$~14 (Appellate)

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

\+ CM(M) 423/2022 and CM APPL. 21710/2022 (stay)

NALINI NEGI & ORS. ..... Petitioners

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal and Mr. Sachin Kaushik, Advs. with Petitioner 3 in person and Mr. Shashi Sharma, AR

versus

MOHIT KUMAR SHARMA ..... Respondent

Through: Respondent in person

**CORAM:**
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGMENT (ORAL)**

% **07.07.2022**

**1.** This petition under Article 226 of the Constitution of India assails order dated 29th March 2022 passed by the learned Additional District Judge ("the learned ADJ") in CS 227/2020 (***Mohit Kumar v. Nalini Negi and Ors.***). The impugned order rejects an application, filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), seeking rejection of CS 227/2020 on the ground that (i) court fees was not paid, (ii) the petition did not disclose any sustainable cause of action and (iii) the petition was barred by law.

**2.** The respondent, who is a practicing advocate, instituted CS DJ 227/2020 against the petitioners alleging tortuous interference, by the petitioners, with the terms and conditions of his engagement by the Technology Development Board (TDB) to represent the TDB in various legal proceedings.

**3.** The petitioners, jointly, allegedly constitute the "Legal Division" of the TDB, though they were not employees of the TDB or on its roll. The TDB, be it noted, is an autonomous statutory corporation established under the Technology Development Act, 1995.

**4.** The petitioners were alleged, in the plaint, to have tortuously interfered with the respondent's employment contract with the TDB, by, *inter alia*, ensuring that the respondent's professional fee bills were not honoured in time, and by reviewing the respondent's fee bills, without taking into account the provisions of the prescribed Fee Schedule, unilaterally amending the contract between the respondent and the TDB, and reviewing the terms and conditions of the respondent's contract with the TDB.

**5.** During the pendency of CS DJ 227/2020, the petitioners moved an application before the learned ADJ under Order VII Rule 11 of the CPC, for rejection of the respondent's plaint. Primarily, the following grounds were urged, to justify the prayer to reject the plaint:

(i) Requisite court fees had not been deposited by the petitioner along with the suit. Reliance was placed, in this Context, on the judgment of this Court in ***Ankur Mutreja v. BSES Yamuna Power Ltd***[1].

[1] **2018 SCC OnLine Del 6927**

(ii) The suit was devoid of any cause of action against the petitioners. The communications, emails and documents on which the respondent sought to place reliance were communications with the petitioners in their official capacity. In this context, it was asserted that Petitioner 1 was the Assistant Law Officer of the TDB, Petitioner 3 was its part time legal retainer/consultant and Petitioner 4 was the Under Secretary of the TDB. Petitioner 2, it was submitted, was a former ALO and not working with the TDB at that point of time, having left its service in January 2020. The acts which, according to the respondent, constituted tortuous interference, had been preferred by the petitioners in their official capacity, on behalf of the TDB.

(iii) The plaint was bereft of any sustainable cause of action. It was the prerogative of a client to choose its counsel. No right vested in the respondent to represent the TDB. The TDB was within its right in withdrawing the respondents engagement at any point of time. In this context, the petitioners placed reliance on Section 20 of the Technology Development Board Act, 1995 ("the TDB Act"), which reads thus:

> "**20**. No prosecution or other legal proceeding shall be against the Government or the Board or any committee appointed by it or any member of the Board or such committee, or any officer or employee of the Government or the Board or any other person authorized by the Government or the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder".

**6.** The impugned order does not provide any reasons for rejecting the petitioners' application, save on the aspect of non-payment of the court fees.

**7.** The impugned order runs into 11 paragraphs. Paras 1 to 3 reproduce the contentions of the parties. Para 4 is merely a one sentence paragraph stating that arguments were heard and considered. Para 5 states that the requisite court fees were deposited. Paras 6 and 7 refer to the judgments of the Supreme Court in ***Saleem Bhai vs. State of Maharashtra***[2] and ***New Holland Tractors (India) Pvt. Ltd. v. Raja Industrial Works***[3]**.** Paras 8 to 11 set out the limited parameters within which Order VII Rule 11 of the CPC operates and observes that the disputed question of fact could not be decided in an application under Order VII Rule 11 of the CPC. Thereafter, para 12 concludes by stating that "from perusal of court file, in the considered opinion of this Court, the issues raised by Defendants in the present application under Order VII Rule 11 CPC are all triable issues which can be adjudicated only after evidence is led by both the parties".

**8.** In my considered opinion, such an order has to be regarded as unreasonable. There is no clear reason as to why the learned ADJ arrived at the opinion that the grounds set out by the petitioner did not make out a case for rejection of the plaint.

**9.** In view thereof, with consent of learned Counsel for both sides,

[2] **2003 (1) SCC 557**
[3] **2005(2)CTLJ493(Del)**

the impugned order is set aside and the application of the petitioners under Order VII Rule 11 of the CPC is remanded to the learned ADJ to re-consider the application and take a decision *de novo*. Needless to say, the order to be passed consequent to such *de novo* consideration should be sufficiently reasoned.

**10.** The parties would appear before the learned ADJ to advance arguments on the aforesaid application on 28th July 2022, being the next date fixed in the matter.

**11.** The petition stands allowed to the aforesaid extent with no orders as to costs. Miscellaneous applications also stand disposed of.

**C.HARI SHANKAR, J**

**JULY 7, 2022**
*r.bararia*