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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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CR-357-2024 (O&M)

Date of decision: 23.04.2024

IFFCO TOKIO Insurance Services Ltd. and another ...Petitioners.

Versus

Ganesh Yadav and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Parvez Chugh, Advocate
for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 01.08.2023 (Annexure P-5), passed by the trial Court, vide which application under Order 7 Rule 11 CPC filed by the petitioners, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that plaintiff/ respondent No.1 filed a suit for declaration to the effect that the action taken by the defendants whereby the plaintiff has been restrained from functioning the job against his post with the defendant company and salary, allowance and incentives of the plaintiff were withheld, are wrong, against the law and principles of natural justice and consequently the plaintiff is entitled to receive his entire salary from the defendants since May 2013 till date. Claim for mandatory injunction was also sought to the

effect that the defendants may be directed to continue making payment of the salary and allowances of the plaintiff since May/ June 2013 till date and onwards and further directing the defendants to provide all the original academic qualification certificate and experience certificate of the plaintiff and make payment of all the due salary and allowances alongwith interest @ 18% per annum to the plaintiff.

3. Upon issuing of notice of the aforesaid suit the petitioners as well as proforma respondents appeared in the said suit and filed written statement. The petitioners/ defendants No.4 and 5 alongwith the written statement also filed an application dated 18.05.2018 under Order 7 Rule 11 CPC for rejection of the plaint. Reply to the said application was filed on 30.03.2019, thereafter, vide the impugned order dated 01.08.2023, the trial Court had dismissed the said application. So the petitioners have knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the revision petitioner has contended that suit filed by the plaintiff/ respondent is not maintainable in the present form and rather the suit for recovery of a specific amount, if any due, as on the date of filing of the suit, should have been filed. But in the present suit the contesting respondents is simply seeking recovery of his alleged salary/ dues under the garb of mandatory injunction and Section 41(h) of the Specific Relief Act provides that an injunction cannot be granted when equally efficacious relief can be obtained. He has further contended that the employer/ employee relationship between contesting respondent and petitioners came to an end in December 2013, since the contesting

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respondent at his own abandoned employment of petitioners and in full and final settlement cheque for a sum of Rs.43,960/- was given by the petitioners to the contesting respondent. However, the same was refused and thus cause of action for filing any case against the petitioners arose in December 2012 and thus limitation period of three years for filing suit expired long time back in December 2016, whereas suit claiming alleged dues has been filed on 07.03.2018 i.e. after a lapse of about five years and the claim made in the suit is clearly barred by limitation. He has also argued that there is no cause of action in favour of the plaintiff/ respondent and against the petitioners. The plaintiff/ respondent under the garb of declaration and injunction is seeking recovery of money, so the suit is not properly valued and advolendum court fee in terms of the Court Fees Act has not been affixed. He has vehemently contended that the present suit is liable to be rejected.

5. I have heard learned counsel for the petitioners and have gone through the relevant record.

6. Vide application under Order 7 Rule 11 CPC, rejection of the plaint has been sought on the ground that the suit for mandatory injunction in nature of seeking recovery of dues/ money is not maintainable, in view of the specific bar under Section 41 of the Specific Relief Act; suit is barred by limitation as having been filed beyond limitation of three years; there is no cause of action against the defendants and suit is not properly valued and appropriate Court fee has not been affixed on the same.

7. The perusal of the plaint reveals that in the instant suit the

plaintiff has not only sought recovery of his salary but has challenged the impugned action vide which the plaintiff was estopped from performance of his duties and direction has also been sought to be issued to disburse the salary and other allowances w.e.f. May/ June 2013 and to provide original documents of qualification and experience Certificate. So far as, the question of limitation/ cause of action is concerned it is a mix question of law and facts, which also requires some evidence and at the present stage, in the absence of the relevant evidence it cannot be said that the present suit is barred by limitation.

8. Thus, there being no illegality or infirmity in the impugned order, no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

9. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

23.04.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No