



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1719 OF 2023

FRANKE FABER INDIA PVT. LTD THROUGH AUTHORISED SIGNATORY
VERSUS
ABHAY GANPATRAO KULKARNI

Mr. S. V. Dankh a/w Ms. Shrutika Deshpande, Advocate for the petitioner
Mr. Abhay Ganpatrao Kulkarni, Respondent-in-person

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.

2. This petition takes exception to the impugned order dated 23rd December, 2022 passed below Exhibit 92 filed by the petitioner/original defendant in Spl. Civil Suit No. 17/2016. Before taking into consideration the contention of rival parties, it would be absolutely necessary to keep into mind the nature of proceeding pending before the learned Trial Court. Undisputedly, the respondent-plaintiff is terminated from the services of petitioner on 28th March, 2016, which reads thus:

"Subject :- Immediate termination of your services.

Dear Mr. Abhay Kulkarni,

*You are working in our Waluj plant as a Dy.
Manager- Maintenance w.e.f. 07.08.2012.*

It is observed that your overall performance is not as per the expectations of the management. You were given sufficient opportunities to improve upon your performance from time to time, but we regret to inform you that there is no improvement in your performance till today.

In view of the above, management has decided to terminate your services from the company with immediate effect, that is from 28.03.2016, as per service rule applicable to your category of employees and you will be paid 2 months Gross salary in lieu as per your notice period.

Please contact our HR department of your full & final settlement, after completing required formalities."

3. The respondent/plaintiff being aggrieved by the said order of termination filed suit before the learned Trial Court seeking damages on the ground that his termination is illegal. The petitioner-defendant filed written statement and took various defences including the defence in respect of the mental fitness of plaintiff. The learned Trial Court framed issues on 4th September, 2018. Plain reading of letter of termination indicates that the termination is effected only on the ground that the performance of respondent is not as per expectations of management and there is no improvement in performance. Except for this reason termination has not been effected on any other ground including purported reason of mental illness of respondent. The suit is filed by the respondent for challenging termination being illegal and compensation /

damages are sought from petitioner/Employer. A question arises as to whether having regard to the scope of suit, there would be any other issue for adjudication before Trial Court, except legality of termination. Since, this issue is not raised in this petition, this Court refrains to record any finding in that regard.

4. The plaintiff completed his evidence and thereafter examining one witness, the defendant closed its evidence on 5th February, 2021. Thereafter the matter was posted for final hearing. In the meantime, the petitioner/plaintiff had preferred an application before the Trial Court below Exhibit 52 seeking issuance of witness summons to the Doctor purportedly treating plaintiff for his alleged mental illness. The said application was dismissed by the Trial Court by passing an order dated 12th February, 2020. This order was challenged before this Court in Writ Petition No. 5851 of 2021 unsuccessfully. Thereafter present application i.e. Exhibit 92 came to be filed on 30th September, 2021 for amendment to the written statement and also to seek permission to lead additional evidence by invoking inherent powers of Civil Court under Section 151 of the Code of Civil Procedure.

5. Learned Trial Court after hearing both sides passed impugned order rejecting application Exhibit 92.

6. Learned counsel for the petitioner submits that the facts and circumstances in which the present application came to be filed shows that there is no deliberate or intentional act on the part of the defendant in making such application at this stage. It is his submission that considering the fact that the application for the issuance of the witness summons to the Doctor was rejected on the ground that there was no evidence to substantiate such prayer, a request was made to the concerned Doctor for providing the said documents which request was refused in view of the the provisions of Mental Healthcare Act. It is thus his contention that in view of afore-stated facts it is right of the defendant to make application for amendment of written statement and to lead further evidence in the matter. Learned counsel for the petitioner has placed reliance on the judgment in case of ***Garware-Wall Ropes Ltd. Vs. Shashikant Bhalchandra Garware, 2011(4) Mh.L.J. 265*** and ***State of Bihar and others Vs. Modern Tent House and Another, (2017) 8 SCC 567.***

7. The application though is mentioned to have been filed by invoking provisions under Section 151 of the Code of Civil Procedure, provisions of Order VI Rule 17 would apply hereto. The inherent power of the Civil Court under Section 151 of CPC can be exercised provided there is no other specific provision for the same. In such circumstances, it is incumbent on the part of this Court to take into consideration the

relevant provisions of Order VI Rule 17 which is reproduce thus:

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

. After the amendment to Order VI Rule 17 it is duty of the Court to consider as to whether there is a due diligence on the part of the party to make an application after the stage of commencement of trial.

8. The facts as they depict on from record show that the suit is filed in the year 2016, issues were framed on 4th September, 2018 and the evidence of the defendant is closed on 5th February, 2021. Thus, the stage at which the application is filed is squarely covered by the proviso to Order VI Rule 17 which provides that no application for amendment shall be allowed after the Trial be commenced unless there is specific averment of due diligence and the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial. As far as the amendment sought by the defendant is concerned, the said amendment is purported request made

by the defendant to the Doctor for providing the treatment record of the plaintiff. In the written statement, the defendant has already taken a plea about purported medical mental illness of the plaintiff and issue is also framed accordingly to that effect.

9. Record indicates that application filed by petitioner vide Exhibit 52 was rejected on the ground that there was no record to justify the issuance summons to the Doctor, which order is confirmed by this Court, present application (Exhibit 92) therefore is filed to overcome the order of rejection of earlier application (Exhibit 52). It is relevant to note that Trial Court while rejecting the application (Exhibit 52) had observed that there is no material on record to indicate the witness summons is required to be issued to the Doctor. Thus, the act of the filing of application for amendment of the written statement and to lead further evidence nothing but to circumvent order passed by the Trial Court which is confirmed by this Court, which mode is not permissible to the petitioner. Mere invocation of provision of Section 151 of CPC, would not come to help to petitioner to overcome earlier order.

10. Apart from this, when the defendants have closed their evidence on 5th February, 2021 and considering the stage of the trial, there was absolutely no reason or justification for the Trial Court to allow the amendment. In the facts of the case, no prejudice will cause to the

defendant if the amendment is not allowed as already defence has been raised about alleged mental status of petitioner. This Court is of considered view that filing of application for amendment in this manner is nothing but intended to protract the trial. Thus, this Court finds no substance in the challenge to impugned order. Having regard to the fact that suit is pending for 8 years, this is a fit case for dismissal of the petition with cost, which is quantified at Rs.5000/- payable to the respondent-plaintiff by petitioner/defendant.

11. Petition stands dismissed in above terms.

(R. M. JOSHI, J.)

ssp