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

Date of Decision: 12.04.2021

+ CM(M) 552/2020 & CM APPL. 28255/2020

BANANA IP COUNSELS LLP Petitioner

Through: Mr.Sujoy Kumar, Mr.Raghav
Kumar
& Mr.Arindam Ghosh, Advs.

versus

NISHA KURIAN Respondent

Through: Dr.Amit George, Mr.Alex
Joseph, Mr.P. Harold,
Mr.Rayadurgam Bharat &
Mr.Amol Acharya, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

1. This petition has been filed by the petitioner challenging the order dated 11.08.2020 passed by the learned Additional Senior Civil Judge, Patiala House Court in Suit, being CS No. 601 of 2018 titled *Ms. Nisha Kurian v. Banana IP Counsels*, rejecting the application of the petitioner filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

2. The above Suit has been filed by the respondent herein *inter alia* pleading that she was working as a Senior Associate-IPR with the petitioner herein. She had tendered her resignation from the services on 29.12.2017, however, the petitioner herein, vide its letter dated

29.01.2018, refused to accept the resignation and instead terminated the Employment Agreement of the respondent with effect from 21.01.2018. The respondent prayed for the following relief in her Suit:

“a. Declaration to the effect that the termination dated 29.01.2018 issued by the Defendant to the Plaintiff is illegal and invalid.

b. A decree of providing adequate experience letter and relieving letter may kindly be passed in favour of the plaintiff.

c. A decree of permanent and prohibitory injunction restraining the defendant from threatening and harassing and pressurizing the plaintiff or adopting the coercive measures against the plaintiff or with malafide and ulterior motives demanding illegal money or forcibly recover the amount from the plaintiff or filing or lodging false vexatious criminal case against the Plaintiff.”

3. The learned counsel for the petitioner submits that the above Suit was clearly not maintainable and was liable to be dismissed. He submits that as far as the prayer (a) is concerned, a simpliciter Suit for declaration is not maintainable. He submits that a Suit for specific performance of such a contract is not maintainable and therefore, the remedy of the respondent, if any, would only be in form of a Suit for declaration with damages. In this regard, he places reliance on the judgments of the Supreme Court in *Executive Committee of Vaish Degree College, Shamli & Ors. v. Lakshmi Narain & Ors.*, (1976) 2 SCC 58; *Apollo Tyres Ltd. v. C.P. Sabastian*, IX (2010) SLT 237; *State Bank of India & Ors. v. S.N. Goel*, (2008) 8 SCC 92; and

Venkataraja & Ors. v. Vidyane Doureradjaperumal, (2014) 14 SCC 502.

4. He further submits that as far as prayer (b) in the Suit is concerned, the Court is not empowered to evaluate the service record of an employee and to dictate the nature of experience certificate to be issued to such an employee. He submits that therefore, prayer (b) in the plaint is also not maintainable.

5. As far as prayer (c) in the Suit is concerned, the learned counsel for the petitioner submits that the petitioner has already instituted a Suit for recovery of damages against the respondent in the Courts at Bangalore. The petitioner has also initiated criminal process in form of lodging of an FIR against the respondent in Bangalore and therefore, prayer (c) in the Suit has been rendered infructuous. Placing reliance on the judgment of the Supreme Court in *Shipping Corporation of India Ltd. v. Machado Brothers & Ors.*, (2004) 11 SCC 168, he submits that on account of such subsequent facts, the prayer made by the respondent has been rendered infructuous and the Suit was liable to be dismissed.

6. On the other hand, the learned counsel for the respondent submits that in the Suit the respondent is not claiming reinstatement in the petitioner/firm. He submits that in fact, the Suit is premised on the resignation tendered by the respondent from her services in the firm. The Suit therefore, does not seek specific performance of her contract of personal services. He further submits that the Suit is also not one of mere declaration but prays for a consequential relief in form of prayer

(b) in the plaint. The learned counsel for the respondent further submits that instead of claiming damages, which the respondent would otherwise be entitled to, the respondent has claimed a certificate of honourable discharge from the services and an experience certificate for her time spent in the service. He submits that such a relief cannot be held to be barred by the Specific Relief Act, 1963 in any manner.

7. As far as prayer (c) in the plaint is concerned, he submits that the effect of the filing of the Suit/FIR by the respondent, would be considered by the learned Trial Court at an appropriate stage, however, the plaint cannot be rejected in-part under Order VII Rule 11 of the Code. He relies upon the judgment of this Court in ***Intertek India Pvt. Ltd. v. Priyanka Mohan***, 2019 SCC OnLine Del 10284, in support of his submission.

8. I have considered the submissions made by the learned counsels for the parties.

9. The Suit filed by the respondent *inter alia* states that she had tendered her resignation from the petitioner firm on 29.12.2017. The Suit is, as is now also been contended by the learned counsel for the respondent, not seeking specific performance of a contract of service and/or reinstatement in the petitioner firm. It seeks a declaration that the letter dated 29.01.2018 subsequently issued by the petitioner firm refusing to accept her resignation and terminating her services, be declared as illegal and as a consequential relief, the respondent has claimed that the petitioner be directed to provide an adequate experience letter and relieving letter to the respondent. The said relief

is in form of getting an honourable discharge from the services of the petitioner firm. The suit therefore cannot be said to be one claiming declaration alone without any consequential relief.

10. The submission of the petitioner that the consequential relief can only be in form of damages, if at all, is also not acceptable. Consequential relief need not be only in form of damages. It is for the employee to seek the consequential relief in the form that he/she would be entitled to in accordance with law. Damages is not the only nature of consequential relief that can be sought by an employee.

11. Equally, while there is no dispute on the proposition of law that the contract of personal service cannot be specifically enforced, the respondent herein is not seeking specific performance of her contract of service.

12. As far as prayer (c) in the plaint is concerned, the effect of the Suit having been filed by the petitioner in Bangalore Court and an FIR having been registered at its behest, is also a matter which will be considered by the learned Trial Court while deciding the Suit. Whether the Suit has been rendered infructuous by any subsequent event, is to be determined by the learned Trial Court once the parties lead their evidence in that regard. Equally, whether prayer (c) can or cannot be granted eventually, cannot lead to partial rejection of the plaint under Order VII Rule 11 CPC. As has been repeatedly held, there cannot be partial rejection of the plaint under Order VII Rule 11 of the Code.

13. Accordingly, I find no infirmity in the order impugned in the present petition. The petition is dismissed.

14. The petitioner shall pay a cost of Rs.35,000/- to the respondent.

NAVIN CHAWLA, J

APRIL 12, 2021/rv/P

