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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th January, 2022

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C.R.P. 77/2020

ICICI BANK LTD

..... Petitioner

Through: Mr. Pawanjit Singh Bindra, Sr.
Advocate & Mr. Abhinav Mukhi,
Advocate.

versus

SH VINOD GUPTA & ORS.

..... Respondents

Through: Ms. Vandana Sharma & Mr. Samudra
Sain, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 11th September, 2020 in *C.S. No. 8627/2016* [old no. C.S. (OS) No. 2109/2011] titled *Sh. Vinod Gupta v. ICICI Bank Limited & Ors.* passed by the Id. ADJ-06 (SE) Saket Courts, New Delhi (*hereinafter* “*Trial Court*”) vide which application filed by the Petitioner/Defendant (*hereinafter* “*Defendant Bank*”) under Order VII Rule 11 CPC has been rejected. The main ground urged under Order VII Rule 11 CPC is that a simpliciter suit praying for declaration and mandatory injunction without praying for consequential relief is not maintainable in view of Section 34 of the Specific Relief Act, 1963 (*hereinafter* “*Act*”).
3. The Respondent/Plaintiff (*hereinafter* “*Plaintiff*”) filed the suit for declaration and mandatory injunction seeking declaration to the following effect:



“(i) Pass a decree for declaring the dismissal order dated 08.3.2011 as illegal.

(ii) Pass a decree declaring that the plaintiff continues in the service of Defendant No.1 Bank.

(iii) Pass a decree declaring the charge sheet dated 17.07.2010 and enquiry proceeding and enquiry report dated 28.09.2010 as illegal and without authority.

(iv) Pass a decree of mandatory injunction directing the defendant to restore the function and work of plaintiff.

(iv-a) Pass a decree declaring the departmental enquiry and findings of the enquiry officer illegal, null and void and without authority.

(v) Award cost of the suit.

(vi) Pass such other or further order as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

4. The Plaintiff had worked in the Defendant Bank for a period of 29 years and it is alleged by the Defendant Bank that during the said period he indulged in 178 dubious and unauthorised transactions which led to a disciplinary enquiry being held against him as a result of which he was terminated. The said termination was assailed by the Plaintiff before the Trial Court on the ground that proper opportunity to present his case was not given to him and the enquiry officer was biased leading to the suit being filed seeking declaration of the enquiry proceedings and the consequential termination as bad in law.

5. Ld. Sr. Counsel, Mr. Pawanjit Singh Bindra, appearing for the Defendant Bank places reliance upon Section 34 of the Act and the reliefs prayed to submit that the suit filed by the Plaintiff is not maintainable. According to him, even if the Plaintiff would not have been terminated from



the Defendant Bank, he would have superannuated by now. Since no monetary compensation or backwages have been sought in the relief part of the plaint, the suit is not maintainable. He relies on the following judgments to support his case:

- i. ***State of M.P. v. Mangilal Sharma* AIR 1998 SC 743.**
- ii. ***Smarjit Datta v. PMT Tools Automatic Pvt. Ltd. & Ors.* 2001(3) BOMLR 836.**

6. Mr. Bindra further submits that the Plaintiff had, in fact, admitted to the fact that he had carried out these unauthorised transactions and had transferred amounts from customers' account to his own account. He had even tendered an apology. Though, no written complaint was made by any customer, considering that he is a bank employee, the termination was perfectly justified.

7. On the other hand, Id. Counsel appearing for the Plaintiff submits that the suit is currently at the stage of evidence before the Trial Court and the evidence ought to be allowed to be continued to be recorded. At this stage, there is no cause for rejection of the plaint.

8. A perusal of the plaint in the present case shows that the same was instituted in 2011 before the Original Side of this Court bearing number C.S. (OS) 2109/2011. Vide order dated 31st July, 2015, the following issues were framed in the suit:

- “1. Whether the dismissal order dated 8th March, 2011 is illegal and liable to be set aside? OPP*
- 2. Whether the plaintiff is entitled to be reinstated in defendant bank along with all consequential benefits with effect from 8th March, 2011? OPP*
- 3. Whether there was any contract of employment*



between plaintiff and defendant bank? OPP

4. Relief.”

9. A bare perusal of the above issues shows that no issue relating to the maintainability of the suit under Section 34 of the Act was framed at that stage. Thereafter, the suit was transferred to the Trial Court on 11th December 2015 due to increase in the pecuniary jurisdiction of the High Court. The suit then proceeded further and it was almost three years thereafter in July’18, that an application under Order VII Rule 11 CPC was filed by the Defendant Bank seeking rejection of the plaint on the ground that it is barred under Section 34 of the Act.

10. It is this application which was rejected vide the impugned order. On the first date when notice was issued in this matter by this Court i.e., 27th November, 2020, an additional issue was directed to be framed by the Trial Court which is now stated to have been framed in respect of the maintainability of the suit under Section 34 of the Act.

11. The question before this Court is whether at this stage, when the suit is stated to be at the stage of evidence, the application under Order VII Rule 11 CPC deserves to be heard which according to Mr. Bindra, Id. Counsel is a legal ground.

12. The said legal ground, raised by the Petitioner, as a ground for rejection of the plaint under Order VII Rule 11 CPC, has been examined by the Court. In the case of *State of M.P. v. Mangilal Sharma (supra)*, the declaratory decree was granted in favour of the employee by the Trial Court and the question before the Supreme Court was whether the Executing Court could award the back wages and other benefits when no relief was granted by the court passing the decree towards arrears of salary and other



consequential benefits. It was in view of these facts and circumstances, the Supreme Court held that the Executing Court cannot go behind the decree, however, the benefit to the Workman in respect of the service conditions which are governed by the statutory rules of the Government would, be applicable to him.

13. In the case of *Smarjit Datta v. PMT Tools Automatic Pvt. Ltd. & Ors. (supra)*, the question before the Bombay High Court was whether a mere suit for declaration without seeking relief of reinstatement, compensation and consequential benefit is maintainable. In the said case, the High Court of Bombay held that since the consequential relief was not sought, the suit would be barred by the proviso to Section 34 of the Act.

14. The facts of the case faced by this Court in the case at hand are distinct from the facts in *Smarjita Datta (supra)*. In the present case, a perusal of the relief prayed for by the Plaintiff would show that the Plaintiff has sought reliefs of declaration from the Court that the termination was illegal. In prayer (iv) of the suit, the Plaintiff seek the following relief:

“(iv) Pass a decree of mandatory injunction directing the defendant to restore the function and work of plaintiff.

(iv-a) Pass a decree declaring the departmental enquiry and findings of the enquiry officer illegal, null and void and without authority.”

15. At the stage when the suit was filed, the employee having not achieved the age of superannuation, apart from seeking reliefs of declaration, his consequential prayer was for restoration of his functions and work. The said prayer is, obviously, not happily worded but reinstatement would be the clear understanding of prayer (iv) in the opinion of this Court.



16. Now, the employee is stated to have achieved the age of superannuation. The question as to whether if the Trial Court passes a declaratory decree, any consequential relief could be granted to the Plaintiff in view of prayer (iv) would be an aspect which the Trial Court would have to consider at the time of final adjudication. The suit is 10 years old. The issues have been framed in 2015 i.e., 7 years ago. No issue relating to the maintainability having been pressed at that stage, this Court is of the opinion, that at this stage, an application under Order VII Rule 11 CPC would not be liable to be entertained on the point of maintainability, at this stage. Since the Court has already directed the Trial Court to frame an issue under Section 34 of the Act, it is again for the Trial Court to consider at an appropriate stage as to whether the suit is maintainable, on the basis of the pleadings and the evidence and take a decision in accordance with law. Parties ought to thus be relegated to trial and final adjudication. The observations in this order are merely for the purpose of deciding the application, for which the defence taken or the evidence is not to be considered and would not bind the trial court in the final adjudication.

17. With these observations, the present petition, along with all pending application, is disposed of.

18. The Trial Court shall now proceed further in accordance with law on the issues which were already framed as also in the issue relating to the maintainability under Section 34 of the Act.

PRATHIBA M. SINGH
JUDGE

JANUARY 7, 2022/dj/sk
(corrected & released on 11th January, 2022)