
(2014) 06 MAD CK 0262
In the Madras High Court
Case No : O.S.A. No. 385 of 2013

The Madras Race Club

APPELLANT

Vs

M. Victor

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 3, Order 7 Rule 11, Order 7 Rule 11(b), Order 7 Rule 11(d)
Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 2(k), 2(oo)(bb), 2(q), 2(s), 33(2)
Specific Relief Act, 1963 — Section 14(1)(b), 16
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 25, 6, 6(3)

Citation : (2014) 4 CTC 10 : (2014) 3 LW 260

Hon'ble Judges : M. Venugopal, J; M. Jaichandren, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned.

2. This original side appeal has been filed against the order passed by the learned single Judge, dated 23.10.2013, in Application No. 1207 of 2013, in C.S. No. 72 of 2013. The appellant herein had filed the said application praying for the rejection of the plaint filed in C.S. No. 72 of 2013, under Order VII Rule 11 of the Civil Procedure Code, 1908.

3. The learned single Judge had dismissed the application filed by the appellant herein, by his order, dated 23.10.2013, stating that the appellant had not made out a case for the rejection of the plaint, under Order VII Rule 11 clause (b), where the relief claimed is under valued and under clause (d), where the suit appears from the statement in the plaint to be barred by any law.

4. Mr. R. Viduthalai, the learned senior counsel, appearing on behalf of the appellant, had submitted that the application in Application No. 1207 of 2013,

had been filed, under Order VII Rule 11 of the CPC 1908, for the rejection of the plaint filed in the suit, in C.S. No. 72 of 2013, stating that the plaintiffs in the said suit had made an indirect claim for employment, alleged to have been denied by the appellant.

5. He had further submitted that the claims made by the plaintiffs in the suit and the reliefs prayed for therein are relating to an Industrial Dispute, within the meaning of section 2(k) of the Industrial Disputes Act, 1947. Hence, it can be agitated only before the appropriate forum, specially created under the provisions of the Industrial Disputes Act, 1947, and not before the civil Court. The reliefs claimed by the plaintiffs in the suit, who are the respondents herein, are in the nature of enforcement of contracts of personal service, which is specifically barred u/s 14(1)(b) of the Specific Relief Act, 1963. Further, the plaintiffs cannot seek the reliefs, as prayed for by them, for the enforcement of contracts of personal service, by way of a declaration, as it is barred u/s 16 of the Specific Relief Act, 1963. Therefore, the declaratory reliefs prayed for by the plaintiffs and the prayer for the grant of an order of injunction cannot be sustained in the eye of law.

6. The learned counsel had further submitted that the request for the grant of an order of permanent injunction, by the plaintiffs in the suit, restraining the defendant therein, the appellant in the present appeal, from denying their wages for the period, from 17.12.2012 onwards, is partly in the nature of recovery of money alleged to be the arrears of salary and partly in the nature of mandatory injunction directing the defendant in the suit to pay the future wages. Further, the plaintiffs cannot claim employment, by way of the declaratory reliefs. No direction can be obtained, in respect of the payment of the arrears of salary, said to be due to them, by way of an order of injunction.

7. The learned counsel had further submitted that the first plaintiff in the suit, in C.S. No. 72 of 2013, had filed a C.P. No. 335 of 2013, on the file of the III Additional Labour Court, Chennai, u/s 33(2) of the Industrial Disputes Act, 1947.

8. The learned counsel had submitted that the plaintiffs in the suit, the respondents in the present appeal, had valued the suit, for the relief of declaration, for each plaintiff, at Rs. 15,250/-. As such, the suit had been valued at Rs. 25,01,000/-, in order to file the suit before this Court. The declaratory relief claimed by the 164 plaintiffs in the suit is in respect of the alleged contract of personal service said to have been entered into independently with the appellant herein. The valuation of the suit, by the respondents herein, is improper and therefore, the plaint filed by them in the suit, in C.S. No. 72 of 2013, is liable to be rejected, under Order VII Rule 11(b) of the Civil Procedures Code, 1908, for under valuation of the suit. The cause of action for each one of the plaintiffs is distinct and separate in nature. Therefore, the plaintiffs ought to have valued the suit relief of declaration, for each one of the plaintiffs, independently, as per the provisions of Section 25 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. Even though the first plaintiff had filed the suit on

his behalf and on behalf of 163 other plaintiffs and had signed the vakalat and the pleadings based on the alleged authorisation letter, contrary to Order III Rule 1 of the Civil Procedures Code, 1908, no leave had been obtained from this Court before filing the suit, in C.S. No. 72 of 2013. Hence, the said suit is not maintainable in law.

9. The learned counsel had further submitted that the plaintiffs had no valid cause of action for the filing of the suit and the averments made in the plaint do not disclose any valid cause of action for the filing of the said suit. The plaintiffs had not shown the existence of any right, which is enforceable before the civil Court. Hence, the plaint is liable to be rejected on the ground of non disclosure of the cause of action for the filing of the suit.

10. The learned counsel had further submitted that the application filed for the rejection of the plaint, in A. No. 1207 of 2013, had been dismissed by the learned single Judge stating that the defendant in the suit, the appellant herein, had not disclosed as to whether the plaintiffs in the suit had been terminated from service. The contention raised in the affidavit filed in support of the application could only be relating to Section 2(o)(bb) and Section 2(s) of the Industrial Disputes Act, 1947. If the plaint is rejected, it would be extremely difficult for the plaintiffs to establish their case by proving that they are "workmen", within the meaning of section 2(s) of the Industrial Disputes Act, 1947. Various requirements had to be satisfied before their claims are accepted by the appropriate forum established under the provisions of the Industrial Disputes Act, 1947.

11. It had also been stated that the learned single Judge had held that the plaintiffs cannot be non-suited on the ground that they were having an efficacious remedy before the appropriate forum established under the Industrial Disputes Act, 1947. The stand taken by the defendant in the suit indicates that the jurisdiction of the labour Court, to entertain the claims of the plaintiffs, would be seriously disputed. The defendant cannot be allowed to keep all the cards close to their chest and to non suit the workers in the civil court and to prevent them from approaching the appropriate forum established under the provisions of the Industrial Disputes Act, 1947.

12. It had also been stated that the learned single Judge had held that the defendant had not taken a positive stand stating that the plaintiffs had been terminated and that it would be open to them to approach the appropriate forum established under the Industrial Disputes Act, 1947. It had been held that, in such a case, it would not be appropriate to entertain the application filed by the defendant in the suit to reject the plaint, by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908.

13. The learned counsel had further submitted that the findings of the learned single Judge are contrary to the well settled principles of law relating to Order VII Rule 11 of the Civil Procedure Code, 1908. It is clear that the claim for rejection

of the plaint can only be based on the averments made in the plaint filed in the suit concerned. The defence raised by the defendant in the suit would be immaterial. The learned single Judge ought to have decided the question as to whether the plaintiffs had camouflaged the issues raised in the plaint and the reliefs prayed for in the suit to make it appear as if the dispute between the plaintiffs and the defendant is of a civil nature. The dispute, which had arisen between the plaintiffs and the defendant in the suit, are purely out of the rights and obligations enshrined in the provisions of the Industrial Disputes Act, 1947. The findings of the learned single Judge, relying on the decision of the Supreme Court, rendered in *Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa*, , relates to a different set of facts and circumstances and therefore, the said decision would not be applicable to the present case.

14. The learned counsel had further submitted that the learned single Judge had held that what is prohibited by Section 14(1)(b) of the Specific Relief Act, 1963, is only the enforcement of the contract of personal service and that there is no bar for the grant of damages in the suit after the trial is completed. The said reasoning of the learned single Judge is erroneous. The plaint filed by the plaintiffs in the suit cannot be sustained on the assumption that the plaintiffs may amend the same and seek a different relief, at a future date. The application for the rejection of the plaint has to be dealt with merely on the averments made in the plaint and the reliefs prayed for by the plaintiffs, on the date of the filing of the suit. The future possibilities cannot be considered for arriving at the conclusion to reject the application.

15. It had been further submitted that the learned single Judge ought to have seen that the plaintiffs, who had wanted to sustain the plaint, circumventing the bar u/s 14(1)(b) of the Specific Relief Act, 1963, should specifically plead in the plaint as to how the case falls within any one of the exceptions specified under the relevant provisions. Instead, the learned single Judge had held that such issues could be decided only during the trial in the suit, based on evidence. The burden cannot be shifted on the defendant to show that the case does not fall within the exceptions mentioned under the relevant provisions of law. As the plaintiffs had failed to show, *prima facie*, that the suit is not barred by Section 14(1)(b) of the Specific Relief Act, 1963, the plaint is liable to be rejected, under Order VII Rule 11(d) of the Civil Procedure Code, 1908.

16. The learned counsel had further stated that the finding of the learned single Judge, that the cause of action is singular and common for all 164 workmen in the suit, is erroneous. It is for the individual workman concerned to establish his right, independently, and to prove that he has a rightful claim and that a concomitant liability is cast on the management of the defendant club. The plaintiffs should not be allowed to maintain a single suit, as the cause of action, if any, for each one of the plaintiffs could differ. They should not be allowed to seek their reliefs, by filing a single suit, as they had done in the present case. Further, the plaint filed, by the plaintiffs in the suit, is liable to be rejected, due to the

undervaluation of the suit, as per the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. The valuation of the suit is to be based on the cause of action and the reliefs prayed for. In the present case, the plaintiffs cannot have a common cause of action, collectively, and they cannot seek common reliefs. The case of the plaintiffs is that the contracts of employment are independent and therefore, they could claim specific rights, independently, based on such contracts. In such circumstances, it could be seen that the learned single Judge had erred in holding that Section 6(3) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, is not applicable to the present case. Therefore, the plaint filed by the plaintiffs, without paying the proper court fees, is liable to be rejected, under Order VII Rule 11(b) of the Civil Procedure Code, 1908.

17. The learned counsel appearing on behalf of the appellant had further submitted that each one of the plaintiffs should have valued the suit relief, separately, at Rs. 15,250/-. However, they had valued the suit just above Rs. 25,01,000/- to bring it within the jurisdiction of this Court. As the plaintiffs had not properly valued the suit and as they had failed to pay the proper court fees, as if the plaintiffs in the suit had a common cause of action, falsely, the plaint should have been rejected, under Order VII Rule 11(b) of the Civil Procedure Code, 1908.

18. It had also been stated that the learned single Judge had erroneously rejected the application finding fault with the appellant, the defendant in the suit, stating that it had failed to disclose its defence, in respect of the alleged claims made by the plaintiffs in the suit.

19. It had also been stated that the learned single Judge had not dealt with the question of maintainability of the plaint filed by the first plaintiff, on behalf of all the other plaintiffs, based on the alleged authorisation letter said to have been given in his favour, without getting the leave of this Court, which is contrary to Order III of the Civil Procedure Code, 1908. As such, as the rejection of the application filed by the appellant, by the learned single Judge, by his order, dated 23.10.2013, is erroneous and unsustainable, the present original side appeal ought to be allowed and the plaint filed by the plaintiffs in the suit, in C.S. No. 72 of 2013, ought to be rejected.

20. The learned counsel appearing on behalf of the appellant had relied on the following decisions in support of his contentions.

20.1. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , the Supreme Court had held that the trial Court must remember that, if, on a meaningful reading of a plaint, it is manifestly vexatious and meritless and if a clear right to sue is not disclosed, it should exercise its power under Order VII Rule 11 of the Civil Procedure Code, 1908.

20.2. In *N. Ravindran Vs. V. Ramachandran*, , the Supreme Court had stated that the scope of Order VII Rule 11 of the Civil Procedure Code, 1908, had been elaborately considered, in *Sopan Sukhdeo Sable and Others Vs. Assistant Charity*

Commissioner and Others, , wherein, its earlier decision, in Saleem Bhai and Others Vs. State of Maharashtra and Others, , had been relied on. It had been held in the said case that the trial Court can exercise its power under Order VII Rule 11 of the Civil Procedure Code, 1908, at any stage of the suit, either before registering the plaint, or after issuing the summons to the defendant, at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Civil Procedure Code, 1908, the averments in the plaint are germane. The pleas taken by the defendant in the written statement is wholly irrelevant at that stage.

20.3. In The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee, , the Supreme Court had reiterated its earlier decision that, in order to consider an application filed under Order VII Rule 11 of the Civil Procedure Code, 1908, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court, at any stage of the suit. It is also clear that the averments in the written statement are immaterial.

20.4. In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , the Supreme Court had held as follows:

23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:

- (1) If the dispute is not an industrial dispute nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

20.5. In Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, , the Supreme Court had held as follows:

23. If an employee intends to enforce his constitutional rights or a right under a statutory Regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Order certified under the 1946 Act ipso facto the Civil Court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan SRTC and

Others Vs. Mohar Singh, . The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the fact of each case.

20.6. In Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, , the Supreme Court had held that it is a well settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two. This general rule of law is subject to three well recognised exceptions (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute.

20.7. In Neelavathi and Others Vs. N. Natarajan and Others, , the Supreme Court had held as follows:

6. On reading of the plaint as a whole, we are unable to agree with the view taken by the High Court. It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole vide S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, . The plaint in paragraph 5 states that Muthukumaraswamy Gounder died intestate and undivided and Muthukumaraswamy's father Vanavaraya Gounder was managing all the ancestral joint family property as the head of the Hindu undivided joint family till his death. In paragraph 8 the plaintiffs stated that on the death of Muthukumaraswamy Gounder his 1/3rd share in the joint family properties devolved upon his sons and daughters. It further alleged that the plaintiffs were in joint possession of the properties along with Vanavaraya Gounder and his other sons. In paragraph 9, it is stated that each of the plaintiffs is entitled to a share in the suit properties as heirs of the late Muthukumaraswamy Gounder and also as heir of the late Vanavaraya Gounder. In paragraph 11, it is stated that since the death of Vanavaraya Gounder defendants 1 to 6 are receiving the income from the properties and are liable to account to the plaintiffs. In paragraph 12, it is stated that since the death of Vanavaraya Gounder defendants 1 to 6 failed to give the plaintiff their share of income and the plaintiffs could not remain in joint possession. Therefore the plaintiffs demanded partition and the defendants 1 to 6 were evading. Again in paragraph 13, it is claimed that each of the plaintiff as co-owners is in joint possession of the suit properties, and this action is laid to convert the joint possession into separate possession so far as the shares of the plaintiffs are concerned. Throughout the

plaint, the plaintiffs have asserted that they are in joint possession. We are unable to agree with the High Court that recitals in all the paragraphs is merely a formal statement repeating the statutory language. The plea in paragraph 12 which was relied on by the High Court states that the defendants 1 to 6 failed to give the plaintiffs their share of the income and the plaintiffs could not remain in joint possession. The plea that they were not given their due share would not amount to dispossession. Reading the plaint at its worst against the plaintiffs, all that could be discerned is that as the plaintiffs were not given their share of the income, they could not remain in joint possession. The statement that they are not being paid their income, would not amount to having been excluded from possession. The averment in the plaint cannot be understood as stating that the plaintiffs were not in possession. In fact, the defendants understood the plaint as stating that the plaintiffs are in joint possession of the suit properties. In paragraph 18 of the written statement the defendants pleaded that the plaintiffs have framed the suit as though they are in joint possession and enjoyment of the suit properties. Asserting that the plaintiffs were out of possession, the defendants stated: "While it is so the allegation that they are in joint possession of the suit properties, is not correct.

21. Per contra, Mr. V. Prakash, the learned senior counsel appearing on behalf of the respondents in the present appeal, the plaintiffs in the suit, in C.S. No. 72 of 2013, had submitted that the learned single Judge had rightly dismissed the application filed by the appellant herein for the rejection of the plaint filed in the suit, in C.S. No. 72 of 2013. The appellant had filed the application, in Application No. 1207 of 2013, to reject the plaint, under Order VII Rule 11(b) and (d) of the Civil Procedure Code, 1908, stating that the suit filed by the respondents herein, in C.S. No. 72 of 2013, had been undervalued and that the reliefs prayed for by them cannot be treated as a common cause of action for the valuation of the suit.

22. The learned counsel had further submitted that it had also been pleaded that the suit filed by the respondents is not maintainable, as it is barred by law. However, the appellant had not been in a position to substantiate its claim that the suit is barred by law and that it had been undervalued, as per Section 6(3) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. The appellant herein had filed the application, in Application No. 1207 of 2013, claiming that the plaint filed in the suit, in C.S. No. 72 of 2013, ought to be rejected, as the suit had been undervalued and that the plaintiffs had no common cause of action. It had also been stated that the suit is barred by law, as the rights and obligations relating to the reliefs prayed for in the suit had arisen only under the provisions of the Industrial Disputes Act, 1947.

23. The learned counsel had also submitted that the contentions raised on behalf of the appellant could be sustained only if the rights in favour of the respondents herein, the plaintiffs in the suit, in C.S. No. 72 of 2013, had been created under the provisions of the Industrial Disputes Act, 1947. In such a case, the

jurisdiction of the civil Court stands ousted, as separate fora had been created for agitating the rights arising under the provisions of the Industrial Disputes Act, 1947. However, in the present case, the plaintiffs in the suit, in C.S. No. 72 of 2013, the respondents in the present original side appeal, had sought to enforce their rights, which are contractual in nature. They had also sought the relief of injunction against the appellant herein, restraining it from withholding the wages due to the workmen, who are the respondents in the present appeal.

24. The learned counsel had also stated that orders relating to the employment of the respondents are available and that they are having the status of permanent workmen, as per the provisions of the Industrial Disputes Act, 1947. Due to the act of the appellant in denying employment to the respondents, they have been prevented from performing their part of the contractual obligations of the contract.

25. The learned counsel had also submitted that it is an admitted fact that the workmen had gone on a strike due to the illegal and unacceptable attitude of the appellant management. However, the workmen had reported for work, on 17.12.2012, and on certain subsequent dates. No orders of termination had been issued, by the appellant, dismissing the workmen from service. As such, their contracts of service are subsisting, till date.

26. The learned counsel had further submitted that the question of legality of the strike is under scrutiny before the 1st Additional Labour Court, Chennai, in I.D. No. 278 of 2013. Even though no termination orders had been issued, terminating the services of the respondents, they had been orally asked not to come to work. However, their wages had not been paid, from 17.12.2012.

27. The learned counsel had also stated that the respondents in the present appeal had not raised the issue of legality of the strike before the civil Court. Even though the workmen could have agitated the matter before the labour Court, they had opted to seek their remedies available to them before the civil forum. In such circumstances, it cannot be said that the suit filed by the respondent, in C.S. No. 72 of 2013, is barred by law, under Order VII Rule 11(d) of the Civil Procedure Code, 1908. Nor can it be said that the plaint is liable to be rejected due to undervaluation, in accordance with Order VII Rule 11(b) of the said code. As the respondents had a valid common cause of action and as they had a common cause to agitate before the civil forum, Section 6 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, would not be applicable to the present case. Further, the Model Standing Orders would not apply to the appellant industry, as such orders would be applicable only when there are more than 100 workmen working in the industry concerned.

28. The learned counsel had further submitted that the learned single Judge had rightly held that the appellant had not made out a case for the rejection of the plaint, at the threshold, under Order VII Rule 11 of the Civil Procedure Code, 1908. In such circumstances, the contentions raised by the appellant, for the

rejection of the plaint filed by the respondents in the suit, in C.S. No. 72 of 2013, cannot be accepted. As such, the present original side appeal is devoid of merits and therefore, it is liable to be dismissed.

29. The learned counsel appearing for the respondents had relied on the decision, in Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, , in support of his contentions. The relevant paragraph of the said decision reads as follows:

21. A dispute arising in between an employer and employee may or may not be an industrial dispute. The dispute may be in relation to or arising out of a fundamental right of the employee, or his right under a Parliamentary Act and the Regulations framed thereunder, and/or a right arising under the provisions of the Industrial Disputes Act or the sister laws and may relate to same or similar rights or different rights, or even may be based on common law right or contractual right. The question in regard to the jurisdiction of the civil Court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a civil Court.

30. In view of the submissions made by the learned counsel appearing on behalf of the parties concerned and on a perusal of the records available, and on considering the decisions cited supra, it is noted that the appellant herein had filed the application, in Application No. 1207 of 2013, for the rejection of the plaint, in C.S. No. 72 of 2013, filed by the respondents, under Order VII Rule 11 of the Civil Procedure Code, 1908.

31. It had been contended that, from the averments made in the plaint filed in support of the suit, in C.S. No. 72 of 2013, the respondents had not made out a case to seek the reliefs, as prayed for in the suit. It had also been contended that the suit had been undervalued and therefore, the plaint is liable to be rejected, as per Section 6(3) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955.

32. It is also stated that the plaint is liable to be rejected, as the plaintiffs in the suit, the respondents herein, have prayed for certain reliefs, with regard to their rights, which had arisen purely out of the provisions of the Industrial Disputes Act, 1947. No common law right is vested in the respondents. Further, the suit is undervalued, taking into consideration the reliefs prayed for in the suit. It had also been contended that no suit would lie, with regard to the specific performance of personal contracts of service, as per Section 14(1)(b) of the Specific Relief Act, 1963.

33. It had also been contended, on behalf of the appellant, that the respondents ought to have approached the fora provided under the Industrial Disputes Act, 1947, for seeking their reliefs, if any. The filing of the suit, in C.S. No. 72 of 2013, before the Civil Court, for seeking the reliefs prayed for therein, is erroneous and therefore, the plaint filed in support of the said suit is liable to be rejected.

34. From the contrary claims made on behalf of the appellant in the present original side appeal and the respondents herein, it is clear that certain disputed factual issues had been raised, with regard to the jurisdiction of the civil court to entertain the suit filed by the respondents, in C.S. No. 72 of 2013. Hence, we are of the considered view that such factual issues cannot be decided, at this stage, without the necessary evidence, oral as well as the documentary, being let in during the trial of the suit.

35. Even with regard to the valuation of the suit, based on the reliefs prayed for by the respondents in the suit filed by them, a proper conclusion can be arrived at only based on some evidence. The issue as to whether the rights of the respondents are purely contractual in nature, or that they had arisen purely under the provisions of the Industrial Disputes Act, 1947, could be tested only by way of evidence.

36. The learned counsel appearing on behalf of the appellant had not been in a position to show that the rights and obligations of the parties concerned flow only from the provisions of the Industrial Disputes Act, 1947. Further, it had not been shown that the claims made on behalf of the respondents in the suit, in C.S. No. 72 of 2013, are closely linked with the issues relating to the "strike", as defined u/s 2(q) of the Industrial Disputes Act, 1947, in respect of which an industrial dispute had been raised, in I.D. No. 278 of 2013.

37. The appellant has not been in a position to substantiate its claim that no contractual rights or obligations had arisen in the present case, to enable the respondents to seek their reliefs before the civil Court concerned. The question as to whether the plaintiffs in the suit, the respondents herein, have independent cause of action and the question as to whether the rights claimed by them had arisen purely under the provisions of the Industrial Disputes Act, 1947, could only be decided during the trial of the suit, based on the evidence to be let in by the parties concerned while so, it would not be appropriate for this Court to accept the claims made on behalf of the appellant for the rejection of the plaint filed by the respondents, in C.S. No. 72 of 2013, by invoking the provisions of the Order VII Rule 11 of the Civil Procedure Code, 1908.

38. In such view of the matter, we are convinced that the findings rendered by the learned single Judge, in his order, dated 23.10.2013, though prima facie in nature, would be sufficient for this Court to conclude that the appellant had not made out a case for the rejection of the plaint filed in the suit, in C.S. No. 72 of 2013, especially, when it has not been shown that there is a specific bar against the respondents in seeking their reliefs before the civil forum.

39. It is noted that the learned single Judge had discussed, elaborately, the various issues, which had arisen in the present case we find it appropriate to hold that it is only a prima facie finding and that the core issues could be raised and decided before the Court concerned, in C.S. No. 72 of 2013, by adducing the necessary evidence, both oral as well as documentary, during the trial of the suit.

40. The issues relating to the valuation of the suit and the jurisdiction of the civil court in entertain the suit could also be raised as specific issues and they could be decided by the Court concerned during the trial of the suit. Therefore, we find it appropriate to hold that the present appeal is liable to be dismissed, as it is devoid of merits. However, we make it clear that the issues raised by the appellant, relating to the valuation of the suit and with regard to the jurisdiction of the civil court to hear the matter, would be still open to be decided during the trial of the suit, in C.S. No. 72 of 2013, or at any time thereafter, as per the relevant provisions of the Civil Procedure Code, 1908. Accordingly, the present original side appeal stands dismissed. No costs. Connected miscellaneous petition No. 1 of 2013, is closed.