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

% ***Date of decision: 28th October, 2024***

+ **C.R.P. 70/2024**

KULDEEP SINGH

.....Petitioner

Through: Mr. Nishant Anand and Mr. Gunjan Bansal, Advs.

versus

RAMA SHANKAR

.....Respondent

Through: Ms. Shreya Tanwar, Mr. Sachin Kumar, Mr. Deepak Garg, Advs. with respondent in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. This Petition under *Section 115 of the Code of Civil Procedure, 1908 (hereafter CPC, 1908)* has been filed on behalf of the defendant-revisionist to challenge the Order dated 29.01.2024 *vide* which the Application under Order VII Rule 11 read with Section 151 of CPC, 1908 filed on behalf of the defendant, has been dismissed.

2. It is submitted that the petitioner/defendant was the owner of factory situated at Khasra No. 76, Near Transformer, Dada Bhaiya Marg, Village - Ranhola, Delhi. The respondent/plaintiff by virtue of *Memorandum of Agreement dated 01.04.2013*, was engaged as a Contractor for providing skilled labor to perform the work of *Shoe Upper Stitching* and other works related to his trade.



3. On 06.09.2013, on the basis of information received from an NGO, raid was conducted at the factory premises by the local police from where a few child labors were rescued. *FIR No. 305/2013 was registered at P.S. Ranhola under Sections 3/14 Child Labor (Prohibition & Regulation) Act, 1986 and Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000 against the petitioner/defendant Kuldeep Singh and one Paras Yadav. The child labor so rescued, were stated to be in the employment of the respondent/plaintiff herein who used to pay them the salary; and were sent to Child Care Home.*
4. *A Charge Sheet dated 14.10.2016 in FIR No. 305/2013 was filed before the Learned MM, Tis Hazari Court, New Delhi. The documents filed along with the Charge Sheet, included the copy of Memorandum of Agreement dated 01.04.2013, which was supplied to all the accused persons including the respondent/plaintiff for scrutiny under Section 207 of CPC. Thereafter, the Charges were framed on 25.07.2022 by the learned MM, Tis Hazari Court, New Delhi, against them. The Order on Charge was assailed by the petitioner/defendant by the way of Revision Petition bearing Cr. Rev. No.482/2022 titled Kuldeep Singh vs. The State of NCT of Delhi before Learned ASJ (West), Tis Hazari Courts, Delhi, which is pending adjudication.*
5. The respondent/plaintiff, Rama Shankar filed the *Civil Suit bearing CS SCJ 149/2023 titled Rama Shankar vs. Kuldeep Singh* on 01.02.2023 seeking a Declaration that the alleged Agreement dated 01.04.2013 is *null and void*.



6. The summons of the Civil Suit was issued on 03.02.2023 on the petitioner/defendant to file the Written Statement along with supporting documents. The petitioner/defendant filed an Application under Order VII Rule 11 read with Section 151 of the CPC for rejection of the plaint, but has been dismissed vide Order dated 29.01.2024.
7. The aforesaid Order is assailed by the petitioner/defendant on the ground that the plaint discloses no cause of action in favour of the respondent. The Civil Suit was based on the Agreement dated 01.04.2013, a copy of which was supplied to him by the Magisterial Court on 28.06.2017. The Suit to challenge Memorandum of Agreement, could have been filed by 01.04.2016 but the Civil Suit has been filed on 03.02.2023 and is barred by limitation under Article 58 of the Limitation Act, 1963. The rejection of the Suit of the plaintiff was sought on the grounds that there is no real cause of action disclosed in the plaint and it is barred by Limitation.
8. It is further submitted that Respondent/plaintiff is the Proprietor of *Varsha Enterprises* and running its business from Khasra No.36 Village Ranholla, Nangloi, New Delhi - 110041 but has falsely claimed himself to be an employee of the petitioner and drawing salary from him. No documentary proof has been filed by the respondent to substantiate his averments. The Agreement dated 01.04.2013 executed by the respondent, belies the defence taken by the respondent.
9. The *Child Rescue Operation* was carried out on 06.09.2013 after which the FIR No.305/2013 was registered and the premises was



sealed by the Government Department. For getting the premises de-sealed, the respondent had made an Application and the employer was asked to deposit unpaid dues of Minimum Wages and to make further deposit towards Delhi Child Labour Rehabilitation cum Welfare Society, as one of the conditions for de-sealing of premises. The entire payment of the Department was made by the respondent, being the employer of the rescued children. This fact was acknowledged by Labour Officer (District West) in his Letter dated 09 September 2013 written to the Sub Divisional Magistrate, Punjabi Bagh, Govt, of NCT of Delhi that since the employer has completed all formalities pertaining to the Department, there was no objection to the de-sealing of the premises which was accordingly, de-sealed. The story propounded by the respondent of being an employee, is frivolous and malicious.

10. The Civil Suit has been filed by the respondent/plaintiff almost after ten years to harass and cause unnecessary hardships and is an afterthought and has been filed with an oblique motive. Reliance has been placed on Raghwendra Sharan Singh vs. Ram Prasanna Singh, (2020) 16 SCC 601 and Khatri Hotels P. Ltd. vs. Union of India & Anr., (2011) 9 SCC 126.

11. The petitioner/defendant has asserted that the learned Civil Judge erred in holding that the plea of the date on which the plaintiff gained knowledge of the essential facts, is crucial for deciding the question of limitation and is a triable issue and the Suit cannot be thrown out at threshold. It is submitted that the defence taken that the respondent that he came to know about the impugned Agreement



dated 01.04.2013 in sometime in September 2022, is only to save the Suit from being time barred.

12. It is, therefore, submitted that the Impugned Order dated 29 January 2024 dismissing the Application under Order VII Rule 11 of the CPC, is liable to be set aside and the Suit be dismissed as barred by limitation.

13. *Learned counsel on behalf of the respondent/plaintiff* has taken a specific plea that the plaintiff/respondent has been in the employment of the petitioner since 2002 till 2019. He is an illiterate/uneducated person who had been taken advantage of by the petitioner, since he was an employee. He was made to sign certain blank documents at the time of raid which had been subsequently manipulated by the petitioner, his employer to falsely implicate him in the criminal case.

14. It is further submitted that he was being represented by the counsel of the petitioner throughout in the criminal litigation and it is only in 2022 when he was able to get the documents that he was able to understand its implication in the entire incident. It is, therefore, submitted that the learned Trial Court has rightly rejected the Application under Order VII Rule 11 by observing that the factum of whether the plaintiff gained the knowledge in 2022, is a matter of evidence.

15. **Submissions Heard.**

16. The respondent/ plaintiff has filed a *Suit for Declaring Memorandum of Agreement Dated 01.04.2013, as null and void*. It is not in dispute that the Agreement dated 01.04.2013 has the signatures



of the respondent. The only defence which has been put up by the respondent is that he was made to sign blank documents at the time of raid which have been subsequently manipulated by the petitioner about which he came to know only in 2022 resulting in filing of the *Suit for Declaration* on 23.02.2023.

17. However, it is not denied that the respondent/plaintiff was arrayed as the main accused in FIR No. 305/2013 that got registered on 05.09.2013. The Charge Sheet was filed in 2016 and the respondent, Rama Shankar as one of the accused, along the petitioner, Kuldeep Singh and Mr. Paras Yadav, has been regularly appearing before the learned M.M. Copies of the documents including the Memorandum of Agreement Dated 01.04.2013, were supplied on 18.06.2017 and the Charges have been framed on 25.07.2022, against which a Revision Petition has been filed by the petitioner, Kuldeep Singh, to challenge the Order on framing of Charges.

18. The respondent/plaintiff argued that he had throughout been appearing and had been provided with the copy of the documents. It is his claim now that he was not aware of the documents or their contents, which came to his knowledge for the first time in 2022. His explanation that it was the counsel of the petitioner who was representing him before the learned M.M. and he was unaware of the proceedings therein because he is an illiterate/uneducated person, cannot be accepted. He admittedly had throughout been appearing before the learned M.M. in the Trial Court and had also participated in the proceedings; to now turn around to say that he is not aware of the contents, is clearly not tenable. The alleged Memorandum of



Agreement dated 06.09.2013 got provided at the time of scrutiny of the documents relied upon by the prosecution, in 2016.

19. It is evident that that the present Suit has been filed by the plaintiff only to establish his defence, which he may do in the criminal case.

20. The suit of the plaintiff is patently barred by limitation and the Application under Order VII Rule 11 CPC, is allowed and the Suit of the plaintiff, is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 28, 2024/bh