



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 4th September, 2023**

+ **C.R.P. 243/2023**

VIPUL SINGH

..... Petitioner

Through: Mr.Kunal Manav and Mr.Prashant K.
Sharma, Advocates

versus

PACIFIC BPO LTD.

..... Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. No. 45519/2023

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.R. P. 243/2023 and CM APPL. No. 45520/2023

1. The present Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed by the petitioner seeking the following reliefs:

"(a) Set aside the order dated 22.07.2023 passed by the by the Ld.Ascj Cum Jscj Cum Guardian Judge Dwarka Court in CS SCJ 1159/29021 titled as "M/s PACIFIC BPO PVT. LTD. VS. VIPUL SINGH".

(b) Pass any other order which this Hon'ble Court deems fit in interest of justice and in favour of Petitioner."



2. The petitioner (defendant before the learned Trial Court) was employed at the post of “Sr. Executive, A.R” with the respondent company (plaintiff before the learned Trial Court) under the Contract for Employment dated 2nd June 2021 (hereinafter “Agreement”) executed between them and the Agreement provided for a fixed salary of Rs.37,733/- p.m.

3. During the course of employment, the petitioner remained absent since 3rd September 2021, without giving any notice of 60 days to the respondent which is mandatory as per the terms of the Agreement. Subsequently, the respondent sent a legal notice dated 7th October 2021, to the petitioner, thereby, calling upon him for payment of Rs.75,466/-, on account of breach of the Agreement by the petitioner. The petitioner responded to the said notice by sending an email dated 7th October 2021, asking for the bank details of the respondent company and stating that he would make the payment as demanded.

4. Upon failure to abide by the terms of the Agreement on the part of the petitioner, the respondent company instituted a suit for recovery of Rs.75,466/- *vide* a Civil Suit bearing No. CS SCJ 1159/2021, before the learned Trial Court, Dwarka, New Delhi. In the said Suit, the petitioner filed his written statement along with an application under Order VII Rule 11 of the CPC, seeking rejection of the respondent’s plaint on the ground that the learned Trial Court does not have the jurisdiction to entertain the issues raised in the instant Suit and the jurisdiction with respect to the said issue falls within the ambit of Section 2A and Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter “the Act”), and the Act itself prescribes for



special courts established to adjudicate the industrial disputes. Hence, the respondent's claim is barred by law.

5. The learned Trial Court dismissed the petitioner's application seeking rejection of the plaint *vide* impugned order dated 22nd July 2023, passed in the Civil Suit bearing No. CS SCJ 1159/2021. Being aggrieved by the same, the petitioner has approached this Court by way of the instant revision petition challenging the said impugned order.

6. Learned Counsel appearing on behalf of the petitioner submitted that the learned Trial Court had erred in passing the impugned order as the same has been passed without taking the entire facts and circumstances into consideration.

7. It is submitted that the petitioner worked at the respondent company for a short while and due to the toxic work environment therein, he decided to leave the respondent organization on 2nd June 2021 as the same was affecting his physical and mental health, thereby, causing him great distress.

8. It is submitted that the suit filed by the respondent cannot be entertained by the learned Trial Court as the petitioner falls under the category of 'workman' defined under Section 2(s) of the Act. As per the said provision a 'workman' is a skilled person who is employed at an industry, and since the petitioner is a skilled employee, he falls within the said definition.

9. It is submitted that the learned Trial Court has incorrectly held that the petitioner was working in a supervisory capacity as the petitioner's job had a very limited scope of work and it did not involve any supervisory role upon



him.

10. It is further submitted that from a bare reading of the plaint filed by the respondent, it is crystal clear that the Suit is an instance of an industrial dispute under Section 2(k) of the Act, which states that any dispute between the employer and an employee will be regarded as an industrial dispute.

11. It is submitted that as per the Section 7 of the Act, Labour Court is the prescribed authority to adjudicate upon disputes raised in the Suit and for the effective redressal of such industrial disputes, it is mandatory to abide by the said Statute.

12. It is submitted that as per Section 9 of the CPC, the Courts are empowered to try all the suits of civil nature except for the suits which are expressly or impliedly barred under the law.

13. It is therefore submitted that the petitioner being a workman falls within the ambit of the abovementioned Act and in view of the same, the plaint of the respondent filed before the learned Trial Court is contrary to the law, and hence, the said plaint is liable to be rejected.

14. It is submitted that, in view of the foregoing submissions, the instant revision petition may be allowed and the impugned order dated 22nd July 2023, be set aside.

15. Heard learned counsel appearing on behalf of the petitioner and perused the record.

16. It is the case of the petitioner that the learned Trial Court is barred from entreating the dispute raised by the respondent by way of filing the recovery suit as the same falls within the definition of an industrial dispute,



in view of which, only the Courts prescribed under the Act shall have the jurisdiction to try the said dispute. It has been further contended on behalf of the petitioner that he is a 'workman' as per Section 2(s) of the Act since he is a skilled employee and due to the said ground the petitioner's relationship with the respondent is that of an employer and an employee, under the Industrial Disputes Act, 1947. It has been therefore, averred on behalf of the petitioner that the plaint filed by the respondent is barred under the law. Section 9 of the CPC, imposes a bar on the Court to try cases of civil nature where the same is expressly or impliedly barred by the law and therefore, the petitioner sought for rejection of the respondent's plaint under Order VII Rule 11 of the CPC, on the above mentioned grounds.

17. The learned Trial Court dismissed the application of the petitioner made under Order VII Rule 11 of the CPC, *vide* the impugned order dated 22nd July 2023, on the ground that the Courts are empowered to reject a plaint only by going through the contents and submissions made in the plaint and not otherwise.

18. The learned Trial Court had observed that as per contents of the plaint, the petitioner drew a salary of Rs.37,733/- p.m. and in this regard the contention that the petitioner is a workman under the Act is not sustainable. The same was held by referring to Section 2(s)(iv) of the Act, as per which those persons employed in a supervisory capacity and draw a wage exceeding Rs.10,000/-, shall not fall under the Statute's ambit. The relevant paragraphs of the impugned order have been reproduced hereunder:

"It is settled law that for purpose of deciding application under



Order VII Rule 11 CPC, the Court has to go through the content of plaint only and not the submission/averment made on behalf of defendant or in written statement respectively.

It is specifically averred in the plaint that the defendant entered into contract of employment, agreement dated 02.06.2021 and joined the company for the salary of Rs.37,733/- per mensem. The applicant has claimed himself to be the skilled worker in the company of plaintiff. Section 2(s)(iv) of Industrial Disputes Act 1947 read as under:

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

*In view of above, the defendant is not the workman in terms of Section 2 (s) of Industrial Disputes Act, 1947 and the relief of plaintiff is not barred under Industrial Disputes Act, 1947. Accordingly the **present application under Order VII Rule 11 CPC stands dismissed.***

19. At this juncture, it is pertinent to discuss the relevant provisions of law to adjudicate upon the instant issue.

20. The provision under Order VII Rule 11 of the CPC, provides for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC, is limited to examining the statement in the plaint. Under Order VII Rule 11 of the CPC, the Court has the jurisdiction to reject the plaint where it does not disclose a cause of action, or where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, or where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, or



where the suit appears from the statement in the plaint to be barred by any law. The rejection of plaint under Order VII Rule 11 of the CPC, needs to be tested on the touchstone of the settled position of law as expounded by the Hon'ble Supreme Court in various cases.

21. In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, the Hon'ble Supreme Court enunciated the aspect of rejection of the plaint and observed that the Court should exercise its power under Order VII Rule 11 of the CPC, to adjudicate upon the grounds mentioned therein, if on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue.

22. In *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422, the Hon'ble Supreme Court has further reaffirmed the scope of provisions stating rejection of the plaint and held as under:

"17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , where this Court, in para 11, observed thus : (SCC p. 714, para 11)

"11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

'9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can



exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order 7 Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100].”

23. Further, for the purpose of adjudicating the instant petition, this Court has also referred to the judgment of ***Church of North India v. Lavajibhai Ratanjibhai*, (2005) 10 SCC 760**, wherein, the Hon’ble Supreme Court held that a plea of bar to the jurisdiction of a civil court must be considered after



having regard to the contentions raised in the plaint. The Hon'ble Court further held that while deciding an application under Order VII Rule 11 of the CPC, the averments disclosing cause of action and the reliefs sought for, must be considered in their entirety. The relevant paragraph of the aforesaid judgment is reproduced herein:

“39.For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure.”

24. Also, in regard to the learned Trial Court's observation with respect to the petitioner falling within the definition of 'workman', this Court is of the view that where an employee has multifarious duties and a question is raised whether he is a workman or not, the Court should consider the primary and basic duties of the person concerned.

25. The determinative factor is the main duties of the concerned employee and not some work done incidentally. For instance, where an employee is mainly engaged in supervisory work and if he is asked incidentally to do some clerical work, these additional duties cannot change the character and status of the person.

26. An important consideration for the above said principle is that it deals



with people doing supervisory work and earning more than Rs.10,000/- p.m. An employee working in a supervisory capacity whose monthly salary is above the aforesaid limit will not qualify as a workman. The same was also observed by the Hon'ble Supreme Court in *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.*, (1985) 3 SCC 371.

27. In light of facts of the present petition, the petitioner has approached this Court under its revisional jurisdiction challenging the impugned order dated 22nd July 2023, whereby, the application of the petitioner filed under Order VII Rule 11 of the CPC, was dismissed by the learned Trial Court. The petitioner whilst impugning the said order avers that the learned Trial Court failed to consider that he is a workman and as per the Act, the dispute between the petitioner and the respondent lies with the Courts prescribed to entertain such disputes, and therefore, the learned Trial Court lacks the jurisdiction to adjudicate upon the dispute arising between the petitioner and the respondent.

28. While dismissing the said application, the learned Trial Court referred to the averments made in the plaint of the respondent, and whereby, it was amply clear that the petitioner was withdrawing a salary of Rs.37,733/-, and as per Section 2(s)(iv) of the Act, the provisions of the said Act would not apply to the persons/employees employed in a supervisory capacity and draw a wage exceeding Rs.10,000/-.

29. In view of the same, the learned Trial Court dismissed the application for rejection of the plaint and observed that the Court is empowered to reject a plaint by only going through the averments made therein, and not by the



contents mentioned in the written statement or any such applications. On application of the principles laid down by the Hon'ble Supreme Court, it is clear that the learned Trial Court has rightly followed the said principles.

30. This Court is of the view that the learned Trial Court proceeded to determine the issue on the premise that there exist sufficient contents in the plaint filed by the respondent which put forth that the petitioner being employed at the post of Sr. Executive A.R., draws a salary amounting to Rs.37,733/-, which is more than the statutory limitation of Rs.10,000/-, prescribed for the application of the Industrial Disputes Act, 1947.

31. Suffice it to observe that going by the averments made in the plaint, the arguments of the petitioner that he is a workman and the dispute between the petitioner and the respondent is a subject matter to be tried by the Courts empowered under the Act, is not maintainable and is hereby, rejected.

32. Order VII Rule 11 of the CPC, empower the Courts to reject a plaint, if only from the averments in the plaint, it is evident that the suit is barred by any law. The relevant facts which need to be looked into for deciding an application under Order VII Rule 11 of the CPC, are the averments of the plaint only. If on an entire and meaningful reading of a plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise its power under Order VII Rule 11 of the CPC.

33. It is needless to observe that the question as to whether the suit is barred by any law depends upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the



defendant are wholly immaterial while considering the prayer for rejection of a plaint.

34. The present petition has been filed under Section 115 of the CPC, whereby, the petitioner has invoked the revisional jurisdiction of this Court. The Hon'ble Supreme Court in *D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh*, (1969) 3 SCC 807 and recently in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633, has held that the High Court has limited powers which can be exercised under Section 115 of the CPC. Further, not every order of the Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of this Court but only those orders, wherein, there has been an irregular exercise, or non-exercise, or the illegal assumption of jurisdiction by the Court below.

35. This Court has considered the factual position in the instant petition and is of the view that there are no merits in the arguments advanced by the petitioner to challenge the impugned order dated 22nd July 2023, whereby, the application of the petitioner filed under Order VII Rule 11 of the CPC, was dismissed. Moreover, since the petitioner is not a workman, being included in the exclusionary clause (iv) of section 2(s) of the Act. The instant dispute is not an industrial dispute.

36. This Court is of the view that the mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or material irregularity. It is held that there are no materials put forth by the petitioner which invites the exercise of revisional jurisdiction of



this Court under Section 115 of the CPC. The view taken by the learned Trial Court in the impugned order is right and there is no infirmity in the said order.

37. In light of the above discussions of facts and law, it is held that the learned Trial Court has made sufficient attempts to analyze the plaint filed by the respondent in the manner predicated in the aforesaid decisions. On perusal of the findings of the learned Trial Court, this Court is of the view that there is nothing in the impugned order which suggests that there is any error of jurisdiction or any other error or irregularity.

38. In view of the foregoing paragraphs, this Court finds no error in the impugned order dated 22nd July 2023, passed in the Civil Suit bearing No. CS SCJ 1159/2021, by the learned ASCJ Cum JSCC Cum Guardian Judge, Dwarka, New Delhi.

39. Accordingly, the instant petition is dismissed. Pending applications, if any, also stand dismissed.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 4, 2023
SV/RYP

Click here to check corrigendum, if any