

(2014) 07 DEL CK 0032
In the Delhi High Court
Case No : FAO (OS) 298/2014

Lakshmi Narayan B. (Shri)

APPELLANT

Vs

International Orthopedic Rehabilitation and Prevention
(India) Pvt. Ltd.

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2014) 6 AD 750

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Ashok Gupta and Laxmi Gupta, Advocate for the Appellant; Khalid Arshad, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Caveat No. 566/2014

1. The counsel for the respondents/caveators has appeared. The caveat stands discharged.

CM No. 10756/2014 (for exemption)

Allowed, subject to just exceptions.

2. The application is disposed of.

FAO(OS) No. 298/2014 & CM No. 10755/2014 (for stay)

3. This appeal under Order XLIII Rule 1(r) of the CPC impugns the order dated 06.05.2014 (of the learned Single Judge of this Court exercising Ordinary Original Civil Jurisdiction in CS(OS) No. 1071/2014 filed by the appellant/plaintiff) of dismissal of the application being IA No. 6880/2014 filed by the appellant/plaintiff under Order XXXIX Rules 1 & 2 of the CPC.

4. We have heard finally the counsel for the appellant/plaintiff and the counsel for the respondents at this stage of admission only.

5. The appellant/plaintiff instituted the suit from which this appeal arises for the reliefs of, i) declaration that the termination of services of the appellant/plaintiff as the Administration Manager of the respondent/defendant No. 1 company is null and void; ii) for mandatory injunction directing the respondent/defendant No. 2 being the Chairman & Joint Director of the respondent/defendant No. 1 company to allow the appellant/plaintiff to continue in employment of the respondent No. 1 as Administration Manager; iii) for permanent injunction restraining the respondents/defendants from interfering with the appellant/plaintiff so continuing in employment; and, (iv) for recovery of damages in the sum of Rs. 27,00,000/-.

6. The plaint was accompanied with the application aforesaid for interim relief restraining the respondents/defendants from interfering with the appellant/plaintiff so continuing in employment.

7. The learned Single Judge vide the impugned order has dismissed the application for interim relief observing that as per the contract of employment of the appellant/plaintiff with the respondent/defendant No. 1 also, the employment of the appellant/plaintiff was terminable by a three months notice and that a contract of private employment, as the contract of the appellant/plaintiff with the respondent/defendant No. 1 was, is distinct from public employment. Reliance in this regard was placed on the judgment of this Court in Shri L.M. Khosla Vs. Thai Airways International Public Company Limited and Another : .

8. The counsel for the appellant/plaintiff has invited our attention to the "Service Rules for Staff" of the respondent/defendant No. 1 company applicable to all employees whether in managerial position or otherwise and prescribing the age of retirement of 58 years and has contended that the appellant/plaintiff is only 55 years of age and has three years of service left. Attention is also invited to Ahmedabad Education Society Vs. Gilbert B. Shah and Others, holding that the employees were entitled to continue up to 60 years of age, being the age of retirement in that case.

9. Both the aforesaid contentions are misconceived. The Service Rules of the respondent/defendant No. 1 Company relied upon, themselves under the head "Termination of Service" provide that except as may be provided in the letter of appointment, services of an employee may be terminated at any time by three months notice in writing or salary in lieu thereof. It is thus not as if even under the said Rules every employee has a right to continue in employment up to the age of retirement of 58 years.

10. As far as the judgment relied upon is concerned, the employment therein was governed by the Bombay Primary Education (Gujarat Amendment) Rules, 1978 and cannot be equated with the employment of the appellant/plaintiff with the respondent/defendant No. 1 which is a private limited company and which

has itself drawn up its Service Rules.

11. Else the legal position is abundantly clear from the plethora of judgments discussed in the judgment aforesaid of this Court in L.M. Khosla (supra). Reference in this regard may also be made to Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, . The interim relief claimed by the appellant/plaintiff is in the nature of enforcement of a contract of personal employment and which is not permissible in law. The remedy if any of the appellant/plaintiff is of damages only and which has already been claimed in the suit by seeking damages equivalent to the salary for the balance period for which the appellant/plaintiff claims to be entitled to continue in employment. We therefore do not find any merit in the appeal which is dismissed. We however refrain from imposing any costs on the appellant/plaintiff.