

2023:PHHC:112847

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1789-2021 (O&M)

Date of Decision: August 28, 2023

SML Isuzu Ltd. and others

...Petitioners

Versus

Harjinder Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.M.S.Sachdev, Advocate
for the petitioners.

Mr.Ish Puneet Singh, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 23.04.2021 (Annexure P-1) passed by learned Court below, whereby, an application filed by the petitioners under Order 7 Rule 11 CPC, for rejection of the plaint, has been dismissed.

The essential facts, as culled from the paper-book are as follows:-

That, initially, respondent-plaintiff had filed a suit against the petitioners-defendants, thereby, seeking declaration qua the legality and validity of the order dated 04.08.2018, with regard to termination of his

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services. Besides the same, also respondent-plaintiff sought issuance of mandatory injunction to re-instate him in the services of the defendants, w.e.f. 04.08.2018, with all back wages and all other consequential benefits.

It is the claim of the respondent-plaintiff that he was appointed as Junior Management trainee vide appointment letter dated 11.05.1991. He had been continuously working with the defendant-company and plaintiff was promoted to the post of Deputy Manager w.e.f. 01.10.2012 and further, promoted to the post of Manager w.e.f. 01.04.2017. However, services of the plaintiff were terminated on 04.08.2018, without providing him opportunity of being heard. It is the claim of the plaintiff that said act, on the part of defendant-company is arbitrary and illegal. Thus, plaintiff had filed a suit for declaration to the effect that letter dated 04.08.2018, is illegal, unlawful, inoperative, null, void and against the principles of law and natural justice.

In pursuance of the notice issued, the petitioners-defendants made appearance and filed an application under Order 7 Rule 11 CPC, thereby, asserting that the contract of service between a private employer and his employee cannot be specifically enforced because the relationship between them is that of master and servant. Defendant No.1 is a Company incorporated under the Companies Act, 1956 and the plaintiff was its employee, so the relationship between them was of master and servant. As such, the relief claimed, cannot be granted and therefore, the plaint does not show any cause of action and deserves to be dismissed.

However, in reply, respondent-plaintiff asserted that defendant

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No.1-company had admitted existence of contractual relationship between the parties. Terms and conditions mentioned in the contract are binding upon both the parties, being signatory to the contract. In case of default by either of the parties, the same can be enforced by filing the civil suit in the Court of competent jurisdiction.

Intentionally, the defendants had willfully violated the terms and conditions of the contract and for the enforcement of the same, the plaintiff is within his rights to file the suit, for specific performance of the contract.

After hearing learned counsel for the parties, the application Order 7 Rule 11 CPC was dismissed.

Being dissatisfied with the order of dismissal of the aforesaid application, the petitioners-defendants have filed the present revision petition.

Undisputedly, the respondent-plaintiff was appointed vide contractual agreement dated 11.05.1991. However, as to whether, there was violation of terms and conditions of the contract of service and what is the effect of the same, are the core questions, to be decided, during the course of trial, after inception of the evidence. That being so, the allegations of victimization of the plaintiff, as asserted, at the behest of certain wrong elements of his company, is a matter to be adjudicated, during the course of trial of this case. Therefore, the plaint, as such, cannot be rejected. No doubt, as submitted by learned counsel for the petitioners-defendants, the contract of personal service, as such, cannot be enforced, but however, besides

seeking relief of mandatory injunction, the respondent-plaintiff had also challenged the order of termination, on account of not being in compliance of the terms and conditions of the contract of employment. Whether the letter of termination etc., follow the principles of natural justice and hearing was given to the plaintiff, are pure mixed questions of law and facts and cannot possibly be determined, without adducing of the evidence by the parties. Such questions cannot be decided at initial stage, in the absence of the evidence. If such questions call for determination by the trial Court, then definitely, an application under Order 7 Rule 11 CPC is to be dismissed. Even the Court below has recorded cogent reasons in the order, in this regard.

Considering the aforesaid discussion, the impugned order calls for no interference. Hence, the present revision petition stands dismissed.

August 28, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No