

\$~109(Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 417/2022, CM APPL. 21345/2022 & CM APPL.
21346/2022

CH AISHI RAM BATRA PUBLIC CHARITABLE TRUST

..... Petitioner

Through: Mr. Ashok Chhabra, Advocate

versus

SMT ANITA KUMAR

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G E M E N T (O R A L)

% **04.05.2022**

CM APPL. 21346/2022 (for exemption)

1. Exemptions allowed subject to all just exceptions.
2. The application stands disposed of.

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3. This petition, under Article 227 of the Constitution of India, assails an order dated 12th October, 2021, passed by the learned Additional District Judge (“the learned ADJ”), in CS DJ No. 75/2019 (*Anita Kumar v. Batra Hospital & Medical Research Centre*), on an objection of maintainability raised by the petitioner, as the defendant

in the said suit. The impugned order rejects the said objection and holds the suit to be maintainable.

4. The respondent, in her suit, sought a declaration that the termination of her employment by the petitioner on 7th April, 2011 was illegal and also claimed damages/ compensation to the extent of ₹ 18,61,000/-, with interest from 7th April, 2011. Additionally, the plaintiff sought restoration of the respondent in the employment of the petitioner.

5. The petitioner contested the maintainability of the aforesaid suit on the ground that a contract of personal service with a private employer was not capable of specific performance in view of the proscription contained in Section 14 of the Specific Relief Act, 1963.

6. The learned ADJ has, in the impugned order, largely agreed with this submission of the petitioner citing, for the said purpose, the judgment of the Supreme Court in *SBI v. SN Goel*¹ and the judgment of this Court in *Ranmeet Singh Chahel v. Oracle India Pvt. Ltd.*².

7. Even so, it was observed by the learned ADJ, in its judgment in *Ranmeet Singh Chahel*², this Court had held that an employee, whose services were allegedly wrongfully terminated by a private employer could maintain a claim for damages and that a suit containing such a claim cannot be rejected under Order VII Rule 11,

¹ AIR 2008 SC 2594

² MANU/DE/4941/2018

CPC.

8. The learned ADJ further relied on the judgment of the Supreme Court in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.*³, to hold that, if part of the relief sought in a plaint was maintainable, the plaint could not be rejected under Order VII Rule 11.

9. Thereafter, in the penultimate paragraph of the impugned order, the learned ADJ observes thus:

“As per the appointment letter dt. 03.01.1991, the plaintiff was offered the post of Executive Assistant subject to her agreeing to the terms and conditions mentioned in the said letter. The plaintiff has accepted the terms and conditions on 05.01.1991. Condition 9 of the said letter provides that “You are liable to be suspended from services pending enquiry into any charge of misconduct against you till the final decision in the matter is taken.” However, as per letter dt. 07.04.2011 issued to the plaintiff whereby she was informed that she has been released from services of defendant from 07.04.2021 with one month advance salary towards notice period. However, the said letter does not mention anything with respect to any enquiry being conducted against the plaintiff or whether pending such enquiry she was suspended from the services.”

10. Clearly, no exception can be taken to the finding of the learned ADJ that, even if the respondent’s contract with the petitioner was incapable of specific performance, the respondent was nonetheless entitled to sue for damages and that, in view thereof, the plaint could not be rejected under Order VII Rule 11.

11. Learned Counsel for the petitioner, however, expresses some

³ (2018) 11 SCC 780

misgivings because of the afore-extracted penultimate paragraph of the impugned order. He submits that this paragraph is likely to be interpreted, later in the proceedings before the learned ADJ, as amounting to an acknowledgment that the plaintiff could maintain the claim for a declaration that her services were wrongfully terminated or any other reliefs predicated on such a claim.

12. To my mind, the afore-extracted paragraph does not contain any such observation. It amounts to a mere recording of facts of the case. The learned ADJ has not expressed any opinion, one way or the other. Be that as it may, the impugned order is not, in my view, susceptible to interference, as the learned ADJ is correct in holding that, even if the contract between the respondent and the petitioner was a contract of personal service with a private employer, a claim for damages would nonetheless lie. Needless to say, however, it would be for the respondent to make out a case for being awarded damages on the basis of the evidence and the law that stands crystallised in that regard. In as much as a claim for damages would be maintainable, the learned ADJ cannot be faulted in rejecting the petitioner's submission that the suit should be dismissed as not maintainable.

13. Accordingly, the impugned order does not call for any interference in so far as it rejects the petitioner's submission that the respondent's suit was not maintainable. However, it is clarified that, in proceeding with the suit, all other issues would remain open to be agitated by the parties before the learned ADJ, and any other observations contained in the impugned order would not bind the

learned ADJ in proceeding with the matter.

14. Subject to the above clarification, the petition is dismissed.

C. HARI SHANKAR, J

MAY 4, 2022
SS

