

AD-39
Ct No.16
13.05.2025
TN

SAT 90 of 2024
IA No: CAN 1 of 2024

Tapas Das
Vs.
Kutchina Home Makers Pvt Ltd

Mr. Samim Ahmed,
Ms. Saloni Bhattacharya,
Ms. Urbi Roy

....for the appellant

Mr. Anirban Ray, Ld. Sr. Adv.,
Md. Dilawar Khan,
Mr. Saunak Banerjee

....for the respondent

1. The present second appeal is at the behest of an employee, arising out of a judgment of reversal passed in a suit filed by the plaintiff/appellant assailing his termination by way of a declaration to that effect and seeking consequential reliefs. However, it is noteworthy to mention here that no relief of damages was specifically sought in the suit.
2. The learned Trial Judge decreed the suit upon coming to the finding that the termination of the plaintiff was bad in law.
3. Such judgment was reversed by the learned First Appellate Court only on the ground that the suit was not maintainable under Section 14, Clauses (c) and (d) of the Specific Relief Act, 1963.

4. Insofar as Section 14(c) is concerned, *prima facie* we are not agreeable with the findings of the learned Trial Judge, since in terms of the amendment brought to the Specific Relief Act, 1963 (for short “the 1963 Act”), in the year 2018, under Section 14(c), a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms cannot be specifically enforced, which is not the case here. In the least, it is arguable whether the said amendment to the Specific Relief Act would be applicable to the present case.
5. However, the learned Appellate Judge also relied on Section 14(d) of the 1963 Act, which provides that a contract which is in its nature determinable is not enforceable by way of a decree of specific performance.
6. The facts of the present case indicate that the contract of employment of the plaintiff, indeed, was a determinable one by its very nature and also by the clauses attending the contract of employment.
7. Learned counsel appearing for the appellant submits that under the omnibus reliefs sought in the suit, the learned Appellate Judge, even while dismissing the suit as not maintainable, ought to have considered the grant of damages to the appellant, in view of the findings of the learned Trial Judge to the effect that

the termination of the plaintiff/appellant was wrongful having not been reversed.

8. Learned counsel cites *Dipak Kumar Biswas vs. Director of Public Instruction and others*, reported at (1987) 2 SCC 252, as well as a coordinate Bench judgment of this court in the matter of *Ashok Kumar Nath vs. Union of India & Others*, reported at 2017 SCC OnLine Cal 15685, in support of such contention.
9. In *Dipak Kumar Biswas* (supra), the Hon'ble Supreme Court, in a similar suit for declaration and injunction where no damages were apparently claimed, had exercised its powers under Article 136 of the Constitution of India, thereby enlarging the relief of damages granted by the High Court therein to the plaintiff in the said suit.
10. However, we find two distinguishing factors standing between the said cited judgment and the present case.
11. First, in the said case, the Supreme Court's observations were prompted by the "misfortune" of the plaintiff therein due to his own hasty action in resigning his permanent post for the post concerned.
12. The Hon'ble Supreme Court, while passing the said judgment, specifically took into consideration that the peculiar facts of the case were indeed distressing and called for the some relief being given to the appellant therein instead of a brusque dismissal of the appeal

on account of the legal impediments for granting the relief of declaration of his continuance in service.

13. We do not find any such alleviating circumstances in the present case. Thus the ratio laid down therein is not applicable to the instant case.
14. Secondly, in the said case, the suit was, as such, dismissed on merits, holding that the appointment of the appellant therein without prior approval of the Director of Public Instruction was irregular and furthermore, the appointment contravened the Government's Resolution regarding the reservation of posts for backward sections of the people of the State and that the policy applied to all government institutions as well as private institutions added by the Government. Thus, in the said case, the suit itself was not held to be non-maintainable and was decided on merits, where there still might have been some scope for the Supreme Court granting the relief as given therein.
15. In the present case, however, in the teeth of the finding of the appellate court that the suit was barred under Section 14(d) of the 1963 Act, with which we concur, there was no scope of granting any further relief in such non-maintainable suit.
16. As opposed to the present case, in *Ashok Kumar Nath* (supra), the plaintiff's suit itself was held to be

maintainable, since the issue of maintainability was not pressed by learned counsel for the defendant.

17. Furthermore, the said suit was specifically for recovery of damages on account of alleged wrongful termination of the plaintiff's engagement/appointment.
18. As such, there was ample scope of granting such relief in the said suit. As opposed to the same, the foundational pleadings in respect of grant of damages is absent in the plaint in the present case.
19. Thus, the proposition of law laid down in *Ashok Kumar Nath* (supra) cannot operate as a precedent in the case at hand.
20. That apart, we find from the records that since the appellate court did not reverse the findings of the trial court on merits regarding the plaintiff's termination being bad in law, there is no bar as such to the plaintiff/present appellant filing an independent suit for damages on account of wrongful termination of his service. If such a suit is filed, the same has to be heard on its own merits and in accordance with law without the court where it is filed being precluded in any manner from deciding the same merely due to the impugned judgment and decree of the first appellate court as well as the present judgment.

21. However, on a comprehensive assessment of the impugned judgment of the appellate court, we find that there is no scope of interference with the same on the grounds as stated above. The bar under Section 14(c) of the 1963 Act is settled by law and by judgments of court and, as such, there is no debatable or disputed question of law to be decided in the present appeal involving an area of law which has not been settled by law or by judgments of court.
22. Thus, the contours of substantial questions of law are not satisfied in the present case.
23. Hence, SAT 90 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
24. IA No: CAN 1 of 2024 is consequentially disposed of as well.
25. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)