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

% ***Date of decision: 6th July, 2022.***

+ **CS(OS) 251/2020**

HEMA GUSAIN

..... Plaintiff

Through: Mr. Alakh Alok Srivastava and Mr. Chandan Kumar Singh, Advocates.

versus

INDIA INTERNATIONAL CENTRE AND ORS. Defendants

Through: Mr. Meet Malhotra, Senior Advocate with Mr. Ravi S.S. Chauhan, Ms. Pallak Singh, Ms. Chaistha Channa and Ms. Manvi Rastogi, Advocates for D-1.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

I.A. 10179/2021 (of the defendant no.1 u/O-VII R-11 of CPC)

1. The present application has been filed on behalf of the defendant no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint on the following grounds:

- i. The plaint does not disclose any cause of action.
- ii. The suit is barred by law.

2. Notice in the present application was issued on 13th August, 2021. Pursuant to the said notice, a reply was filed on behalf of the plaintiff on 11th

September, 2021. Thereafter, a rejoinder was filed on behalf of the defendant no.1 on 21st October, 2021.

3. In the plaint filed by the plaintiff, it has been pleaded that:
 - i. The plaintiff had joined the defendant no.1 on 1st January, 1995 as a Personal Assistant.
 - ii. On 30th April, 2017, the plaintiff was appointed as the Secretary (Designate) on the basis of selection done by the Search Committee appointed by the defendant no.1.
 - iii. On 23rd June, 2017, the term of the previous President of the defendant no.1 got over and the defendant no.2 was appointed as the next President.
 - iv. The defendant no.2 had personal animosity against the plaintiff.
 - v. On 29th July, 2017, an Office Order was issued by the defendant no.1 that appointment of the plaintiff as Secretary be kept in abeyance.
 - vi. On 8th August, 2017, the plaintiff received another notice from the defendant no.1 stating that the salary and perks of the plaintiff would be reversed and the excess amount paid to the plaintiff would be recovered.
 - vii. A Civil Suit No.1040/2017 was filed by the plaintiff before the Patiala House Courts, impugning the office order dated 29th July, 2017.
 - viii. On 9th October, 2017, the plaintiff issued a resignation letter, which was accepted by the defendant no.1 on 10th October, 2017.
 - ix. On 11th October, 2017, the aforesaid suit was withdrawn by the plaintiff. It is the contention of the plaintiff that the aforesaid resignation was not voluntary and was forced upon the plaintiff by the defendants and therefore, amounts to illegal termination

4. Accordingly, the present suit was filed on behalf of the plaintiff seeking the following reliefs:

- a) *Pass a Judgment and Decree of Damages and Compensation of Rs.2,02,00,000/- (Rupees Two Crore and Two Lakh Only) in favour of the Plaintiff and against the Defendants, jointly and severally, alongwith pendelite and future interest @9% per annum, till the date of full realization of entire amount, for illegal termination of service of the Plaintiff by the Defendants; 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;*
- d) *Any other order of further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.*

5. Senior counsel appearing on behalf of the defendant no.1, in support of the present application, has made the following submissions:

- i. The plaintiff had voluntarily resigned from her service. There is nothing to suggest that the plaintiff was forced to resign.
- ii. The plaintiff had withdrawn the first suit without seeking liberty to file a fresh suit. Therefore, the fresh suit, which is based on substantially the same pleadings, is barred.
- iii. Even if it is assumed that the plaintiff was wrongfully terminated, in light of the law laid down by the Supreme Court in ***SS Shetty V. Bharat Nidhi Ltd***, AIR 1958 SC 12, followed by

this Court in *SDU Travels Pvt Ltd Vs. Vipin Sharma*, AIR 2017 Del 92 and *G4S Security Services (I) Pvt Ltd V. Dhiraj Negi*, 2018 SCC OnLine Del 10739, the plaintiff can at best claim compensation for the notice period, which the plaintiff was entitled to under the terms of her employment, which was three months.

- iv. Reliance is placed on the judgment of the Supreme Court in *Dahiben V. Arvinbhai Kalyanji*, (2020) 7 SCC 366, to contend that where the Court finds the suit to be manifestly vexatious and without any merit, and does not disclose a right to sue, the Court would be justified in exercising the power conferred under Order VII Rule 11 of the CPC to reject the plaint. The power conferred under Order VII Rule 11 of the CPC may be exercised by the Court at any stage of the suit. Further, the provision of Order VII Rule 11 of the CPC is mandatory in nature.
- v. Reliance is also placed on the judgment of the Supreme Court in *Bhargavi Construction And another Vs. Kothakapu*, (2018) 13 SCC 480, to submit that the expression "*barred by any law*" occurring in clause (d) of Rule 11 of Order VII of the CPC, not only includes any Act enacted by the legislature, but also includes "judicial decisions of the Supreme Court", which are binding on all the Courts in India by virtue of Article 141 of the Constitution of India.

6. On the other hand, the counsel appearing on behalf of the plaintiff has made the following submissions:

- i. The previous suit filed was simplicitor withdrawn by the

plaintiff and there was no adjudication on merits. Therefore, the principle of res judicata will not apply. Reliance is placed on the judgment of the Supreme Court in *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat*, (2021) 9 SCC 99.

- ii. The cause of action for filing the present suit was entirely different from the cause of action for filing the previous suit.
- iii. The rejection of the plaint under Order VII Rule 11 of the CPC is a drastic power conferred on the Court and therefore, it has to be strictly expressed. Reliance is placed on the judgment of the Supreme Court in *P.V. Guru Raj Reddy & Anr. Vs. P. Neeradha Reddy & Ors.*, 2015 (8) SCC 331.
- iv. The plaintiff would be entitled to damages beyond the notice period and various factors have to be considered by the Court while granting compensation, which can only be proved in a trial. Reliance is placed on the judgment of the Supreme Court in *Kailash Singh Vs. The Managing Committee, Mayo College, Ajmer & Ors.*, 2018 (18) SCC 216.

7. I have heard the counsels for the parties.

8. As regards the submissions made on behalf of the defendant no.1 that the present suit is barred on account of earlier suit having been withdrawn by the plaintiff, I am of the view that the cause of action for filing the present suit is entirely different from that of the earlier suit. There may be factual narrations that are common to both the suits, but the cause of action and reliefs sought are entirely different.

9. In the present suit, the cause of action is based on the forced resignation of the plaintiff, amounting to illegal termination and

compensation in respect thereof has been sought, whereas in the previous suit, the cause of action was based on the Office Order dated 29th July, 2017 issued by the defendant no.1, to keep appointment of the plaintiff as secretary in abeyance.

10. Counsel for the plaintiff has correctly placed reliance on the judgment of the Supreme Court in *Srihari Hanumandas Totala* (supra). The relevant observations of the Supreme Court in the said judgment are set out below:

*“25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) **the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit;** (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) **that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.**”*

*25.4. **Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.**”*

11. In light of the aforesaid observations, taking into account that the previous suit was not decided on merits, but was withdrawn by the plaintiff, the plea of res judicata would be beyond the scope of Order VII Rule 11(d) of the CPC. Therefore, I do not find any merit in the submission of the defendant no.1 that the present suit is not be maintainable.

12. A reading of the plaint would disclose that the entire case of the plaintiff is that there was a power tussle in the management of the defendant no.1 in 2017 and the plaintiff became a victim of such tussle. Circumstances were created so that she was constrained to resign. It is further averred that the said resignation was not a voluntary resignation but a forced resignation

and therefore, amounted to illegal termination, for which the plaintiff is entitled to compensation. It is for the plaintiff to ultimately prove these averments in trial. However, at this stage, while deciding an application under Order VII Rule 11 of the CPC, the Court has to only look at the averments made in the plaint. The scope of application under Order VII Rule 11 of the CPC is limited only to the extent whether or not in terms of averments made in the plaint and the documents filed along with the plaint, the suit is maintainable. Reference in this regard may be made to the judgments of the Supreme Court in ***Dahiben*** (supra) and ***Srihari Hanumandas Totala*** (supra) followed by me in ***Mr. Toshiaki Aiba as the Bankruptcy Trustee of the Estate of Vipin Kumar Sharma Vs. Mr. Vipin Kumar Sharma & Anr.***, 2022 SCC Online Del 1260. The reliance placed by the defendant no.1 on the judgment of the Supreme Court in ***Dahiben*** (supra) is misplaced as there is nothing to suggest that the present suit is vexatious or does not disclose the right to sue.

13. In view of the aforesaid averments made in the plaint, I do not think this is a fit case to exercise jurisdiction under Order VII Rule 11 of the CPC to reject the claim.

14. Reliance is placed on behalf of the defendant no.1 on the judgment of the Supreme Court in ***Bhargavi Construction*** (supra). Relevant observation of the Supreme Court is set out hereunder:

“17. It was his submission that the expression “barred by law” occurring in clause (d) of Rule 11 of Order 7 not only includes any Act enacted by the legislature creating a “bar” but the expression “law” includes therein “judicial decision of the Supreme Court” also, which are binding on all the courts in the country by virtue of Article 141 of the Constitution of India”

15. Reliance is also placed on behalf of the defendant no.1 on the judgment of the Supreme Court in *SS Shetty* (supra). The relevant observations of the Supreme Court made in paragraph 12 of the judgment are set out hereinafter:

“12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. “They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages.” (Chitty on Contracts, 21st Edn., Vol. (2), p. 559 para 1040).”

16. The aforesaid judgment of the Supreme Court has been followed by this Court in *SDU Travels* (supra) and *G4S Security* (supra).

17. Undoubtedly, the law laid down by the Supreme Court would be covered under the expression “*barred by any law*” occurring in Order VII Rule 11(d) of the CPC. However, it has to be seen whether the paragraph quoted above expresses a clear position of law and whether the same can be relied upon for rejecting the plaint under the provisions of Order VII Rule 11 of the CPC.

18. In the passage quoted above, the Supreme Court has observed that if the contract expressly provides that it is terminable on a month's notice, the

damages payable on termination will be “*ordinarily*” a month’s wages. The expression “*ordinarily*” used in the passage above, suggests that in some cases further damages can be awarded by the Court. The quantum of damages to be awarded to the plaintiff can only be decided after the trial. Further, the damages can be awarded only if the court comes to the conclusion that the resignation was not voluntary and amounted to unlawful termination. The question whether the termination was unlawful can only be determined in a trial. Therefore, a trial would be necessary in the facts and circumstances of the present case.

19. It may be pertinent to mention here that the judgment relied upon by the defendant no.1 in *SS Shetty* (supra), *SDU Travel* (supra) and *G4S Security* (supra) were not in the context of Order VII Rule 11 of the CPC. Even if it is assumed that the plaintiff is not entitled to compensation beyond the notice period, a trial would be necessary to determine whether she was unlawfully terminated or not. So, the plaint cannot be rejected on the basis that the quantum of damages claimed in the plaint cannot be granted.

20. It is a settled principle of law that there cannot be any partial rejection of the plaint under Order VII Rule 11 of the CPC. Either the plaint has to be rejected as a whole or there can be no rejection at all. In this regard reference may be made to the judgment of the Supreme Court in *Madhav Prasad Aggarwal and Anr. Vs. Axis Bank Limited And Anr.*, (2019) 7 SCC 158 and *Roop Lal Sathi Vs. Nachhattar Singh Gill*, (1982) 3 SCC 487, which has been followed by me in *Dr Ramesh Chander Munjal & Ors Vs. Dr. Suraj Munjal & Ors.*, 2022 SCC Online Del 1045.

21. In light of the aforesaid observations, the application under Order VII Rule 11 of the CPC is devoid of merits and the same is dismissed.

22. Any observations made herein are limited to the scope of the present application and would not have any bearing on the trial of the case.

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23. List before the Joint Registrar on 16th August, 2022, for admission/denial of documents and marking of exhibits.

24. List before the Court on 11th October, 2022, for framing of issues.

JULY 6, 2022

at

AMIT BANSAL, J.

