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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6387-2019 (O&M)
Reserved on : 04.05.2023
Date of decision : 12.05.2023

ICICI Bank Ltd. & Anr. ... Petitioner(s)

Versus

Gurmeet Singh Dhindsa and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Er. Sandeep Suri, Advocate for the petitioners.

Mr. Aalok Jagga, Advocate for respondent No.1.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 10.09.2019 whereby the application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit seeking the following relief :

> *"Civil suit for declaration to the effect that the plaintiff is in continuous service of Defendant No.1 and further declare that the action of defendant Bank in terminating the services of the plaintiff as Assistant General Manager posted at ICICI Bank office at SCO 129-130, Sector 9 C,*

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Chandigarh is against his terms of employment, illegal and arbitrary and that he is entitled for full salary and all other consequential benefits, attached to the said posts w.e.f. 07.06.2014 till the date of actual payment.

It is still further prayed that the plaintiff be also held entitled to mandatory injunction directing the defendants to allow him to discharge his duties on the said post of Assistant General Manager at his office address at SCO 129-130, Sector 9 C, Chandigarh, since the plaintiff has been illegally restrained from discharging his duties on the said post as the Bank has acted in a manner which has violated the fundamental right of the plaintiff to life and liberty as envisaged by Article 21 of Constitution of India.

It is still further prayed that a decree of rendition of accounts may also be granted in favor of plaintiff directing the bank to produce the complete accounts and the manner in which settlement amount has been calculated consequential to legal termination of the plaintiff.

It is still further prayed that this Hon'ble Court may be pleased to issue any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case"

3. The defendant-petitioners herein filed an application under Order 7 Rule 11 CPC for rejection of plaint. A reply was filed to the said

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application and vide the impugned order dated 10.09.2019 (Annexure P-1), the application has been rejected. Hence, the present revision petition.

4. Learned counsel for the defendant-petitioners would contend that no suit for enforcement of a contract of personal service is maintainable in law. In support of his contention, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **State Bank of India & Ors. Vs. S.N. Goyal (AIR 2008 SC 2594)**.

5. *Per contra*, learned counsel for the plaintiff-respondent No.1 has contended that the present suit is not only for a declaration that the plaintiff-respondent No.1 is in continuous service of defendant No.1 and his termination is illegal, but the suit is also for a decree for rendition of accounts. It is further the contention of learned counsel that even if the argument of learned counsel for the defendant-petitioners was to be accepted, since the suit is also for rendition of accounts, the plaint cannot partially be rejected and hence the suit would be maintainable. In support of his contentions, learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Roop Lal Sathi Vs. Nachhattar Singh [1982 (3) SCC 487]; Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner [2004 (3) SCC 137]; Ram Prakash Gupta Vs. Rajiv Kumar Gupta & Ors. [2007 (10) SCC 59]** and **Sejal Glass Ltd. Vs. Navilan Merchants Pvt. Ltd. [2017 (4) RCR (Civil) 416]**.

6. I have heard learned counsel for the parties.

7. In the present case the plaintiff-respondent No.1 filed a suit challenging his termination as well as for declaration that he is in continuous service of defendant No.1 and for mandatory injunction directing the defendant-petitioners to permit him to discharge his duties and for rendition

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of accounts directing the Bank to produce the complete accounts and the manner in which settlement amount has been calculated consequent to illegal termination of the plaintiff-respondent No.1.

8. Hon'ble Supreme Court in the case of **State Bank of India** (supra) has held as under :

> *"11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:*
>
> *(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);*
>
> *(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and*

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(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : Dr. S. Dutt vs. University of Delhi, AIR 1958 SC 1050; Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi, 1970 (2) SCR 250; Sirsi Municipality vs. Cecelia Kom Francies Tellis, 1973 (3) SCR 348; Executive Committee of Vaish Degree College vs. Lakshmi Narain, 1976 (2) SCR 1006; Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir, AIR 1981 SC 122; and Dipak Kumar

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Biswas vs. Director of Public Instruction, AIR 1987 SC 1422).

12. In this case the appellant is a statutory body established under the State Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed under section 43(1) of the said Act. The respondent approached the civil court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated, pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by section 14 of the Specific Relief Act."

9. As per the law laid down, no doubt a bar is contained in Section 14 of the Specific Relief Act, 1963 that a contract of a personal service is not specifically enforceable, however, it is trite that a plaint cannot be rejected partially. Hon'ble Supreme Court in the case of **Sopan Sukhdeo Sable** (supra) has held as under :

"18. As noted supra, the Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. Order 6 Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to

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strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

19. Order 6 Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

20. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott. L.J. in Bruce v. Odhams Press Ltd., 1936(1) KB 697 in the following passage :

> *"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action;*

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and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order 25, Rule 4 (see Philips v. Philipps, 1878(4) QBD 127); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez, (1969(3) SCC 238), the distinction between "material facts" and "particulars" was brought out in the following terms :

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"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Rule 11 Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

10. In the present case, besides the other reliefs, in para 27 of the plaint the following averments have been made :

"27. That the bank may also be directed to reverse all the

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financial settlements done by it like settlement of plaintiffs loan outstanding from the gratuity credited to his accounts or recoveries made with regard to official car which still stands in bank's name and has been provided to the plaintiff and he has possession and; any penalty charged for the Bank's hardware like laptop etc. in his possession."

The plaintiff-respondent No.1 has also prayed for rendition of accounts and the manner in which the settlement amount has been calculated. That being so, it cannot be said that all the prayers made in the plaint are barred by law.

11. In view of the above, and in view of the settled law that the plaint cannot be rejected partially, the present revision petition being devoid of any merit is accordingly, dismissed. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

12. Dismissed. Pending applications, if any, also stand disposed off.

12.05.2023 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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