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C.R.P.No.3504 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2023

Pronounced on : 10.07.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3504 of 2019
and CMP.No.23007 of 2019

1.Dr.R.Vijayalakshmi
M.S., (Obstetrics & Gynecology)
D/o.M.S.M.Ramachandran

2.M.S.M.Ramachandran

.. Defendants / Petitioners /
Petitioners

Vs

The Director General
Employees State Insurance Corporation
Panchdeep Bhawan
CIG Mar, New Delhi -110 002

Rep by
The Dean
ESIC Medical College and PGIMSR
K.K.Nagar
Chennai - 600 078.

.. Respondent / Respondent /
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 12.07.2019 made in I.A.No.1 of 2019 in O.S.No.275 of 2019 on the file of the learned



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XV Additional Judge, City Civil Court, Chennai, by allowing this civil revision petition.

For Petitioners : Mr.G.RM.Palaniappan

For Respondent : Mr.T.N.C.Kaushik
Standing Counsel for ESIC

ORDER

This revision is filed by the defendants challenging the order passed in I.A.No.1 of 2019 in O.S.No.275 of 2019 on the file of the learned XV Additional Judge, City Civil Court, Chennai.

2.The brief facts that led to the filing of the present revision may be stated as below :

- The first revision petitioner herein is a post-graduate in Obstetrics & Gynaecology, qualified from the plaintiff/respondent institution. She joined her post-graduate course in June 2012, to be precise on 04.06.2012. As a pre-condition to obtain admission, she executed a bond, dated 18.05.2012, where under she undertook to serve the plaintiff for a period of five years and in default to pay Rs.7.50 lakhs plus interest at the rate of 15% p.a. And the direct benefit of this



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arrangement was that the plaintiff did her post graduation at a subsidised fee of Rs.24,000/- p.a

- The revision petitioner completed her PG course in May 2016. Even though she has passed her PG course successfully, the course itself was not recognised by Medical Council of India. It is in this backdrop, the plaintiff had issued an appointment order dated 26.07.2016, directing the revision petitioner to join duty to serve as ESIC Senior Resident (ESIC-SR) in the Department of Obstetrics and Gynaecology at ESIC Hospital, Asramam, Kollam in Kerala.
- Due to want of recognition to her PG course, the revision petitioner could not register herself before the Medical Council of India. This Court is informed that she moved this Court with a writ petition in W.P.No.29422 of 2016, and this Court vide its Order dated 11.08.2017 had issued a direction for a provisional registration of the revision petitioner, following which, she came to be registered provisionally with Tamil Nadu Medical Council on 10.10.2017.
- Subsequently thereafter on 29.04.2019, the plaintiff could obtain recognition for the course which the revision petitioner had pursued. However, even prior to obtaining recognition, the plaintiff had



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instituted the present suit as a summary suit for enforcing the point which the first revision petitioner had executed as stated supra.

- On receiving the summons, the revision petitioners entered appearance and filed I.A.No.1 of 2019 seeking the leave of the Court to defend the suit. This was dismissed by the trial Court, and hence the present revision.

3. Heard both sides. During the pendency of the CRP and without prejudice to the contentions in the suit, the 1st revision petitioner/1st defendant had deposited Rs.7.5 lakhs to the credit of CRP.No.3504 of 2019. Explaining to the Court that the revision petitioners have a triable issue in the suit, the learned counsel for the revision petitioners made the following submissions:

- a) It is true the said revision petitioner was issued with an appointment order dated 26.07.2016 notwithstanding the fact that the course that she did was not recognized. In terms of the appointment order, she was appointed to serve as a Senior Resident in the Department of Obstetrics and Gynaecology at ESIC Hospital, Asramam, Kollam in Kerala. The learned counsel



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submitted that on the date when this appointment order was issued, the first defendant / first revision petitioner was not qualified to serve as a Senior Resident, since neither her course was recognized nor she was registered with the Medical Council of India.

- b) It is true that on 10.10.2017, she was provisionally registered with Tamil Nadu Medical Council of India (TNMCI), but the recognition still was not obtained. If only the first defendant had joined the duty in terms of the appointment order dated 26.07.2016, then she exposed herself to the peril of being prosecuted in the eventuality of any mishap happening due to her treatment, since she would not have been competent to do what, which she was required to do. In other words, the respondent required the revision petitioner to do that which the law does not authorise her to do. And critical enough, the suit itself was laid even before the recognition was obtained, and after the recognition was obtained, the defendants were not even informed about the same.



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The issue therefore arises is who is in fault, and whether the first defendant / first revision petitioner at all was liable for the suit claim. And even if she is found liable for the principal sum agreed in the bond, and even if it is assumed that the revision petitioner concerned / first defendant is liable to pay the bond sum, yet to fasten the liability to pay interest at 15% per annum from 26.07.2016, cannot be justified when the plaintiff itself is in default. He placed reliance on the ratio in ***State of Tamilnadu, through its Secretary, Department of Health & Family Welfare and another Vs P.S. Sriram & Others*** [(2020) 7 MLJ 513 : 2020 SCC OnLine Mad 2742].

5. Refuting the said submission, and placing reliance on the ratio in ***Association of Medical Super Speciality Aspirants and Residents & Others Vs Union of India & Others*** [Judgment in WP (Civil) No.376 of 2018 dated 19.08.2019]; ***Dr.A.Ansiya Vs The Directorate General of Health Services and another*** [Order in W.P.No.21173 of 2019 dated 04.11.2019]; ***Dr.A.Elaiyaraja Vs. The Medical Council of India & Others*** [Order in W.P.No.29180 of 2017 & batch etc., dated 11.11.2021]; ***Dr.R.Rajeswari and Others Vs The Dean, Employees State Insurance Corporation Medical College & Post Graduate Institute of Medical***



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Science & Research & Another [Order in W.P.No.20784 of 2015 dated 07.01.2022]; **Dr.Ahamed Muneef Vs Dr.Rajeswari & Others** [Judgment in W.A.Nos.462, 464 & 571 of 2022 dated 07.03.2022 and **Dr.P.N.Chandrika Vs The Director (ME), Employees' State Insurance Corporation & Others** [Order in W.P.No.25903 of 2014 & batch etc., dated 04.07.2022], the learned counsel for the plaintiff/respondent submitted that this is one among the many litigations which various candidates who were similarly placed have filed and lost, and in each of those cases, the Court has rejected the plea that the execution of bond has not been abided by the candidate.

6. In response, the learned counsel for the defendants/revision petitioners would submit that he does not choose to challenge that the plaintiff has no authority to even obtain a bond, but merely say that the first revision petitioner was not in a position to abide by the bond as she could not join service at a time when her course was not even recognised.

7. The short question involved is should the petitioner be granted leave for defending the action laid against her. The indisputable fact is that on 26.07.2016, the date on which the plaintiff issued an order of appointment



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directing the first defendant/first revision petitioner to join duty as a senior resident doctor, the course it had offered the petitioner was not recognised.

Indeed, the petitioner had completed her PG course only on an expectation of obtaining recognition for her PG course by the plaintiff. And the course she did continued to remain unrecognised till 29.04.2019. This raises a point as to whether the order of appointment issued by the plaintiff/respondent to the petitioner to serve as a senior resident doctor when the course was not even recognised on the date the appointment order is valid in law. There surely is a substantial defence available to the petitioner. In all fairness the petitioner should have been granted leave to defend the suit.

8. This Court therefore, allows this petition and sets aside the order of the trial court I.A.No.1 of 2019 in O.S.No.275 of 2019, and the petitioner is granted the leave to defend the suit subject to the condition that the money she had deposited in this Court shall remain with the Court. The Registry is required to transfer the said amount of Rs.7.50 lakhs to the trial court for it to retain control of the same. No costs.

.07.2023



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Index : Yes / No

Speaking order / Non-speaking order
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To:

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



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N.SESHASAYEE.J.,

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Pre-delivery order in
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