

(2012) 08 RAJ CK 0171

In the Rajasthan High Court

Case No : Civil Revision Petition No. 78 of 2010

M/s. Hong Kong and Shanghai Banking Corporation Ltd. and
Another

APPELLANT

Vs

Ms. Neeti Bhatnagar

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115
Constitution of India, 1950 — Article 12, 14, 309, 311(2)
Specific Relief Act, 1963 — Section 14, 14(1), 14(1)(b)

Citation : (2013) 2 CDR 1135 : (2013) 136 FLR 657

Hon'ble Judges : Gopal Krishna Vyas, J

Bench : Single Bench

Advocate : R.K. Thanvi and Narendra Thanvi, for the Appellant; Himanshu Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishna Vyas, J.—In this revision petition filed u/s 115, C.P.C., the petitioner-defendants are challenging validity of order dated 8.4.2010 passed by the Civil Judge (Sr. Dn.), Jodhpur in Original Suit No. 23/2010 filed by the respondent-plaintiff for mandatory and declaratory injunction.

As per facts of the case, in the suit filed by plaintiff-respondent for mandatory and declaratory injunction against the petitioner-defendants to challenge the letter dated 9.3.2010, by which, the petitioner Bank decided to put the services of the respondent-plaintiff to an end.

In the suit an application under Order 7 Rule 11, C.P.C. was filed by the petitioner-defendant with the prayer that suit is barred by law on the ground that the plaintiff-respondent is in private employment which normally would be governed by terms of the contract between the parties, therefore, the relief sought in the suit cannot be granted by the civil Court as the suit for enforcing the contract of personal service is clearly barred u/s 14 of the Specific Relief Act,

1963. The application filed by the petitioner-defendants was rejected FLR(1)-42 vide, order dated 8.4.2010. Instant revision petition has been filed for challenging the said order dated 8.4.2010.

2. Learned Senior Advocate Shri R.K. Thanvi, appearing on behalf of the petitioner vehemently argued that order impugned deserves to be quashed solely on the ground that it is a case of enforcement of contract and relief sought in the suit cannot be granted by the civil Court because in the suit the petitioner has prayed for enforcing the terms and conditions of contract of personal service which is clearly barred u/s 14 of the Specific Relief Act, 1963. It is also submitted that the trial Court has committed a grave illegality in exercising its jurisdiction to try the suit because Court has failed to appreciate that case of the plaintiff-respondent is not related to any service rules framed under Article 309 or 311(2) of the Constitution of India nor there is any relation of any statutory rules. In fact, the services of the respondent-plaintiff are regulated by personal service contract, therefore, the suit is barred under the provisions of the Specific Relief Act. Therefore, the order impugned may be quashed and application filed under Order 7 Rule 11, C.P.C. may be allowed.

3. In support of his contention, learned Counsel for the petitioner vehemently argued that as per the judgment in Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, the suit is not maintainable; but, this aspect of the matter has not been considered by the trial Court while deciding application filed under Order 7 Rule 11, C.P.C., therefore, the order impugned may be quashed and application filed under Order 7 Rule 11, C.P.C. may be allowed.

4. Per contra, learned Counsel appearing for the respondent submits that reasons given by the trial Court for rejecting the application filed under Order 7 Rule 11, C.P.C. do not require any interference because admittedly the respondent-plaintiff was working on the post of Manager and his services were terminated without following procedure laid down in the rules for which no other remedy is available except the civil suit because the post of manager does not fall under the definition of workman as per the Industrial Disputes Act; so also, the order of termination of services cannot be challenged by way of filing writ petition before this Court because the petitioner-defendant Bank is not "State" within the meaning of Article 12 of the Constitution of India. Similarly, the appointment of the petitioner cannot be called to be made u/s 14(1) of the Specific Relief Act, 1963, therefore, It cannot be said that any error has been committed by the trial Court. Further, learned Counsel for the respondent invited my attention towards judgment Rajasthan SRTC and Others Vs. Mohar Singh, in which, the Hon"ble apex Court held that civil Court may have limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit, therefore, the order impugned does not require any interference.

5. After hearing learned Counsel for the parties, I have perused the order impugned, so also, entire record of the case.

6. It emerges from the facts that respondent-plaintiff has challenged the decision taken by the petitioner-defendant Bank whereby it is decided to terminate the services of the respondent-plaintiff. Admittedly, the terms and conditions of service of the respondent is governed by the provision. It appears from the facts that there is total non-compliance of the provisions with regard to disciplinary action, therefore, it cannot be said that it is a case of enforcement of contract.

7. Further, the remedy of raising industrial dispute is also not available to respondent-plaintiff because he was appointed on the post of Manager and post of manager does not fall under the definition of "workman" as defined in the Industrial Disputes Act, 1947. It is also worthwhile to observe that the decision for terminating the services of the plaintiff-respondent cannot be challenged by way of filing writ petition before this Court because the petitioner-defendant Bank is not State within the meaning of Article 12 of the Constitution of India. In view of the above, the only remedy available to the respondent-plaintiff is to file civil suit.

8. In the case of R.S.R.T.C. and others v. Mohar Singh (supra), the Hon'ble Supreme Court has categorically held in para 21 and 22 of the judgment that order of civil Court declaring dismissal of service of bus driver of State Transport Corporation as being passed in violation of principles of natural justice cannot be said to be without jurisdiction; and, in the event, it is found that the action on the part of a State is violative of the Constitutional provisions or the mandatory requirements of a statute or statutory rules, the civil Court would have the jurisdiction to direct reinstatement with full (sic) wages. Para 11 and 20 of the said judgment (2008 AIR SC W 3567) are as follows:

11. Civil Court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit. It may not be entitled to sit in appeal over the order passed in the disciplinary proceedings or on the quantum of punishment imposed. It may not in a given case direct reinstatement in service having regard to section 14(1)(b) of the Specific Relief Act, 1963 but, it is a trite law that where the right is claimed by the plaintiff in terms of common law or under a statute other than the one which created a new right for the first time and when a forum has also been created for enforcing the said right, the civil Court shall also have jurisdiction to entertain a suit where the plaintiff claim benefit of a fundamental right as adumbrated under Article 14 of the Constitution of India or mandatory provisions of statute or statutory rules governing the terms and conditions of service.

20. The decisions referred to hereinbefore clearly brings about a distinction which cannot be lost sight of. If a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the civil Court would be barred, but if no such right is claimed, civil Court will have jurisdiction.

The judgment cited by learned Counsel for the petitioners, reported in Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, is not applicable in the present case because

suit has been filed by the petitioner for mandatory injunction and declaration and in that case the facts were altogether different.

In view of the above, I see no reason to interfere in exercise of the revisionary jurisdiction.

Therefore, this revision petition is accordingly dismissed.