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C.R.P.No. 273 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 26.08.2022

Delivered On: 22.09.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.273 of 2021

and

C.M.P.No.2550 of 2021

Standard Chartered Bank,
Rep. By its Chief Executive,
No.19, Rajaji Salai, Ground Floor,
Chennai – 600 001.

... Petitioner/Petitioner/Defendant

Vs.

Sukhi Bahety

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to set aside the fair and decretal order in I.A.No.15342 of 2018 in O.S.No.4712 of 2018, dated 15.06.2020 passed by the learned IV Assistant Judge holding Full Additional Charge of the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.Siddarth Bahety



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ORDER

WEB COPY This Civil Revision Petition had been filed seeking to set aside the fair and decretal order passed by the learned IV Assistant Judge holding Full Additional Charge as II Assistant Judge, City Civil Court, Chennai in I.A.No.15342 of 2018 in O.S.No.4712 of 2018, dated 15.06.2020.

2.The learned Counsel for the Petitioner/Defendant Mr.P.Raghunathan submitted his arguments. As per the submission of the learned Counsel for the Petitioner/Defendant, the Respondent/Plaintiff had filed the suit in O.S.No.4712 of 2018 seeking the relief of declaration viz., i) that the designation/nomenclatures of 'Officer' and 'Manager' in the Plaintiff's service of appointment and promotion etc., is not synonymous with the nature of job and duties performed. It is misleading, wrong, false, deceptive in order to evade and avoid the various labour legislations. It is illegal and invalid; ii) declaring that the principles of natural justice had been violated, not been followed and adhered to, in the holding and conducting of the domestic enquiry before the dismissal/termination from service of the Plaintiff, and is illegal and invalid; iii) declaring that the dismissal from service on 30.06.2015



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of the Plaintiff, from the services of the Defendant, is illegal, invalid and void;

iv) declaring that the Plaintiff is entitled to be reinstated in service with continuity of service, full back wages, and payment of all and every benefits, allowances, etc.,; v) To direct the Defendant to pay to the Plaintiff the costs of this suit; and vi) To grant such further or other reliefs as may be just, fit and proper in the circumstances of the case. The learned Counsel for the Petitioner invited the attention of this Court to the cause of action in the plaint. A copy of the plaint is enclosed in the typed set filed along with this Petition. The relevant portion of the plaint is extracted as under:

“3.The Plaintiff states that the Plaintiff was employed by the Defendant on 12.07.2004 in the designation of Senior Officer – Collection, and which designation of 'Officer' and subsequently 'Manager', the Plaintiff most respectfully states was, and is, deceptive, misleading, misrepresentative and fraudulent, just to evade and avoid various labour law legislations, especially and more so when though by the said designations, the Plaintiff was put in the Management cadre, but the nature of his employment, job and duties was clerical or that of a skilled or technical worker employee and every subsequent conduct of the Defendant will also prove and substantiate, that the Plaintiff was also treated as a worker and not as an 'Officer' or 'Manager', and was not in the cadre, caliber and employment with the duties of an 'Officer' or 'Manager' in the Management cadre, but of one who was a skilled or technical worker employee.

10.The Plaintiff states that some of the main issues involved are, as to whether the Plaintiff, in spite of being designated as 'Manager', is a workman or not, and is he exercising managerial functions, and does the nature of his job call for exercising any managerial functions, and also as to whether the disciplinary hearing called for by the Defendant, was in conformity with law, and the norms of a domestic enquiry, and also



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whether the dismissal from service of the Plaintiff was according to law and the principles of natural justice.

11.The Plaintiff states that this abuse and circumventing of the labour laws of our country, and without any Standing Orders or otherwise whatsoever, and which has caused miscarriage of justice, is evident from the fact that even the Assistant Commissioner of Labour, Government of India, Ministry of Labour and Employment has, rejected the petition of the Plaintiff filed under Section 2-A of the Industrial Disputes Act, on the sole ground that the Plaintiff was an 'Officer', therefore, this suit before this Hon'ble Court is filed.

14.The Plaintiff, therefore, most respectfully prays that this Hon'ble Court may be pleased to pass a judgment and decree against the Defendant:-

i) that the designation/nomenclatures of 'Officer' and 'Manager' in the Plaintiff's service of appointment and promotion etc., is not synonymous with the nature of job and duties performed, and is misleading, wrong, false, deceptive and to evade and avoid the various labour legislations, and is illegal and invalid;

ii) declaring that the principles of natural justice had been violated and not been followed and adhered to, in the holding and conducting of the domestic enquiry before the dismissal/termination from service of the Plaintiff, and is illegal and invalid;

iii) declaring that the dismissal from service on 30.06.2015 of the Plaintiff, from the services of the Defendant, is illegal, invalid and void;

iv) declaring that the Plaintiff is entitled to be reinstated in service with continuity of service, full back wages, and payment of all and every benefits, allowances, etc.,;

v) To direct the Defendant to pay to the Plaintiff the costs of this suit; and

vi) To grant such further or other reliefs as may be



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just, fit and proper in the circumstances of the case.”

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3.The Petitioner herein as Defendant in the suit had filed a Petition under Order VII, Rule 11 of CPC in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 to reject the plaint. After due enquiry, the learned IV Assistant Judge having Full Additional Charge of II Assistant Judge, City Civil Court at Chennai, had dismissed the I.A.No.15342 of 2018 in O.S.No.4712 of 2018 as per the order dated 15.06.2020.

4.It is the submission of the learned Counsel for the Petitioner/Defendant that the enquiry was heard by the learned II Assistant Judge and reserved for orders on 30.08.2019 and it was adjourned from time to time on 12 different occasions. Thereafter on 24.03.2020 the Government declared national lockdown. Subsequently, on 15.06.2020 the learned IV Assistant Civil Judge officiating for the learned II Assistant Judge had passed the order dismissing the petition to reject the plaint.

5.Though the learned IV Assistant Judge reasoned that where an employee is dismissed for breach of contract, his normal remedy in the suit is



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damages or declaration that the dismissal was wrongful and not declaration that the dismissal was invalid. However, the declaration can be made that the decision by the Disciplinary Committee leading to dismissal is void for non-compliance with the principles of natural justice. The suit was therefore, maintainable. Section 14(1)(b) was not a bar created by any law. The learned IV Assistant Judge further reasoned that the Plaintiff had alleged violations of principles of natural justice. So the civil court jurisdiction cannot be barred because the Plaintiff had alleged that the Plaintiff's dismissal was motivated and pre-planned. The learned IV Assistant Judge had held that the reported decisions relied by the learned Counsel for the Petitioner before him in *2009 (4) SCC 299* and *2009 (14) SCC 360* does not apply to the case on hand because the Plaintiff pleaded non-observance of the principles of natural justice. The learned IV Assistant Judge holding Full Additional Charge of the learned II Assistant Judge without hearing oral or written submissions dismissed the petition. The learned IV Assistant Judge ought to have seen that the Petitioner was a Company incorporated in England and it was not a Government of India Company, State or Instrumentality of the State or that his employment was a public employment



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or that the terms and conditions of his employment were statutory in character. The learned trial Judge ought to have seen that it was the Respondent's case that he was a workman and sought for a declaration to that effect. The learned trial Judge ought to have seen that the prayer in paragraph 14 (1) of the plaint when read in the context of the plaint shows that it was for a declaration that he was not an Officer or a Manager but a workman of the Petitioner. The learned trial Judge ought to have seen that even according to the plaint averments, the Respondent had filed the Petition under Section 2A of the Industrial Disputes Act, 1947 seeking to set aside the dismissal order on the basis that though designated as "Manager", he was a workman under the Industrial Disputes Act, 1947. The learned trial Judge ought to have held that the declaration of status of a person as a workman is within the exclusive jurisdiction of the authorities under the Industrial Disputes Act, 1947 and Civil Court jurisdiction is impliedly barred by the provision of the Industrial Disputes Act, 1947 and Specific Relief Act, 1963. The learned trial Judge failed to see that the Respondent had not only sought a declaration that the dismissal order dated 30.06.2015 was illegal, invalid and void, but also a declaration that the Plaintiff was entitled to be reinstated in service with



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continuity of service with full back wages, payment for benefits, allowances

etc., The learned trial Judge ought to have seen that the Respondent/Plaintiff

had not relied on eight documents under Section 14(1) of CPC and that Plaint

document Nos.4 to 8 when read together comprehensively and meaningfully

show that it was the Plaintiff who had boycotted the enquiry scheduled on

24.06.2015. In any event, the Petitioner being a private employer and the

employment being contractual, alleged violation of principles of natural

justice cannot confer jurisdiction to Civil Court particularly when the

Respondent claims to be a workman. The learned trial Judge had made a

typographical error in paragraph 4 of the affidavit of the Petitioner in support

of the petition to reject the plaint when the sum and substance of the affidavit

was regarding enforcement of contract of Personal Service. The learned trial

Judge ought to have seen that Section 14(1)(b) (now amended as Section

14(1)(b) and (c) of the Specific Relief Act, 1963 forbids a Civil Court from

enforcing a contract of personal service and that the plaint, when construed

comprehensively and meaningfully was only a suit to enforce the contract of

personal service. The learned trial Judge erred in thinking that Section

14(1)(b) of the Specific Relief Act, 1963 was not a bar created by any law.



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In the absence of any plea that the Respondent/Plaintiff was a public servant or that the Petitioner was a statutory body or instrumentality of the State who had acted in violation of the statute should have allowed the Petition to reject the plaint. The learned trial Judge failed to discern the ratio of the judgements reported in **2009 (4) SCC 299** and **2009 (14) SCC 360** and other judgments cited before the predecessor of the learned IV Assistant Judge who held Full Additional Charge of the learned II Assistant Judge. Viewed from any angle, the order of the learned trial Judge is not sustainable. Therefore, the learned Counsel for the Petitioner/Defendant seeks to allow this Civil Revision Petition and set aside the fair and decretal order passed in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 dated 15.06.2020 and thereby reject the plaint in O.S.No.4712 of 2018 and allow the Petition filed under Order VII, Rule 11 of CPC.

6.In support of his contention, the learned Counsel for the Petitioner/Defendant relied on the following decisions:

6.1.In the case of ***T.Arivandandam -vs- T.V.Satyapal and another***



reported in (1977) 4 SCC 467 wherein the Hon'ble Supreme Court has held as under:

“The trial Court must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch. XI) and must be triggered against them.”

6.2.In the case of **S.N.Mookherjea -vs- ANZ Grindlays Bank** reported in **1991-II-LLN-608** wherein the Bombay High Court has observed in paragraph No.3 which reads as under:

“3.The appellant took out Notice Of Motion No. 4509 of 1990 seeking injunction restraining the bank from withdrawing the facilities and the perquisites available to the post which the appellant was holding. The appellant obtained ad interim relief in the motion and when the motion came up for hearing, the bank filed affidavits asserting that the suit was not maintainable and City Civil Court had no pecuniary jurisdiction to entertain and try the suit. The bank claimed that even assuming that the termination of the services of the appellant is contrary to law, still it is not open for the Court to grant the declaration sought by the appellant. The bank contended that the only remedy of the appellant, if any, for alleged wrongful dismissal is to seek damages and the declaration that the appellant continues to be in the employment of the bank cannot be decreed. The trial Judge framed the preliminary issue about the maintainability of the suit and came to the conclusion that the suit was not maintainable as it is not permissible to grant such declaration unless the plaintiff is entitled to protection under Art. 311 of the Constitution or under the provisions of the Industrial Disputes Act or the employee is in the employment of the statutory corporation. In view of the finding that



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the suit was not maintainable, the finding on the issue as to whether the City Civil Court had pecuniary jurisdiction to try the suit was not answered. The trial Judge by order, dated 18 December, 1990 dismissed the suit as not maintainable and vacated the ad interim order secured by the appellant on institution of the suit.”

In the same judgment, it has been held as under:

“Held :

It is not permissible for the civil Court to grant a declaration as sought by the appellant in view of long time decisions of Supreme Court. This rule, however, is subject to three well recognised exceptions:

- (i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311 of the Constitution of India;*
- (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and*
- (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute.”*

6.3. In the case of ***Federal Bank Ltd., -vs- Sagar Thomas*** reported in

(2003) 10 SCC 733 wherein the Hon'ble Supreme Court has held as under:

“A. Constitution of India – Art. 226 – Maintainability – Against whom all writ petition maintainable – Law summarised – Whether maintainable against a company incorporated under the Companies Act (not being a “govt. company” under Section 617) – Held, merely regulatory provisions, to ensure that business or commercial activity carried on by private bodies remains within a discipline, do not confer any status upon the company nor put any obligation upon it which may be enforced through issue of a writ under Art. 226 – Further clarified, even though it is a judicially accepted norm that private interest has to give way to the public interest, if private property is acquired in the public interest it does not mean that the party whose property is acquired is performing any function or duty of a public character – Companies Act, 1956 – S. 10 – Jurisdiction of court – Writ therefore will not be issued where there may not be any non-compliance with or violation of any statutory provision by the private body.”

6.4. In the case of ***Pruthvirajsingh Nodhubha Jadeja -vs-***



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Jayeshkumar reported in (2019) 9 SCC 533 wherein the Hon'ble Supreme

Court in paragraph No.8 has observed as under:

“8.It is well-settled law that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the Court.”

7.By way of reply, the learned Counsel for the Respondent/Plaintiff before the trial Court submitted that the suit itself is maintainable. The order passed by the learned IV Assistant Judge holding Full Additional Charge of the learned II Assistant Judge dated 15.06.2020 is perfectly a reasoned order and this Court exercising powers under Article 227 of the Constitution of India cannot interfere with the order. The suit was instituted after the Plaintiff invoked the jurisdiction of the Industrial Disputes Act, 1947 before the Assistant Commissioner of Labour that is the precondition to invoke the powers of the Civil Court for a dispute of this nature. When the plaint averments is read as a whole, the averments in the plaint gives cause of action for the Plaintiff to agitate his right before the Civil Court. Particularly, when the Defendant had been the Respondent, Plaintiff had invoked Section 2A of the Industrial Disputes Act, 1947 before the Regional Labour Commissioner (Central), Shastri Bhawan, Chennai – 6 seeking to declare him as a workman.



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When the petition is rejected, it gives a cause of action to file a suit. When the plaintiff is read as a whole, the cause of action is acceptable as per the relief sought in the suit. He further submitted that whether the suit is maintainable or not cannot be decided under Order VII, Rule 11 CPC. It is a subject matter of evidence and trial proceedings. Only after the conclusion of the trial, on the basis of the records available before the trial Court, the Trial Court can decide whether the Plaintiff is entitled to the relief sought for or not.

8.He further submitted that under Order VII, Rule 11 CPC, the trial Court cannot consider the plaintiff averments as pointed out by the learned Counsel for the Petitioner. Therefore, the learned IV Assistant Judge holding Full Additional Charge of the learned Second Assistant Judge had rightly dismissed the petition in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 filed under Order VII, Rule 11 CPC stating that the powers of the Civil Court is not barred when Civil right under the principles of fairness, equity and good conscience is invoked by the Plaintiff, when the Defendant had not acted fairly and the Defendant had not acted as per the principles of natural justice.



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Therefore, this Civil Revision Petition is not maintainable and it has to be dismissed.

9. On consideration of the rival submissions and on perusal of the plaint averments, as rightly pointed out by the learned Counsel for the Petitioner herein who is the Defendant before the trial Court and the Petitioner in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 is found acceptable that the Respondent/Plaintiff had approached the Court seeking the relief of declaration thereby insisting the Court for a declaration for enforcement of a contract of personal service which attracts the provisions of Section 14(1)(b) of the Specific Relief Act, 1963, as it stood prior to the amendment which reads as under:

“14. Contracts not specifically enforceable.—

(1) The following contracts cannot be specifically enforced, namely:

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;”

Subsequently, the Specific Relief Act, 1963 was amended as Section

14(a)(b)(c) and (d) which read as under:

“14. Contracts not specifically enforceable. - The following contracts cannot be specifically enforced, namely:—

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- (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- (d) a contract which is in its nature determinable.”

9.1.The reliance placed by the learned Counsel for the Petitioner in the reported ruling in ***S.N.Mookherjea -vs- ANZ Grindlays Bank*** reported in ***1991-II-LLN-608*** decided by the Division Bench of the Hon’ble High Court of Bombay squarely applies to the facts in this case. Here also the Bank is a Standard Chartered Bank which has its registered office at England. In the case of ***Federal Bank Ltd., -vs- Sagar Thomas and others*** reported in ***(2003) 10 SCC 733***, the affected person had approached the High Court by way of Writ Petition.

9.2.Even though the Petitioner had quoted Section 11(a) of the Specific Relief Act, 1963, it ought to have been read by the learned trial Judge as Section 14(1)(b)(c) or 14(1)(b) as it stood prior to amendment in 2018. Therefore, the typographical error in the affidavit of the Petitioner under Order VII, Rule 11 CPC was considered by the learned trial Judge even



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though the sum and substance of the affidavit was with regard to Section 14(1)(b) of the Specific Relief Act, 1963 is found unreasonable and unacceptable in the light of the decision reported in **(2019) 9 SCC 533 [Pruthvirajsingh Nodhubha Jadeja -vs- Jayeshkumar]**.

9.3. Therefore, in the light of the above rulings and on reading of the entire plaint averments, particularly, the relief sought for in the suit in O.S.No.4712 of 2018 and cause of action, the claim made by the Respondent as Plaintiff in the suit that even though he was, “Manager” he has to be declared as workman by invoking the powers of the Industrial Disputes Act, 1947, is found to be misconceived and unreasonable. Rejection of the same by the authorities under the Industrial Dispute Act, 1947 as though the Plaintiff approached the Court to file the suit is found unreasonable and unacceptable in the light of the Industrial Disputes Act, 1947. The Respondent in the plaint as Plaintiff accepts that he is a Manager of the Bank and therefore, he cannot claim to be a workman and it cannot be claimed under Industrial Disputes Act, 1947. The said averments of the Respondent is contrary to Industrial Disputes Act, 1947 which no Court of law can



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entertain. Therefore, the conduct of the Respondent attracts the provision of promissory estoppel under the Indian Evidence Act. When he claims to be a Manager he is estopped from considering as a workman. Therefore, the Court has to necessarily reject the contention of the Respondent under the principle of promissory estoppel. Instead the learned Second Assistant Judge while accepting the contention of the Petitioner which resulted in filing of this Petition by the Defendant in the suit. The arguments of the learned Counsel for the Respondent that the citizen of this country should not go without a remedy in any Court of law cannot at all be accepted in the light of the law laid down by the Hon'ble Supreme Court in matters of similar nature and as observed in *S.N.Mookherjea -vs- ANZ Grindlays Bank* reported in **1991-II-LLN-608**. Therefore, the arguments of the learned Counsel for the Respondent/Plaintiff is rejected.

9.4.In the light of the ruling cited by the learned Counsel for the Revision Petitioner/Defendant before the trial Court and the Petitioner in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 the averments in the plaint is found to attract the provisions of Order VII, Rule 11 of CPC. In the light of



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Section 14(1)(b) prior to amendment and Section 14(1)(b)(c), after amendment in 2019 had barred the jurisdiction of the Civil Court. Therefore, the order dated 15.06.2020 passed by the learned IV Assistant Judge holding Full Additional Charge of the learned II Assistant Judge in dismissing the I.A.No.15342 of 2018 in O.S.No.4712 of 2018 is found to be perverse. Therefore, the same is liable to be set aside.

In the result, this **Civil Revision Petition is allowed.**

The order dated 15.06.2020 passed by the learned IV Assistant Judge holding Full Additional Charge of the learned II Assistant Judge in I.A.No.15342 of 2018 in O.S.No.4712 of 2018 is set aside. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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SRM

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The IV Assistant Judge
(FAC) II Assistant Court,
City Civil Court at Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Pre-Delivery Order made in
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