

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5541-2018 (O&M)

Date of decision: 18.05.2023

Somic ZF Components Pvt. Ltd.

....Petitioner

Versus

Karambir Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Vijay Pal, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 21.05.2018 passed by Ld. Civil Judge (Jr. Division), Gurugram, whereby application filed by petitioner/defendant, under Order VII Rule 11 CPC, for rejection of plaint, was dismissed.

2. Succinct facts first, as pleaded in the revision.

2.1. Plaintiff/respondent has instituted a suit before the court below for permanent injunction and mandatory injunction mentioning therein that he joined petitioner/defendant company in October-1996 and was made a permanent employee w.e.f. 01.10.1998. He was working as Junior Executive (Purchase) since 01.10.1999 and was currently in JM-5 Grade. Vide transfer orders dated 13.06.2016 (Annexure P-4), plaintiff/respondent was transferred and called to report at Chennai (Tamil Nadu) on 01.07.2016 which was allegedly an act of harassment and victimization.

Challenging the said orders, the instant civil suit was filed for permanent and

mandatory injunction for directing petitioner/defendant to cancel transfer order from Gurgaon to Chennai.

2.2. Petitioner/defendant is contesting the suit *per* defense taken in written statement. An application (Annexure P-5) under Order VII Rule 11 CPC praying for rejection of plaint was also filed, which has been rejected vide an order impugned herein.

3. Learned counsel for petitioner argues that it has been specifically mentioned in transfer order that management is facing huge employee attrition in Chennai location and the transfer of plaintiff/respondent is a routine administrative exercise and not by way of any punitive measures, as is projected. He would further argue that plaintiff/respondent has neither quantified the damages being claimed nor has paid the requisite court fees for the purpose. Therefore, the application filed by petitioner/defendant, under Order VII Rule 11 CPC has to be allowed and the plaint has to be outrightly rejected.

4. Learned counsel for respondent would oppose the revision petition while arguing that pleas taken by petitioner/defendant are wholly irrelevant. An application under Order 7 Rule 11 CPC has to be decided only on the basis of *ex-facie* averments contained in the plaint, which is when seen herein do not make out a case of rejection of plaint. Therefore, no fault can be found with the impugned order.

5. I have heard learned counsel for parties and gone through the record.

6. Impugned order dated 21.05.2018 passed by Ld. Trial Court, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

6. Now coming to the facts of the present case, the Applicant has filed the present application for rejection of the plaint on the grounds that the reliefs claimed by the Plaintiff, vide the present suit fall outside the purview of the Civil Court. In support of his case, the applicant had relied upon the judgment of the Hon'ble Apex Court in Pearlite Lioners (P) Ltd. Vs. Manorama Sirsi (2004) 3 SCC 172, wherein it has been held that where the reliefs claimed by the Plaintiff are such, as would result in enforcement of the contract of personal service, then the jurisdiction of the Civil Court, to grant such reliefs, is barred. Relying upon the

aforesaid judgment, the Applicant has argued that the reliefs claimed by the Plaintiff i.e. (1) Relief of permanent and mandatory injunction directing the Defendants to cancel the impugned transfer order of the Plaintiff dated 13.06.2016, from Gurugram to Chennai, (2) Relief of permanent injunction restraining the Defendants from relieving the Plaintiff in pursuance of the transfer orders, (3) Relief of permanent injunction restraining the Defendants from suspending, terminating, discharging or dismissing the plaintiff during the pendency of the present suit, even if the Plaintiff does not join her duty at the place of her transfer, (4) Any other directions, orders etc. which this Courts may deem fit and proper, are such reliefs, which if, granted would have the effect of enforcing the contract of personal service, which is not permissible. Opposing the argument, advanced on behalf of the Applicants, Ld. Counsel for the Plaintiff argued that the reliefs claimed by the Plaintiff do not fall outside the purview of jurisdiction of the Civil Courts, insofar as, even in contracts of personal service, it is always open to the Court to examine, whether the employer or the employee has violated the terms of the contract in passing any orders or adopting any course of conduct, which fact can only be determined, after both the parties are given an opportunity to lead evidence in support of their cases. He further argued that for the purpose of determining whether a suit is barred by any law, the Court has to consider the bare pleadings in the plaint and it cannot be swayed by the submissions in the written-statement and the application under Order 7 Rule 11 CPC. Moreover, in addition to the reliefs of permanent injunction, the Plaintiff has also sought residuary relief, based upon the discretion of this Court. Such relief would not tantamount to enforcing the contract of personal service and hence, the jurisdiction of the Civil Courts, to try the present suit, is not barred. It is settled law as already discussed above that for the purpose of determining an application under Order 7 Rule 11 CPC, the Court has to consider the averments in the plaint. It should not allow itself to be influenced by the pleadings taken in the written-statement as well as in the application under Order 7 Rule 11 CPC. This fact is highlighted upon a bare perusal of Order 7 Rule 11(d) which reads as: where the suit appears from the statement in the plaint to be barred by any law. The expression "from the statement in the plaint", assumes significance as it lays down that for the purpose of determining the question, whether any suit is barred by any law, the Court has to consider the statements made in the plaint. Keeping in view the aforesaid provision, this Court is of the view that whereas the reliefs of permanent injunction, claimed by the Plaintiff to restrain the Defendants from transferring him from Gurugram to Chennai and also restraining the Defendants from terminating, discharging or dismissing the Plaintiff during the pendency of the present suit, even if the Plaintiff does not join her duty at the place of her transfer, would have the effect of enforcing a contract of personal service which as per the judgment of the Hon'ble Supreme Court in Pearlite Lioners (P) Ltd. Vs. Manorama Sirsi (2004) 3 SCC 172, is not maintainable however, the Plaintiff has also claimed residuary relief depending upon the discretion of the Court, which includes within its ambit, the relief of damages for contravention of the terms of contract. The aforesaid relief does not fall beyond the jurisdiction of the Civil Courts and the Civil Court has full jurisdiction to determine whether or not the Plaintiff is entitled to receive any damages, for breach of contract on the part of the Defendants. This matter can be determined only after affording both the parties an

opportunity to lead evidence on their behalf to prove their respective cases. The suit cannot be thrown out, right at the outset on the grounds that the reliefs claimed by the Plaintiffs are such, as would result into enforcement of a contract of personal service, which is barred by law, in view of the judgment of the Hon'ble Supreme Court. In view of the above discussion this Court is of the view that the suit of the Plaintiff does not appear from the statements in the plaint, to be barred by any law. Hence, the application at hand stands disallowed.” (Emphasis supplied)

7. Perusal of above clearly reflects that even though Ld. Trial Court seemingly was in agreement with arguments canvassed by learned counsel for defendant seeking rejection of plaint *qua* part relief, but since Court has the inherent power to grant damages under the residual relief clause, therefore, it dismissed the application. Being so, given that as on date, claim in the suit, as it stands, does not either has any pleading or relief *qua* damages to be sought by plaintiff/respondent. In the premise, the Ld. Trial Court ought not to have dismissed the application on the presumption that plaintiff may or will be seeking damages under the residual relief clause.

8. Confronted with my aforesaid observation, learned counsel for respondent/plaintiff states that he has sought instructions from plaintiff and he proposes to amend his plaint to seek damages which he would specifically mention in his proposed amended plaint after quantifying the damages and also affix appropriate Court fee in accordance with law.

9. Resultantly, since the plaintiff proposes to amend his plaint by adding the relief of damages, he may do so by filing appropriate application in this regard. Needless to say, same shall be dealt with in accordance with law. Furthermore, in case proposed amendment is allowed by Ld. Trial Court, it is expected from Ld. Trial Court that issue *qua* admissibility of rest of the relief other than the damages shall specifically be framed and trial shall proceed further in accordance with law.

10. Revision stands disposed of in above terms.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 18, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No