

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR No.1018 of 2024****Reserved on : 13.03.2024****Date of Decision: 20.03.2024**

Rajat Masih

....Petitioner

VERSUS

Evervent Pvt. Ltd.

....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Arnav Kumar, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 11.01.2024 dismissing the application filed by the defendant-petitioner under Order VII Rule 11(a) read with Section 151 of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that there was no cause of action made out.
2. The brief facts relevant to the present case are that the plaintiff-respondent filed a suit for recovery of Rs.10,00,000/- alongwith interest @ 18% per annum till realization on account of the loss which occurred to the plaintiff-respondent because of the act done by the defendant-petitioner herein as also for compensating the plaintiff-respondent for the loss of reputation and professional client because of the act of the defendant-petitioner. The defendant-petitioner filed the present application averring therein that he was only a functional trainee and was yet to be appointed upon the designation and hence he was not required to serve any notice

before resigning from the portfolio assigned to him. It was further averred that the plaint is frivolous and vexatious and hence deserved to be rejected. The Trial Court vide the impugned order dismissed the application holding inter-alia that whether the defendant-petitioner was required to give a 90 days' notice before leaving the job would be a matter of evidence.

3. Learned counsel for the defendant-petitioner would contend that no cause of action is made out in the present case and that by way of clever drafting the claim cannot be allowed to survive. In support of his argument he has relied upon judgments of the Hon'ble Supreme Court in the case of **Ramisetty Venkatanna & Anr. vs. Nasyam Jamal Saheb & Ors.** [2023(2) Apex Court Judgments (SC) 444]; **Rajendra Bajoria vs. Hemant Kumar Jalan** [2022 (12) SCC 641] and **K. Akbar Ali vs. K. Umar Khan & Ors.** [2021 (14) SCC 51] and that of this Court in the case of **Rampal Sihag vs. Gurmeet Singh** [2024 (1) RCR (Civil) 15].

4. Heard.

5. In the present case the letter dated 01.09.2022 which was filed alongwith the plaint is the appointment letter of the defendant-petitioner. Clause 7.1 of the appointment letter clearly states that employment with Evervent (plaintiff-respondent herein) is subject to separation on 90th day of resignation and that the defendant-petitioner could not waive the notice period requirement in the event that he wishes to terminate his employment with Evervent. It would be a matter of evidence to see whether Clause 7 of the appointment letter would come into play after the period of probation or would be applicable even during the period of probation. Hence, at this stage the application has rightly been dismissed by the Trial Court. The reliance of the learned counsel on the case of **Ramisetty Venkatanna** (supra) would be

of no avail as in the present case learned counsel has not been able to show that how the law laid down in the said case would be applicable to the facts of the present case. Learned counsel for the defendant-petitioner has not been able to convince this Court that the present is a case of clever drafting. The judgment relied upon by learned counsel for the defendant-petitioner in the case of **Rajendra Bajoria** (supra) would also be of no avail as in the said case the Hon'ble Supreme Court has held that if the Court finds that none of the relief sought in the plaint can be granted to the plaintiff then such a suit should be thrown out at the threshold. However, in the present case it cannot be said that the relief sought by the plaintiff-respondent is not made out at this stage. Hence, the defendant-petitioner can gain no advantage from the said judgment. The reliance on the case of **K. Akbar Ali** (supra) would also not be of any help as the same deals with a matter wherein it was held that the Court has inherent power to see that frivolous or vexatious litigation are not allowed to consume the time of the Court. In the present case learned counsel for the defendant-petitioner has not been able to show that the present suit is vexatious or frivolous litigation. The facts in the case of **Rampal Sihag** (supra) are totally different and hence the judgment in the said case is not applicable to the facts of the present case. At this stage the suit cannot be dismissed on an application under Order VII Rule 11 CPC as it would be a matter of evidence to see whether the clause regarding notice of a period of 90 days would be applicable even during the probation period.

6. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. It is made clear that any observation made herein shall not be

treated as an expression of opinion on the merits of the case. Pending applications, if any, are also disposed off.

(ALKA SARIN)
JUDGE

20.03.2024
jk

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