



2025:DHC:10749-DB



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

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Judgment reserved on: 10.11.2025***Judgment pronounced on: 03.12.2025***

+ RFA(OS) 87/2019

RITA SOLOMON & ORS (N K DHENISH & ORS.)

.....Appellants

Through: Mr. Abhimanyu Garg, Ms.
Preety Makkar, Mr.
Shrutanjaya Bharadwaj, Mr.
Aashish Dutta, Mr. Aman Abbi,
Mr. Vivek Sura, Advs.

versus

THE REPUBLIC OF ITALY & ANRRespondents

Through: Mr. Jaiveer Shergill, Mr.
Gaurav Gupta, Advs.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE RENU BHATNAGAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. The issue that arises for consideration in the present Appeal is whether the learned Single Judge was justified in rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] on the sole ground that the suit did not contain any cause of action as pleaded. The rejection is assailed on the principal ground that the learned Single Judge misconstrued and misapplied the law relating to rejection of plaint under Order VII Rule 11 of the CPC, by subsuming the non-existence of cause of action within non-disclosure and conducting a premature appraisal of facts and merits.

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Page 1 of 9



2. The present Appeal challenges the order dated 01.05.2019 [hereinafter referred to as ‘Impugned Order’] passed by the learned Single Judge, whereby the plaint instituted by the Appellants - Indian-origin employees of the Embassy of Italy in New Delhi claiming discrimination in payment of salary/pay in violation of Italian Presidential Decree No.103 of 2000 [hereinafter referred to as ‘Presidential Decree’] was summarily rejected. The suit was dismissed despite no objections on limitation, jurisdiction, or other bars, confining the controversy solely to the scope and correctness of Order VII Rule 11 of the CPC application.

3. The question that arises before this Court is “Whether the Ld. Single judge was right in law to give a finding on a question of fact while adjudicating an application for rejection of plaint.”

FACTUAL MATRIX AND BACKGROUND

4. The Appellants, comprising locally recruited employees of Indian origin, were engaged by the Embassy of Italy in New Delhi from as early as 1997, with their appointments and contracts governed by the Presidential Decree, which expressly incorporated provisions for equal remuneration among employees belonging to the same homogeneous category.

5. From the initial years of employment, the Appellants began to observe and experience a pronounced disparity in salary and service benefits as compared to their Italian-origin colleagues recruited locally for substantially similar roles. Despite fulfilling identical eligibility requirements- including continuous residency in India, the Indian-



origin employees received significantly lower pay and fewer ancillary benefits.

6. Between 2001 and 2012, the Appellants took repeated steps to highlight and resolve the alleged discrimination, including concerted representations to the Italian Embassy, correspondence with authorities in Rome, and engagement with the Ministry of External Affairs of India. During this period, the Italian Government made assurances that the disparity would be rectified, but the pay gap and differential benefits persisted unabated across subsequent contract renewals and new appointments.

7. Due to persistent inaction by the Respondents, the Appellants resorted to legal remedies. After protracted correspondence and a writ petition before the Delhi High Court, the Appellants obtained the consent mandated under Section 86 of the Code of Civil Procedure from the Government of India by January 2013, enabling them to institute civil proceedings against the foreign state.

8. The Appellants filed a civil suit being CS(OS) 1352/2013 before this Court seeking declarations that the Respondents' actions contravened Article 157 of the Presidential Decree and constituted employment discrimination, as well as a direction for arrears of approximately Rs.2.11 crore and parity in pay and benefits.

9. The Embassy, after a prolonged delay in responding, sought rejection of the plaint under Order VII Rule 11 of the CPC. The learned Single Judge, while dismissing other preliminary objections, ultimately rejected the plaint on the ground that the facts pleaded did not reveal a justiciable cause of action under the governing Decree,



particularly in view of the court's finding that the “cost of living” justified the differentials.

10. It was held that pay parity as claimed was not mandated, and the cost of living justified differential treatment. This rejection of plaint under Order VII Rule 11 of the CPC, thus terminated the suit at the threshold without permitting the Plaintiffs an opportunity to lead evidence on the disputed facts and legal contentions.

CONTENTION OF THE PARTIES

11. The Appellants submit that they are Indian-origin locally recruited employees of the Italian Embassy in New Delhi, employed under contracts governed by the Italian Presidential Decree, particularly Article 157, which requires equal pay for employees in a homogeneous category. Despite identical duties and local residency status, they have been paid less and accorded lesser benefits than their Italian-origin counterparts.

12. The Appellants contend that repeated representations to the Embassy and Ministries over many years for rectification were unheeded, compelling them to seek statutory consent under Section 86 of the CPC and file suit for declaratory and monetary relief. The core submission is that the plaint clearly discloses a cause of action under the said Presidential Decree and that the learned Single Judge improperly ventured into a summary appraisal of the plaint, documents and merits-particularly on complex factual issues like pay parity, homogeneous classification, and cost of living differences without affording the Appellants an opportunity to lead evidence and have their case adjudicated on merits.



13. The Respondents maintain that the plaint does not disclose any cause of action as required under Order VII Rule 11(a) of the CPC. They contend that Article 157 of the Italian Presidential Decree does not mandate absolute pay parity between Italian and Indian-origin employees, and any pay differential is justified by relevant factors such as citizenship and cost of living. Thus, the plaint is unsustainable on its face.

14. Further, the Respondents submit that the suit is barred by limitation and that the consent under Section 86 of the CPC is invalid, granted without proper application of mind. They also raise the plea of sovereign immunity, contending maintainability issues.

15. Finally, the Respondents submit that the learned Single Judge rightly applied Order VII Rule 11 of the CPC and correctly rejected the plaint as devoid of cause of action. They contend that triable issues cannot be entertained at this stage when the plaint fails the strict threshold test of disclosure of cause of action on its face, justifying dismissal without trial.

ANALYSIS AND FINDINGS

16. Having heard learned counsel for the parties at length and perused the record, this Court proceeds to consider the submissions in light of the law. In doing so, we confine ourselves strictly to the question of rejection of the plaint under Order VII Rule 11(a) of the CPC. We do not examine the factual controversies, which are for trial, but decide whether the plaint, read on its face, disclosed a cause of action. If it did, then the plaint cannot be rejected at this stage merely on the respondents' view of the merits.



17. *Prima facie*, given the Appellants and their Italian-origin comparators were locally recruited and had resided in India for at least two years prior to employment, the factual foundation for classifying them as a homogeneous category is cogent. This gives out *prima facie* reasons to venture into pay parity as a legal entitlement under the Presidential Decree. The Appellants should have been allowed to prove their assertions but, however, the case of the Appellants were misconstrued, and the facts were wrongly presumed to their detriment.

18. The factual dispute whether these employees indeed form a homogeneous group entitled to equal pay is material and complex, involving interpretation of relevant law and factual nuances like residency, job classification, and cost of living. Such issues cannot be summarily decided under Order VII Rule 11 of the CPC but require thorough examination at trial upon evidence. The same could not have been ascertained by the Court without giving an opportunity to the Appellants to lead evidence. Thus, the plaint rightly raises triable issues on this critical point.

19. The learned Single Judge, after repelling all other objections, wrongly proceeds (at para 31–32) to reject the plaint on the hypothesis that the claimed discrimination does not fall within the protective umbrella of Article 157, and thus, “there is no cause of action”.

20. As this Court has noted, limited grounds on which a civil court may reject a plaint at the threshold are exhaustive and narrowly defined. Clause (a) allows rejection “where it does not **disclose** a cause of action.” No other alleged defect in the plaintiff’s case is tenable at this stage except the grounds enlisted under clauses (a) to (f)



of Order 7 Rule 11 of the CPC. Thus, a plaint can be rejected only if, even assuming all averments in the plaint to be true, it fails on its face to show a right to sue. A plea that a plaint “does not disclose” a cause of action [clause (a)] is very different from the court concluding that, on the facts pleaded, no cause of action in fact existed. The former is a jurisdictional defect in pleading; the latter is a merits question not triable at the threshold.

21. In other words, one must ask whether the plaint *prima face* furnishes sufficient facts which, if proven true, give the Plaintiff the right to the relief claimed. A belief by the Court that the Appellants’ cause of action is legally untenable or unfounded is not a ground for rejection under Order VII Rule 11(a) of the CPC.

22. The Supreme Court and this Court have repeatedly held, notably in *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*¹ and *Popat and Kotecha Property v. State Bank of India Staff Assn*², that the test is not whether the claim in the plaint is likely to succeed, but rather whether the plaint, as pleaded, contains the basic averments essential to constitute a cause of action if ultimately substantiated by evidence. To substitute “non-disclosure” with “non-existence” of cause of action is to fundamentally distort the rule, for the former is a matter discernible on a plain reading, while the latter presupposes adjudication on merits or evaluation of evidence- a function reserved strictly for trial.

¹ (2006) 3 SCC 100

² (2005) 7 SCC 510



23. The Madras High Court deliberated on this issue in **Mr. Tim Boyd v. Mr. Kesiraju Krishna Phan³i**, while categorically holding as under:

“Para 23 “Whether a complaint discloses the cause of action as required under Order 7 rule 11, is a question which is a distinct and different one from the question as to whether the plaintiff can succeed in the suit based on such cause of action. It is needless to state that only the latter question involves the consideration of other allied questions with regard to the maintainability of the suit as well as the “locus-standi” of the plaintiff to file the suit. In my considered view, these questions, namely the maintainability of the suit or the locus-standi of the plaintiff to maintain such suit, are the questions which are to be relegated to be considered and decided along with the other issues on merits, after conducting trial, since these questions also involve consideration of facts and law.”

24. Lastly, learned counsel for the Respondents has also argued that the plaint was time barred and thus limitation is also a valid ground for rejection of plaint, although the learned Single judge, even while allowing his application, has rejected this ground. This Court concurs with the finding of the learned Single Judge that, *prima facie*, the present suit is not barred by limitation as the same is based on a recurring cause of action and that even if a part of the relief, i.e., payment of wages, sought in the plaint is barred by limitation, the Court can still exercise its discretion to mould the relief and grant recovery to the extent that is within limitation.

25. The Respondents counsel’s reliance on **Nikhila Dibyang Mehta & Anr. v. Hitesh P. Sanghvi & Ors.⁴** is misplaced, since it does not apply to a set of facts that give rise to a recurring cause of action and is only relevant to a ‘one time action’. As has already been held in a catena of the Supreme Court judgments like **MR Gupta v. Union of**

³ CDJ 2015 MHC 5184

⁴ 2025 SCC OnLine SC 779



2025:DHC:10749-DB



*India*⁵, the doctrine of laches/limitation is not applicable where separate or distinct cause of action occurs periodically. Thus, the Respondents cannot be allowed to press this contention before this court.

CONCLUSION:

26. In view of the foregoing, this Court finds that the learned Single Judge has erred in rejecting the plaint on the basis of “non-existence of cause of action.” The plaint, on its face, does disclose a cause of action and must therefore be allowed to proceed. Accordingly, the Impugned Order cannot stand. It is also reiterated that any assessment of the merits of the cause of action or applicability of defences (limitation, jurisdiction, etc.) will have to await fuller consideration on the record.

27. For these reasons, the present Appeal is allowed. The Impugned Order is hereby set aside. The application under Order VII Rule 11(a) of the CPC filed by the Respondents is dismissed. The plaint in CS(OS) 1352/2013 shall stand reinstated, and the suit will proceed to trial on its merits.

28. The present Appeal stands disposed of.

ANIL KSHETARPAL, J.

RENU BHATNAGAR, J.

DECEMBER 03, 2025/sp/kb