Civil Revision No.7958 of 2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7958 of 2013

Date of Decision: 9.1.2014

M/s DSM India Pvt. Ltd.

.....Petitioner

Versus

Mr.Maanav Yashroy & Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR.

Present: Mr.Shubham Bhalla, Advocate for the petitioner.

MEHINDER SINGH SULLAR, J.(Oral)

The conspectus of the facts and material, culminating in the commencement, relevant for deciding the instant revision petition and emanating from the record, is that plaintiff Maanav Yashroy son of S.R.Yashroy respondent No.1 (for brevity "the plaintiff") was working on the post of Commercial Manager with the petitioner -defendant DSM India Private Limited Company (for short "the defendant-company") as per employment agreement dated 1.12.2011. According to the plaintiff that as per the terms and conditions of the agreement, it was agreed between the parties that his employment can be terminated by either party by serving three months' prior notice or payment of salary in lieu thereof. The defendant company was stated to have issued notice of termination of service of plaintiff by ignoring the terms & conditions of the contract of employment. Therefore, his termination simpliciter is illegal and void.

2. Leveling a variety of allegations and narrating the sequence of

events, in all, the plaintiff has instituted the civil suit against the defendant company and its officers, for declaration to the effect that notice of termination issued by the defendant company is illegal, void and against the public policy, to direct it to comply with the contractual obligations prior to terminate the services of plaintiff and to award exemplary damages for his victimization by the company.

- 3. The defendant-company refuted the claim of plaintiff and filed the written statement, stoutly denied all the allegations contained in the plaint and prayed for dismissal of the suit.
- 4. During the pendency of the civil suit, the defendant company moved the application (Annexure P10) to reject the plaint under the provisions of Order 7 Rule 11 CPC as according to it, the civil suit filed by the plaintiff is not maintainable, in view of bar contained u/s 14 of the Specific Relief Act, 1963 (hereinafter to be referred as "the Act"). He can only claim the damages in pursuance of the contract of employment. On the basis of aforesaid grounds, the defendant company sought to reject the plaint.
- 5. The plaintiff contested the claim, filed the reply (Annexure P11) and prayed for dismissal of application under Order 7 Rule 11 CPC.
- 6. Sequelly, the trial Court, after taking into consideration the entire material on record, dismissed the application of defendant company under Order 7 Rule 11 CPC, by way of impugned order dated 2.11.2013 (Annexure P13).
- 7. The petitioner-defendant company did not feel satisfied and preferred the present revision petition to challenge the impugned order, invoking the provisions of Article 227 of the Constitution of India.

- 8. After hearing the learned counsel for the petitioner, going through the record with his valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant revision petition in this context.
- Ex facie the argument of learned counsel that since the suit 9. filed by the plaintiff is not maintainable, as per the provisions of Section 14 of the Act, so, the trial Court committed a legal mistake to dismiss the application of defendant company to reject the plaint, is neither tenable nor the observations of Hon'ble Apex Court in case State Bank of India and others v. S.N.Goyal (2008) 8 SCC 92 are at all applicable to the facts of the present case at this stage, wherein the Manager of State Bank of India was removed from service on account of proved misconduct during the course of enquiry. It was held that the State Bank of India is a statutory body governed by the State Bank of India Act, 1955 and the officers/employees of the Bank are governed by the rules framed under the Act. On the peculiar facts and in the special circumstances of that case, it was observed that the contract of personal service is not specifically enforceable, having regard to bar contained in Section 14 of the Specific Relief Act, 1963. Even if termination of contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of an employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. However, employee is entitled to damages only for breach of contract.
- 10. Possibly, no one can dispute with regard to the aforesaid observations of the Hon'ble Supreme Court, but to me, the same would not

come to the rescue of the defendant company at the stage of deciding the application for rejection of plaint under Order 7 Rule 11 CPC. As to whether the contract of employment between the parties is voluntary & genuine or otherwise, whether its terms & conditions were violated or not and what is its effect, would be the moot points to be decided during the course of trial after receiving the evidence by the trial Court.

Assuming for the sake of argument (though not admitted), if the 11. suit is barred u/s 14 of the Act, even then, the plaintiff would be entitled to damages if he is able to prove illegality in termination of his employment as he has challenged the notice of termination on the basis of violation of terms & conditions, discrimination and against the public policy. Therefore, the plaint as such cannot be rejected. All the issues raised are pure mixed questions of law and facts and cannot possibly be determined without adducing the evidence by the parties. All the contentions, now sought to be urged on behalf of defendant-company, are not at all relevant at this initial stage and the same may be deeply necessary to be considered at the time of final arguments during the course of trial by the trial Court. Moreover, it is now well settled principle of law that plaint can only be rejected if it squarely falls within the ambit and four corners of Order 7 Rule 11 CPC and not otherwise. An identical question came to be decided by this Court in case Rajesh Grover v. Smt. Rita Khurana and others 2005 (4) RCR (Civil) 721: (2006-2) PLR 244. After examining the relevant provisions of Order 7 Rule 11 CPC, it was held as under:-

"The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise this power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it should be so done in exceptional-circumstances. The truthfulness of narration of facts in the plaint or

the written statement are not to be judged at the stage of rejection of plaint. That is a matter of evidence which the Court shall go into at the trial of the case. The weakness or the strength of the case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit."

- Therefore, the ratio of law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand. Above-all, such intricate questions cannot legally be decided by this Court at this initial stage in the absence of evidence on record. If all such points, which require determination by the trial Court, are to be decided by this Court in the garb of petition under Article 227 of the Constitution of India, then, the sanctity of the trial would pale into insignificance and amount to nullify the statutory procedure of trial as contemplated under the Code of Civil Procedure, which is not legally permissible.
- 12. In this manner, the trial Court appears to have examined the matter in right perspective and dismissed the application under Order 7 Rule 11 CPC filed by petitioner defendant-company, by virtue of impugned order, which, in substance, is as under (Paras 10 and 11):-
  - "10. It is suit for declaration with consequential relief of damages. As per plaint, only which is relevant stage, the plaintiff has challenged the termination order issued by defendant company and thereby has sought the relief of declaring the impugned termination order as illegal. Along with this, the plaintiff has prayed for directions to the defendant company to comply with the contractual obligations prior to terminating the plaintiff. Consequently, the plaintiff has sought the relief of exemplary damages to be awarded to the plaintiff. The plaintiff has not prayed for reinstatement in the defendant company. Hence the question of enforcing the specific contract between the parties does not arise. The plaintiff is not enforcing the personal contract by getting directions to the defendant company to follow due process of law prior to terminate the plaintiff. It is a mixed question of law and fact as to whether the plaintiff company followed the proper procedure before terminating the plaintiff from his job and has to be proved by cogent evidence at the stage of evidence. This is not the stage for this matter to be looked in. As far as the contention raised by the counsel for applicant regarding personal contracts and not to enforce the same etc. is related then it is pertinent to mention here that any

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contract/agreement whether personal commercial or specific does not give power to any body to bye pass the due procedure of law as well as contractual obligations between the parties. Meaning thereby, if defendant has any power to exercise then it has to be exercised by following due process of law and if question of not following due process has been raised by the plaintiff then he has the right to prove the same at the stage of

evidence.

11. Moreover, the plaintiff has sought the relief of exemplary damages in consequences of relief of declaration. Hence, the contention of applicant that the relief of declaration simpliciter is not maintainable, is of no consequence. Hence prima facie the plaintiff has cause of action to file the present suit and this suit is not barred by any law. Hence, plaint

is not liable to be rejected u/O 7 Rule 11 CPC."

13. Meaning thereby, the trial Court has recorded the cogent grounds in this regard. The learned counsel for petitioner did not point out any material/ground, muchless cogent, so as to warrant any interference in the impugned order. Such order, containing valid reasons, cannot possibly be interfered in the exercise of revisional jurisdiction of this Court under Article 227 of the Constitution of India, unless and until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for petitioner, so, the impugned order deserves to be and is hereby maintained in the obtaining

circumstances of the case.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

15. In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition is hereby dismissed as such.

Sd/-

9.1.2014 **AS**  (Mehinder Singh Sullar)

Judge

Whether to be referred to reporter? Yes/No