Manager, have been pointed out. From the same, it does not follow that the scope of his responsibilities did not involve managerial, supervisory and administrative responsibilities. In fact all these jobs on the face of it appear to be managerial and administrative in nature. In any event, even the functions that the appellant claims to have discharged do not contraindicate that they would not be performed by somebody holding a managerial/supervisory or administrative position. Though the component of salary drawn by the employee may not be determinative of the issue whether the employee is workman or not, the fact that the appellant was drawing a handsome salary of Rs. 4 lacs per month in the year 2014, is also a clear pointer to the fact that he was not menial worker or a workman simpliciter, with no administrative, supervisory or managerial responsibilities.

7. Therefore, we do not find any merit in this appeal. The appeal and the application are disposed of.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 05, 2020

v