

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5851 OF 2021

Franke Faber India Pvt Ltd.
Plot No. L-7, MIDC Industrial Area,
Waluj, Aurangabad
through Authorised Signatory.

... **PETITIONER**
(Org. Defendant)

VERSUS

Abhay S/o Ganpatrao Kulkarni,
Age : 57 years, Occ: Nil
R/o. Narendra Housing Society,
House No.13, P-11, N-7 CIDCO,
Aurangabad.

... **RESPONDENT**
(Org. Plaintiff)

...

Advocate for Petitioner : Mr. Sachin V. Dankh
Advocate for Respondent : Mr. V.I. Thole

...

CORAM : MANGESH S. PATIL, J.

DATE : 24.08.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is the original defendant in a suit filed by the respondent for damages on account of alleged illegal termination. The petitioner submitted an Application (Exhibit-52) seeking a witness summons to be issued to one Dr. Vijay Barhale, a Psychiatrist. The Application has been rejected by the impugned order.

3. The learned advocate for the petitioner would submit that the petitioner has been dismissed from service due to lack of performance. It is a specific contention that such lack of performance was perhaps because of his mental illness. Even the respondent is claiming damages for mental agony resulting from such illegal termination. He would submit that specific issues have been framed at Serial Nos. 3 and 6 touching his mental condition. Since the petitioner is aware about or has the knowledge of the respondent having taken treatment of the Psychiatrist a witness summon was solicited to be issued. He would submit that though there is no material in the possession of the petitioner as of now to demonstrate mental condition of the respondent, the petitioner is ready to run the risk of calling the psychiatrist and no prejudice is likely to be caused to the respondent. If the truth is to be searched, examination of the witness is necessary touching the mental status of the respondent. It was in the interest of justice that the petitioner ought to have been allowed to call the witness. The respondent could have got the opportunity to cross-examine the witness as well. In support of his submission he would place reliance on the following decisions:

- i. **Ramdas Dhondibhu Pokharkar Vs. State Bank of India and Anr.; 2002 SCC OnLine Bom 1459**
- ii. **Satyanarayan M. Agarwal through his LR's Vs. Vishwanath Chaudhary; 2020 SCC OnLine Bom 10832**

4. Per contra, the learned advocate for the respondent would submit that though the damages have been claimed by the respondent for

alleged illegal termination, the Letter of Termination nowhere discloses that medical condition of the respondent was the ground for termination of the employment. He would further submit that the petitioner has been harping in dark. There is no concrete material available with it and only a fishing inquiry is sought to be undertaken based on some surmises and conjectures. The respondent during his cross-examination flatly denied to have ever consulted Dr. Barhale. Even the witness of the petitioner merely stated about once having seen the respondent coming out of the Dr. Barhale's Hospital. Therefore, in the absence of any material with the petitioner to *prima facie* show that the respondent indeed has consulted Dr. Barhale, no fault can be found with the impugned order refusing to issue the witness summons.

5. The learned advocate for the respondent would further submit that even the Application (Exhibit-52) was moved by the petitioner at the fag end of the trial. No plausible explanation is coming forth as to why no attempt was made at any earlier point of time to summon the witness.

6. The learned advocate further points out that now the petitioner has even closed its evidence after rejection of the present Application and the matter is closed for arguments. The petitioner has been remiss in defending the suit. Even on earlier occasion cross-examination of respondent on its behalf had to be declined on couple of occasions.

7. I have carefully gone through the papers and considered the rival submissions. Though, the learned Judge has framed Issues Nos. 3 and

6, the pleadings of the parties particularly that of the petitioner in the Written Statement shows that except a bald assertion in clause D of paragraph No.1 of the Written Statement to the effect that since the plaintiff (respondent) is not medically fit and not entitled to any damages, the Written Statement is absolutely silent about any knowledge on the part of the petitioner about his mental condition muchless about he having ever approached Dr. Barhale. Even in the absence of such pleadings the cross-examination of the respondent has been conducted by putting couple of similarly vague suggestions about he having taken treatment from Dr. Barhale which suggestion he has flatly denied. Surprisingly, even it was suggested to him that because of his mental health he could not give performance satisfactorily and the company was required to terminate him. Suffice for the purpose to repeat that the Termination Letter does not make out any such ground for termination.

8. The witness of the petitioner during his examination-in-chief has stated about the respondent having taken treatment from Dr. Barhale and probably because of that his performance had gone down. Such a statement seems to have been made without there being any basis in the pleading and even when that is not the ground for termination spelt out in the termination order. Surprisingly during his cross-examination he admitted not to have seen any document about the respondent having taken treatment from Dr. Barhale. He only states that he had once seen the respondent coming out from the Dr. Barhale's Hospital in the year 2015 as

the basis for his information. It is in view of such state of affairs, the request made by the petitioner to summon Dr. Barhale would be nothing but a fishing inquiry and the Court cannot be expected to indulge in any such investigation.

9. The decisions cited on behalf of the petitioner (supra) would operate in the matrix of the individual case. When in the matter in hand I can find the aforementioned infirmities which apparently justify the impugned order rejecting the Application to summon Dr. Barhale, in my considered view the petitioner is not entitled to derive any benefit from the decisions.

10. The Writ Petition is dismissed.

11. It is clarified that the observations made herein above are only meant for the purpose of deciding the present petition and the learned Judge shall not feel influenced by these observations.

(MANGESH S. PATIL, J.)