

(2019) 01 DEL CK 0424

In the Delhi High Court

Case No : Letter Patent Appeal No. 555 Of 2018, Civil Miscellaneous Nos. 40234 Of 2018, 40236, 53792 Of 2018

X

APPELLANT

Vs

District Magistrate (South) & Anr

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 9

Citation : (2019) 1 SCT 743

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Warisha Farasat, Shruti Narayan, Shobhna Takiar, Monika Arora, Kushal Kumar, Harsh Ahuja, Amrita Sharma

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J

CM. No.40234/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 555/2018

1. This appeal has been filed by the appellant with the following prayers:

"In light of the aforesaid facts and circumstances, it is prayed that this Hon'ble Court may:

a. Pass an order to set aside the order of the learned Single Judge of the High Court of Delhi in Writ Petition (Civil) No. 8443 of 2018 dated 13.08.2018.

b. Pass an order to set aside the Report dated 13.06.2018 of the Local Complaints Committee in the Complaint made by the Appellant herein;

- c. Direct the Respondent No.1 to re-constitute the Local Complaints Committee in accordance with the provisions of the Act to re-hear the complaint of the Appellant on merits following the principles of natural justice and in accordance with the provisions of the Act;
- d. Pass any other order (s) that this Hon'ble Court may deem fit and proper in the interest of justice."

2. In substance, the challenge in this appeal is to the order of the learned Single Judge dated 13th August, 2018, whereby the learned Single Judge has dismissed the writ petition upholding the order passed by the Local Complaints Committee dated 13th June, 2018 on the complaint made by the appellant herein. Suffice it to state that the Committee as well as the learned Single Judge had held that the complaint made by the appellant on 19th March, 2018 was beyond a period of three months as specified under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. It was contended by the learned counsel for the appellant, that in the complaint dated 19th March, 2018, the appellant did refer to certain communications sent by the appellant to her employer which shall reveal that the appellant did raise the issue of sexual harassment at the earliest and within the limitation period. She has also relied upon an e-mail sent by an employee working with Edible Routes, the employer against whose CEO the appellant had made the complaint, to contend that the complaint made by the appellant had been acknowledged and was under consideration. She concedes to the fact that the effect of these communications as referred to in the complaint dated 19th March, 2018 and the e-mail dated 8th January, 2018 could not be considered by the Local Complaints Committee. She also concedes that e-mail dated 8th January, 2018 was not on record of the Local Complaints Committee.

4. On the other hand, learned counsel appearing for the respondent state that the orders of the Local Complaints Committee and learned Single Judge are justified. According to her, the complaint having been made only on 19th March, 2018 against incidents that have taken place on 12th July, 2017 and on 6th September, 2017 are clearly barred by time. She also submitted that it is because of non-submission of the relevant documents by the appellant the Committee had to give such a decision. In other words, nothing precluded the appellant to file all the relevant documents in support of her case. She states, now the appellant should not be permitted to file documents for reconsideration by the Committee. She has drawn our attention to the order passed by the Local Complaints Committee dated 13th June, 2018 in support of her submission. Alternatively, it is her submission that even on the basis of the documents sought to be relied upon by the learned counsel for the appellant before this Court the complaint shall not be within time. Hence no purpose shall be achieved if the matter is relegated to the Committee. She also states that the complaint per se shall not be maintainable before the Local Complaints Committee as there was no relationship of employer and employee between the Edible Routes and the

appellant herein and as such the Committee shall not have the jurisdiction to entertain the same.

5. Having heard the learned counsel for the parties, we are of the view that the only ground on which the Local Complaints Committee had dismissed the complaint was limitation, inasmuch as the complaint was filed beyond a period of 3 months as contemplated under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In other words, there was no issue with regard to the maintainability of the complaint before the Local Complaints Committee on the ground of no employer-employee relationship exit. We say nothing more than that. Learned counsel for the appellant has referred to certain communications which were filed in a sealed cover before this court. The same were not part of the record of the Local Complaints Committee and the effect thereof could not be considered by the Local Complaints Committee. In the fitness of things, we feel that given the nature of issue raised by the appellant it shall be appropriate to relegate the parties to the Local Complaints Committee by giving opportunity to the appellant herein to file the communications as sought to be relied upon by her, which shall be considered by the said Committee on the issue of limitation and pass a reasoned and speaking order. Having said so, we set aside the order dated 13th June, 2018 of the Local Complaints Committee and also of the learned Single Judge dated 13th August, 2018 passed in W.P.(C) 8443/2018. We make it clear that we have not expressed ourselves on the merit of the issue of limitation which fell for consideration in this appeal.

The appeal stands disposed of.

CM. Nos. 40236/2018 and 53792/2018

Dismissed as infructuous.