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

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Judgment Pronounced on: 07.02.2024

+ FAO(OS) 104/2022 & CM APPL. 59491/2023

INDIA INTERNATIONAL CENTRE

..... Appellant

versus

MS. HEMA GUSAIN & ORS.

.... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Meet Malhotra, Sr. Advocate with
Mr. Ravi S.S Chauhan and Ms. Pallak
Singh, Advocates.

For the Respondents : Mr. Alakh Alok Srivastava and Mr.
Chandan Kumar Singh, Advocates for
R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Appeal seeks to challenge the order dated 06.07.2022 passed by the learned Single Judge in I.A. No. 10179/2021 in CS (OS) No. 251 of 2020 [hereinafter called "Impugned Order"]. By



the Impugned Order, the Appellant/Defendant No.1's Application under Order VII Rule 11 of Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking rejection of the Plaint filed by the Appellant/Defendant No.1 [hereinafter for ease of reference referred to as "IIC"] was dismissed.

2. A suit for recovery of damages and compensation for wrongful termination of service by IIC was filed before the learned Single Judge by Respondent No.1/Plaintiff [hereinafter for ease of reference referred to as "HEMA"] who was employed with IIC for more than two decades was '*forced to resign from her employment*' and the forced resignation falls within the category of illegal termination. HEMA has, thus, prayed for a decree of recovery of damages for her dismissal from service and for interests and costs. The prayers made in the Plaint read:

"a) Pass a Judgment and Decree in favour of the Plaintiff for recovery of Rs.2,02,00,000/- (Rupees Two Crore and Two Lakh Only) against the Defendants, jointly and severally, along with pend elite and future interest @ 9% per annum, till the date of full realization of entire amount, for her wrongful dismissal from service; and/or

b) Pass a Judgment and Decree in favour of the Plaintiff for recovery of Rs.10,00,000/- (Rupees Ten Lakh Only) against the Defendants towards harassment and mental agony and Rs.20,00,000/- (Rupees Twenty Lakh Only) towards her Defamation on account of her illegal and arbitrary termination; and/or

c) Cost of the suit may be awarded in favour of the Plaintiff and against the Defendants;..."



3. Along with the Complaint, HEMA filed documents in support of her case. IIC filed an Application under Order VII Rule 11 of CPC wherein it was prayed that the complaint filed by HEMA in CS (OS) No. 251 of 2020 [hereinafter referred to as "Complaint"] be rejected under the provisions of Order VII Rule 11 of CPC.
 - 3.1 It was contended in the Application that the Complaint filed by HEMA is barred by law in as much as the relief sought is untenable. It is further stated in the Application that the Complaint does not disclose any cause of action, as HEMA had voluntarily resigned and it is only in the case of a wrongful termination that compensation by way of damages is payable. Since, the resignation was voluntary, the damages are not due or payable by IIC.
 - 3.2 Lastly, it was stated in the Application that HEMA had earlier filed a suit [Civil Suit No. 1040 of 2017] before Patiala House Courts [hereinafter referred to as "1st Suit"] arising out of substantially the same facts and had unconditionally withdrawn the same. Thus, the Complaint filed before the learned Single Judge i.e., CS (OS) 251 of 2020 [hereinafter referred to as "2nd Suit"] is not maintainable being 'hit' by the provisions of Order XXIII CPC.
4. By the Impugned Order, the learned Single Judge after noting the basic facts of the case and submissions of both parties, directed dismissal of the Application, finding that the case was not a fit one for exercise of jurisdiction under Order VII Rule 11 of CPC.



5. Aggrieved by the Impugned Order, this Appeal has been filed.
6. Learned Senior Counsel appearing on behalf of IIC has submitted that HEMA was in service of IIC, and her contract of service provided that her service was terminable on three months' notice. It is in pursuance thereof that on 09.10.2017, HEMA voluntarily resigned, and her resignation was accepted immediately, her notice period waived and all dues were settled. Since this was a voluntary resignation and not a forced resignation it will not amount to illegal termination. Thus, no damages were payable by IIC.
- 6.1 Relying on the judgments of *ITC Vs DRAT*¹ and *Dahiben vs Arvind Bhai Kalyanji*², it was contended that the clever drafting or creating illusions of a cause of action are not permitted in law. If on a meaningful reading of the plaint, the Plaint is vexatious and without any merit, the Court would be justified in exercise the power under Order VII Rule 11 CPC. It was thus contended that a plain reading of the Plaint would show that there were no averments which would entitle HEMA to a decree.
- 6.2 Lastly, it was contended that the Plaint fails to explain as to why and under what circumstances HEMA was forced to resign. The Plaint is lacking a cause of action and is propped up by clever drafting and cannot be permitted to proceed to trial.

¹ (1998) 2 SCC 70

² (2020) 7 SCC 366



7. Learned counsel for HEMA, on the other hand, has contended that from a meaningful reading of the Complaint, it can be seen that the grievance of HEMA was that circumstances were created by IIC which compelled HEMA to resign from her employment. Referring to several paragraphs of the Complaint, including paragraph 27 and 28 of the Complaint, it was contended that a clear distinct cause of action subsists in the Complaint.
- 7.1 It was further contended that since termination of HEMA was not voluntary but “*forced*” due to circumstances created by IIC, which details have been explained in the Complaint, the claim for damages on account of illegal termination by IIC was maintainable.
- 7.2 It was further contended that a careful examination of the prayer made by HEMA in her 1st Suit [filed before Patiala House Courts, Delhi] and the prayers made in the 2nd Suit would show that these are clear and distinct. Thus, the Complaint was not barred by Order XXIII CPC. The principles of *res judicata* would also not be applicable in the present case. It was contended that in any event, the issue of *res judicata* is a contentious one and cannot be decided in proceedings arising out of an Application under Order VII Rule 11 CPC.
8. As noted in our Order dated 10.01.2024, the matter was finally heard by this Court on that date with the consent of parties. Written



Submissions had previously been filed by IIC. Despite an opportunity been granted to HEMA, Written Submissions were not filed by HEMA.

- 8.1 The short question before the Court is the challenge to dismissal of the Application filed by IIC for rejection of the Plaint under the provisions of Order VII Rule 11 CPC.
9. The provisions of Order VII Rule 11 of CPC provide for rejection of a plaint in certain specific circumstances. The circumstances are enumerated in the provision and read as follows:

*“11. **Rejection of plaint.**— The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite



stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

10. It is no longer *res integra*, that the power conferred on a Court by this provision is a drastic one and has to be exercised with caution, as a case is dismissed by a Court at the threshold. Additionally, while deciding an application under Order VII Rule 11 CPC, only the averments of the Plaint are to be looked into and the Written Statement is not relevant [See: ***Bhau Ram v. Janak Singh***³].
- 10.1 It is also a settled law that whether a Plaint discloses a cause of action or not, is essentially a question of fact and the averments made in the Plaint in the entirety have to be looked at. The test in an Application under Order VII Rule 11 CPC is that if the averments taken in the Plaint are said to be correct, can a decree be passed. [See: ***Frost International Limited vs. Milan Developer and Builders Limited and Another***⁴].
11. The Supreme Court in a recent case of ***Geetha v. Nanjundaswamy***⁵, while relying on the principles enunciated on ***Dahiben*** case, has set out in detail the principles to be followed when an Application under Order VII Rule 11 CPC is filed. It has been emphasised that this provision is in the nature of a summary provision where a case is decided without any evidence or trial. It has also been held that

³(2012) 8 SCC 701

⁴ 2022 SCC Online SC 394

⁵ 2023 SCC OnLine SC 1407



power conferred by the provision can be concerned only if one of the specific grounds specified in Clauses (a) to (e) of Order VII Rule 11 CPC is established. The relevant paragraphs of the **Geetha** case are extracted below:

“6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali, as follows:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 28 1: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words: (SCC p. 324, para 12)

“12.The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court,



and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

...

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading



the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R. V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281:(1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a



cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint”

*7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. **Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail.** To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.”*

[Emphasis is ours]

12. As set forth above, the challenge by IIC in this Appeal is essentially on two grounds:
- (i) Firstly, the Plaint fails to disclose a cause of action, is lacking in *bona fides*, and upon a meaningful reading of the Plaint no decree can be passed;
 - (ii) Secondly, the Plaint is barred by the provisions of Order XXIII CPC, as HEMA had filed the 1st suit on substantially the same facts and circumstances and had unconditionally withdrawn the same. Since, no leave was sought by HEMA to file the 2nd Suit, the 2nd Suit is barred in view of the 1st Suit being based on the same cause of action.
- 12.1 It has also been submitted by IIC that the Plaint is a result of clever drafting showing an illusory cause of action and, thus, cannot be permitted to proceed for a trial.
13. So far as concerns the contention raised by IIC on the 2nd Suit being barred, by the provisions of Order XXIII CPC, it is apposite to examine the Plaints filed. A plain reading of the Plaints in the two matters show that the causes of action in the suits are different. The



1st Suit was filed, in essence, seeking a declaration and injunction against the Office Order dated 29.07.2017 issued by IIC to keep the appointment of HEMA as a secretary in abeyance; to declare the notice dated 08.08.2017 as invalid and to restrain IIC from appointing other persons to such post.

13.1 Whilst, as per the averments in the Complaint, the 2nd Suit was filed seeking compensation and damages for the illegal termination of HEMA. The 2nd Suit discloses the 1st Suit and it is averred in the Complaint that the withdrawal of the 1st Suit was one of the many things HEMA was forced to do by IIC.

13.2 The causes of action and prayers in 1st and 2nd Suit are also distinct. The prayers in the two suits are reproduced in HEMA's Reply to the present Appeal and set forth below:

<i>Prayer in Civil Suit number 1040 of 2017</i>	<i>Prayer in Civil Suit (OS) No. 251/ 2020</i>
<i>(i) Declare that the office order dated 29.07.2017 issued by the Defendants is null and void,</i> <i>(ii) Declare that the Notice dated 08.08.2017 issued by the Defendants is null and void,</i> <i>(iii) Declare that the Office Order dated 05.04.2017 issued by the Defendants with respect to the appointment of the Plaintiff as Secretary of the Defendant No.1 is legally valid and correct,</i> <i>(iv) In the alternative, pass a decree of mandatory injunction by directing the Defendants to withdraw the Notice dated</i>	<i>(a) Pass a judgment and Decree in favour of the Plaintiff for recovery of Rs.2,02,00,000/- (Rupees Two Crore and Two Lakh Only) against the Defendants, jointly and severally, along with pendelute and future interest @ 9% per annum, till the date of full realization of entire amount, for her wrongful dismissal from service; and/or</i> <i>(b) Pass a Judgment and Decree in favour of the Plaintiff for recovery of Rs.10,00,000/- (Rupees Ten Lakh Only) against the</i>



08.08.2017 and office order dated 29.07.2017 and restore the earlier office order dated 05.04.2017, (v) Restrain the Defendants from appointing any other person other than the Plaintiff to the post of the Secretary of the Defendant No.1 till the disposal of the present Suit; (vi) Restrain the Defendants from delegating the duties and responsibilities of the Secretary to any other person other than the Plaintiff till the disposal of the present suit; (vii) pass a decree of permanent injunction restraining the Defendants from taking any steps towards recovery of any alleged excess amount paid to the Plaintiff as mentioned in the Notice dated 08.08.2017 issue to her; (viii) award cost of the Suit in favour of the Plaintiff; and (ix) Pass such order/ further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.	Defendants towards harassment, mental agony and Rs.20,00,000/- (Rupees Twenty Lakh Only) towards her Defamation on account of her illegal and arbitrary termination; and/or (c) Cost of the suit may be awarded in favour of the Plaintiff and against the Defendants; (d) Any other order or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
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[Emphasis is ours]

13.3 The Appellant has contended that this Appeal is barred by Order XXIII CPC. However, a plain reading of the provision shows that in order for this provision to be applicable, the subject matter of 2nd Suit and the 1st Suit must be substantially the same.



13.4 The Supreme Court in the case of *Vallabh Das v. Madan Lal (Dr)* (1970) 1 SCC 761 while discussing the applicability of Order XXIII Rule 1 has held that the applicability of this provision hinges on the execution of the “subject matter” of the cases filed. The “subject matter” has been defined to include both “cause of action” and the “relief”. The Court held that when these are distinct, the suit cannot be barred by Order XXIII. It was further held that an identity of a few issues does not mean that the two suits are identical. Thus, where distinct and disparate “reliefs” are sought, Order XXIII Rule 1 is inapplicable. The relevant extract reads as follows:

“5. Rule 1 of the Order 23, Code of Civil Procedure empowers the courts to permit a plaintiff to withdraw from the suit brought by him with liberty to institute a fresh suit in respect of the subject-matter of that suit on such terms as it thinks fit. The term imposed on the plaintiff in the previous suit was that before bringing a fresh suit on the same cause of action, he must pay the costs of the defendants. Therefore we have to see whether that condition governs the institution of the present suit. For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that was in litigation in the previous suit. The expression “subject-matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said, that the subject-matter of the second suit is the same as that in the previous suit. Now coming to the case before us in the first suit Dr Madan Lal was seeking to enforce his right to partition and separate possession. In the present suit he seeks to get possession of the suit properties from a trespasser on the basis of his title. In the first suit the cause of action was the division of status between Dr Madan Lal and his adoptive father and the relief claimed was the conversion of joint possession into separate possession. In the present suit the plaintiff is seeking possession of the suit properties from a trespasser. In the first case his cause of action arose on the day he got separated from his family. In the present suit the cause of action, namely, the series of transactions which formed the basis of his title to the suit properties,



arose on the death of his adoptive father and mother. It is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent event which conferred certain rights on him. **Mere identity of some of the issues in the two suits do not bring about an identity of the subject-matter in the two suits. As observed in Rukhma Bai v. Mahadeo Narayan, [ILR 42 Bom 155] the expression “subject-matter” in Order 23 of the Rule 1, Code of Civil Procedure means the series of acts or transactions alleged to exist giving rise to the relief claimed. In other words “subject-matter” means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. We accept as correct the observations of Wallis, C.J., in Singa Reddi v. Subba Reddi [ILR 39 Mad 987] that where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject-matter as the first suit.”**

[Emphasis is ours]

- 13.5 Thus, Order XXIII Rule 1 (4) CPC precludes a party from instituting a fresh suit only where the subject matter of such suit, is same as the subject matter of the first suit which was withdrawn/abandoned.
- 13.6 In the present case, the 1st Suit revolves around the cause of action concerning the office order dated 29.07.2017, while the 2nd Suit was filed pertaining to illegal termination. Hence, this argument of the Appellant is also rejected.
14. The only other contention of IIC hinges on “clever drafting”. The Supreme Court in the case of ***Vaish Aggarwal Panchayat v. Inder Kumar***⁶ held that once the Court while bearing in mind the

⁶ (2020) 12 SCC 809



cleverness in drafting, still finds that there exists a distinct cause of action as compared to the previous suit, and also finds *prima facie* that the plaint is not barred by law, then the suit will not be hit by the provisions of Order VII Rule 11 CPC or even the principle of *res judicata*..:

“10. As is evident, after the framing of the issues the defendant filed the application under Order 7 Rule 11 CPC stating that the suit is not maintainable as barred by *res judicata*. The learned trial Judge, as is evident from the order passed by him, has taken note of the stand taken in the written statement which has been regarded as the incorrect approach by the learned Appellate Judge. The High Court, as it appears, has been guided by the finding recorded by the learned trial Judge totally ignoring the factum that such a conclusion has been arrived at by taking into consideration the averments made in the plaint and the assertions put forth in the written statement. The crux of the matter is whether, in the obtaining factual matrix, the High Court should have applied the principle of *res judicata*. **The cause of action for filing the suit is different. The grounds urged in the suit, as we find, are also quite different. Even if the plaint is read keeping in mind the cleverness and deftness in drafting, yet it is not prima facie discernible from the plaint that it lacks any cause of action or is barred by any law.** On a perusal of the plaint alone it cannot be said that the suit is barred by the principle of *res judicata*.”

[Emphasis is ours]

- 14.1 In the present case, a *prima facie* reading of the Plaint, discloses a cause of action in favour of HEMA. Thus, this ground under Order VII Rule 11 is also unavailable to IIC.
15. In these circumstances, this Court finds no infirmity with the Impugned Order.



16. The Appeal is, accordingly, dismissed. All pending Application(s) stand closed.
17. It is, however, clarified that nothing contained in this order will be construed to as an expression on the merits of the dispute between the parties, which is pending adjudication before the learned Single Judge. All rights and contentions of the parties are left open in this regard.

(TARA VITASTA GANJU)
JUDGE

(VIBHU BAKHRU)
JUDGE

FEBRUARY 07, 2024/SA/r