



WEB COPY



C.M.A. No.1385 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1385 of 2023
and C.M.P.13845 of 2023

M/s.MRF Corp. Limited,
Represented by its Director,
Mr.Arun Mammen,
V Floor, Tarapore Towers, 826,
Anna Salai, Triplicane,
Chennai – 600 002.

...Appellant

Vs.

B.Joseph Vincent

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (r) of Civil Procedure Code of 1908, against the order passed by the IV Additional City Civil Court, dated 28.04.2023 made in I.A.No.3 of 2023 in O.S.No.422 of 2023.



C.M.A. No.1385 of 2023

For Appellant : Mr.Vijayan for
King and Partridge

For Respondent : Mr.K.M.Aasim Shehazd for
BFS Legal

J U D G M E N T

The above appeal has been filed challenging the Order passed by the learned IV Additional Judge, City Civil Court, Chennai, in I.A.No.3 of 2023 in O.S.No.422 of 2023, restraining the appellant/MRF Corp. Limited, from conducting domestic enquiry against the respondent herein.

2. The appeal arises under the following circumstances:

(a) The respondent was employed under the appellant company for about 20 years. Due to personal reasons, he had sent a resignation letter on 31.03.2022. Since the appellant had not settled his Superannuation dues the respondent filed a Suit in O.S.No.422 of 2023 for recovery of Rs.53,45,834.85, and also prayed for a direction for issuance of relieving letter, experience certificate and so on.



C.M.A. No.1385 of 2023

(b) The appellant/MRF Corp. Limited in the meantime issued a notice on 12.01.2023, calling upon the respondent to offer his explanation for the misconduct said to have been committed by the respondent which was allegedly prejudicial to the interest of the company.

(c) The respondent thereafter filed I.A.No.3 of 2023 in O.S.No.422 of 2023, praying for an injunction restraining the appellant from conducting the domestic enquiry. It is the case of the respondent that the enquiry is motivated and was only to wreak vengeance; that the enquiry is only to counter the Suit filed by the respondent; that the appellant had accepted the resignation of the respondent and the Employer-Employee relationship did not exist and therefore, the enquiry cannot be conducted; that the Show cause notice also listed out irregularities, which had allegedly taken place a few years before the date of the resignation, the appellant's vindictive action extended to filing of a frivolous complaint; that the respondent therefore, filed the Anticipatory Bail, before this Court in CrI.O.P.No.7282 of 2023; and that this Court had observed that custodial interrogation would not be required and granted



C.M.A. No.1385 of 2023

Anticipatory Bail. The learned counsel stated before the Trial Court that all the above facts would show that an enquiry sought to be initiated is malafide and should not to be allowed.

(d) The appellant herein filed a counter before the Trial Court and submitted that the resignation of the respondent herein was not accepted; that the appellant had been receiving several complaints relating to malpractices that had caused huge loss to the company; that therefore, they had not paid the Superannuation dues to the respondent; that they were in the process of collecting evidence; that after doing so, they had issued the Show cause notice on 12.01.2023 and hence, it cannot be said that the enquiry is motivated or malafide.

(e) The learned IV Additional Judge, City Civil Court, Chennai, found after hearing the submissions on behalf of the parties that if the appellant is aggrieved by the fact that the respondent had caused huge loss to the appellant, it was open to them to file a counter claim; that the appellant had



C.M.A. No.1385 of 2023

not initiated any action till the respondent had submitted his resignation in March 2022; that the enquiry sought to be conducted is only an eye wash and therefore, the respondent had established *prima facie* case, balance of convenience and irreparable injury, warranting an order of interim injunction as prayed for.

(f) Aggrieved by the said order, the appellant has preferred the instant appeal.

3. Mr.Vijayan, the learned counsel for the appellant reiterated the submissions made before the Trial Court. In addition the learned counsel submitted that if ultimately the appellant succeeds in the Suit, the evidence collected would not be available to establish the misconduct in the domestic enquiry; that if it is the case of the respondent that no Employer-Employee Relationship existed, it is open to the respondent to ignore the enquiry and contend that the same is malafide in the pending Suit; that if the appellant is prevented from conducting an enquiry, irreparable injury would be caused to



C.M.A. No.1385 of 2023

the appellant and not to the respondent as observed by the learned trial Judge.

The learned counsel therefore, prayed for setting aside the order of injunction.

4. Mr.K.M. Aasim Sheshazd, the learned counsel for the respondent, also reiterated the submissions made before the Trial Court. The learned counsel further submitted that the appellant initiated a domestic enquiry only after the Suit was filed by the respondent; that the respondent had also filed frivolous FIR; that the chargers are vague; and that the reading of the Show cause notice would reveal that the enquiry is vindictive and motivated. The learned counsel further submitted that since a Criminal case is also pending, if the departmental proceedings are allowed to continue, his defence in the Criminal case would be prejudiced, and therefore, the action which is intended of counter the Suit claim should not be allowed to continue; and that the Trial Judge was justified in passing an order of injunction.



C.M.A. No.1385 of 2023

5. Heard learned counsel for the appellant as well as the learned counsel for the respondent.

6. The admitted facts are the respondent was employed under the appellant for more than twenty (20) years; that he had submitted his resignation on 31.03.2022; that one of the Directors to whom the respondent was reporting had accepted his resignation, which was sent through WhatsApp and e-mail; that the appellant had not issued any relieving letter and also not paid any alleged dues to the respondent, that the prayer in the Suit also confirms the fact that no relieving letter was issued by the appellant.

7. The primary objection of the respondent for the domestic enquiry is that it is a farce; and that the respondent is not an employee of the appellant any longer. The learned counsel for the appellant, per contra, submitted that all these issues can be decided in the Suit; that if the appellant is not allowed to conduct an enquiry, the evidence so far collected by them would not be available for them to conduct an enquiry, if they ultimately succeed in the Suit.



C.M.A. No.1385 of 2023

8. This Court is of the view that there cannot be an order restraining the conduct of enquiry on the premise that the enquiry is farce and vindictive.

It is desirable that the issues as to whether the enquiry has been fairly conducted, as to whether the enquiry was necessary and as to whether the Employer-Employee relationship was severed are adjudicated in the Suit. Therefore, this Court is of the view that the appellant can be permitted to conduct the enquiry.

9. However, in order to ensure fairness, it is necessary to issue certain directions as regards the conduct of the enquiry. The Learned counsel for the appellant, submitted that they appointed a lawyer to conduct an enquiry to ensure fairness though it is not mandated. The learned counsel for the respondent submitted that some other person may be appointed to conduct the enquiry. Therefore, this Court is of the view that enquiry may be conducted by a neutral person in view of the allegations made by the parties against each other. The learned counsels on either side agreed for appointment of Mr. D. Abdullah, Advocate as an Enquiry Officer. Thus in the interest of both



C.M.A. No.1385 of 2023

the parties, the following directions can be issued in the instant appeal instead of passing an order of injunction restraining the appellant from conducting any enquiry:-

(a) Mr.D.Abdullah, Advocate (Mob.No.9884016380) is appointed as an Enquiry Officer. The Enquiry Officer shall conduct a de nova enquiry.

(b) The appellant is restrained from taking any action against the respondent, in the event of the Enquiry Officer holding the respondent is guilty of the charges pending disposal of the suit. Further action by the appellant would depend upon the result of the suit.

(c) It is open to the respondent to raise all contentions in the Suit including that the Employer-Employee relationship does not exist and the enquiry itself is not necessary. The Trial Court shall decide the issue as to whether the enquiry is justified and all other incidental issues relating to the enquiry after affording sufficient opportunity to both the parties in accordance with law.



C.M.A. No.1385 of 2023

10. The learned Trial Judge shall expedite the trial and complete it as expeditiously as possible.

11. With the above observations, this Civil Miscellaneous Appeal is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

22.08.2023

dk

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

- 1.The IV Additional Judge,
IV Additional City Civil Court,
Chennai.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



WEB COPY



C.M.A. No.1385 of 2023

SUNDER MOHAN, J

dk

C.M.A.No.1385 of 2023
and C.M.P.13845 of 2023

22.08.2023