

**In the Court of Sh. Surinder S. Rathi. Ld. Addl District Judge,
Patiala House Courts, New Delhi**

CS No. 57564/2016

Archana Sharma Vs. Lalitendu Samant & Anr.

15.10.2016

Present: Ms. Anindita Pujari and Shri Santosh Kumar, Ld. Counsel for the plaintiff with plaintiff in person. .

Shri Saket Singh, Ld. Counsel for defendant no.3.

Plaintiff is in employment with defendant no.3 since 10.09.2007. Earlier she was Customer Service Coordinator and was thereafter promoted as Sr. Coordinator. Prior to joining her services with defendant no.3 she served with G E Countrywide, SBI , Air Sahara and other companies. By education she has done PG in Journalism apart from Masters Degree in Business Administration and Diploma in Advance Software Technology.

It is her case that during the course of her service with defendant no.3, defendant no.1 HR Head started harassing her from around May-2011 onwards in order to entrap her and seek sexual favours. He started causing hurdles in the day to day functioning of the plaintiff in an unethical and unprofessional way so as to cause mental trauma and emotional stress to make her fall in line.

In so far as plaintiff is unmarried and was living alone at Dwarka and there was no mode of conveyance from her residence to her workplace, she applied with defendant no.1 to consider her request to transfer her from Operations to General Duty in so far as operation duty involved shift duties at odd hours. She also pleaded some medical problems but even though this request was made through proper channel on bonafide grounds but still it was

kept pending on and defendant no.1 insisted that he should be given sexual favours. She was asked by defendant no.1 to keep in touch with him qua this request.

On 24.07.2011 plaintiff was called by defendant no.1 in his cabin where she was humiliated and was conveyed that no Department is willing to take her in. However, on 02.08.2011 she was apprised that she has been transferred to Strategic Planning Group and was supposed to collect her transfer order from defendant no.2, head of that department. Upon joining SPG defendant no.2 asked her to meet defendant no.1 to collect the transfer order. When she went defendant no.1 in his cabin and thanked him for her transfer, she was told that she will have to make three promises to him that she would not gossip will remain at the second floor and that she will have to make him (defendant no.1) happy. Even though plaintiff assured him of the best services as an employee, he remarked that she's trying to act innocently and said that she should understand that as to how she should make him happy. She was not given her transfer order and was made to come to the cabin of defendant no.1 repeatedly upto September, 2011 when she was handed over the same.

Thereafter, defendant no.1 continued to visit her work station. He used to comment on her clothes and makeup. He complained of her that she has forgotten about him and that she does not pay any visit to him and that she does not make him happy. He warned that in case she will land up in a problem he will not help her. She was made to work in the late night shifts. Defendant no.1 started making calls to her between 9.30 PM to 11.00 PM and also on holidays. He started sending messages to her in order to pursue his sexual intentions. In December 2011 he asked plaintiff to accompany her to

FI Track Race on phone but she declined. She also refused the request of defendant no.2 to join the late night parties. She was harassed in her day to day work and defendant no.2 used to insist that she should go to defendant no.1.

She was phoned by defendant no.1 on 28.12.2011 at 10.30 PM where he tried to indulge in an intimate conversation with the plaintiff. She made complaint about the same to Shri P S Nair who was CEO of Aviation Centre of defendant no.3. She played the recorded conversation before him as she was under tremendous trauma and this complaint was forwarded to defendant no.4 the Internal Complaint Committee of defendant no.3 against Sexual Harassment (ICC).

The ICC carried out proceedings on 03.02.2012 and 15.02.2012 on two dates. She was examined by the ICC. She came to know that the deposition of Defendants no.1 and 2 were also recorded apart from other witnesses at her back. Finally, impugned report dated 30.03.2012 was passed whereby defendant no.1 and 2 were exonerated. She was not supplied the copy of the report. Rather on 30.05.2012 she was issued a warning letter by HR Head Mr. Reddy of improving her conduct and performance. She was told that in her complaint filed before the ICC despite being complainant in the matter she has found guilty and been punished with issuance of "Written Warning".

Aggrieved therefrom plaintiff approached Delhi Commission for Women and National Commission for Women in June, 2012 but no action was taken on her complaint.

Aggrieved by the defendants acts and omissions she preferred the suit in hand seeking declaration that the report of the inquiry is sham and

bogus and that defendants no.1 and 2 deserve to be held guilty of subjecting plaintiff of sexual harassment. Post filing of the suit, she was arbitrary or illegally transferred to another company somewhere in Orissa on 11.12.2012. She amended her suit seeking cancellation of her transfer.

Suit was contested by defendants by filing their separate Written Statements. They admitted that plaintiff was their employee and that the complaint as allegedly was made for Sexual Harassment and an inquiry was conducted. They also accepted that the result of inquiry is a matter of record and also that her services were transferred out of Delhi. It is their case that transfer has nothing to do with the facts stated in the plaint. They have denied the allegations that defendant conducted a of sham inquiry or that principles of natural justice were not followed. Court is apprised that soon after the inquiry defendant no.1 resigned the services of defendant no.3 while defendant no.2 continues to serve with them.

Ad-interim protection against transfer of plaintiff out of Delhi was granted on the basis of undertaking given by defendant no.3. Issues were identified on 06.12.2013 and the matter was at the stage of PE.

Thereafter, the case file was received on transfer upon change of pecuniary jurisdiction from Hon'ble High Court to this Court.

Post filing of the suit, during the intervening period a new legislation by the name **“Sexual Harassment of Woman at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and Rules** has been promulgated by the Parliament.

After some preliminary hearings were done in this regard Id. counsel for defendant No.3 moved an application under order 7 Rule 11 CPC on 27.08.2016. Detailed submissions were heard on this application.

In support of his plea for rejection of the plaint Id. counsel for defendant no.3 raised two major issues. The first being that the suit is being immature in so far as the same was filed by the plaintiff without exhausting the departmental remedy available to her as per GMR's Internal HR policies against Sexual Harassment. It is argued that post the issuance of “**Vishaka Guidelines by Hon'ble Supreme Court**” vide judgment dated 13.08.1997. The above Sexual Harassment policy of the GMR was created by defendant no.3 on 01.07.2011.

It is argued that as per the policy against Sexual Harassment, in case an employee is aggrieved by the finding even by the Internal Complaint Company (ICC), such an aggrieved employee has an option to “escalate the issue” to the level of Group Chairman. It is argued that in case the plaintiff was aggrieved by the finding of ICC's report dated 30.03.2012, she should have preferred to raise this issue before the Group Chairman instead of rushing to the Court by filing the suit in hand.

This plea is opposed by learned counsel for plaintiff on the ground that the internal documentation in the name of policy as referred to on behalf of defendant no.3 does not carry the sanctity of being a binding Law, Rule or Regulation. I find strength in this plea of learned counsel for plaintiff in so far as such like internal arrangements by a private company or firm cannot in any manner delay or take away the right of a citizen to approach the Court of law for airing a cause of action in terms of **Section 9 CPC**. For ready reference Section 9 is reproduced here under -

Section 9 of CPC -

9. Courts to try all civil suits unless barred.- *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a*

civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Plain reading of the statute clearly shows that cognizance of every Civil Suit shall be taken by Court unless the same is “expressly or impliedly barred”. Once the plaintiff was aggrieved by the dismissal of her complaint against Sexual Harassment on 30.03.2012, such like internal arrangements of “escalation of issue” before the Group Chairman cannot be treated as having such legal force which could either expressly or impliedly bar the plaintiff from approaching the Court of law. I find no flaw in plaintiff approaching this Court on this score.

Another leg of arguments raised in this Order 7 Rule 11 CPC application is that after the dismissal of the plaintiff's complaint by ICC on 30.03.2012 and during the pendency of this suit the “Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013” was passed and notified w.e.f 09.12.2013. It is argued that upon promulgation of this Law all the subjudice only matters pertaining to Sexual Harassment of a Women at Work place shall be deemed to be covered by this new Act.

While referring to the Vishaka Judgment, it is submitted that since the Guidelines were only a Court made Law, the judgment itself provided that it shall remain effective and binding only till such time a suitable legislation is enacted. Para 18 of the judgment reads as under-

Vishaka & Ors. Vs. State of Rajasthan & Ors. (1997) 6 SCC 241-

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly.

Relying on this para it is argued that since the matter was still subjudiced when the new Law came into force, the Internal Complaint Committee report dated 30.03.2012 shall be treated as covered under **Section 18 of the Act** and any challenge thereto shall be treated as an Appeal which shall be covered under **Rule 11 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act Rules, 2013**. For ready reference the above two statutory provisions are reproduced here under-

Section 18 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013-

18. Appeal.-(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

Rule 11 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013-

11. Appeal.-Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 of under

clauses (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendation may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

No doubt through the Guidelines framed under the Vishaka Judgment, Hon'ble Supreme Court had filled a lacuna which was a matter of great concern has human rights of Women Employees as protected under **Article 14, 15 and 21 of the Constitution** were at stake. Evidently, the text of the judgment itself shows that it was a stop gap arrangement and simultaneously directions were issued to the Central and State Governments to legislate a proper law in this regard. In order to arrive to a just decision of this case it would be appropriate to refer to certain portions of this new enactment. **Section 2 (h)** of the Act defines the term Internal Committee.

Section 2 (h) "Internal Committee" means an Internal Complaints Committee constituted under section 4.

Section 2 (n) defines the term Sexual Harassment.

Section 4 provides for mandatory constitution of ICC by every employer of a work place.

Section 9 provides for making of a sexual harassment complaint by every woman in writing.

Section 11 and 12 provides for procedure of holding an inquiry against such complaint.

Section 13 provides for preparation of the Inquiry Report by the Internal Complaints Committee. The opening line of section are of utmost importance in the case in hand.

Section 13 (1) -

13. Inquiry Report.-(1) On the completion of an inquiry under this Act, the internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, to the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. (Emphasis supplied)

The usage of the words “**on the completion of inquiry under this Act**” clearly shows that only those Reports which are prepared by an Internal Complaint Committee appointed as per **Section 4** of the Act, which received a complaint under **Section 9** and conducted inquiry under **Section 11 and 12** can prepare an Inquiry Report as per **Section 13 under the Act**. The only logical conclusion one can make is that any other report by any other company which is neither constituted under this new Law nor it conducted the proceedings under the same can be regarded as an Inquiry Report under the Act.

In the same analogy the reference of Section 18 by Learned counsel for defendant no.3 is of no aid to him in so far as Section 18 only applies to Inquiry Reports prepared under Section 13 of the Act and not to any other report. In the case in hand it cannot be, by any stretch of logic or reasoning, stated that the Inquiry Report dated 30.03.2012 can be regarded as an Inquiry Report under Section 13 of the Act. Evidently, the New Law saw the light of the day only on the first time on 09.12.2013 and there is nothing in the statute which could justify a retrospective application of either any substantive provisions or even the procedural ones of the Act.

As detailed supra, the cause of action in this case arose prior to promulgation of the Law, the complaint was lodged before the promulgation of

the Law, entire inquiry was held before the new Act was enacted and Inquiry Report was concluded a good one year nine months before the new Law was enacted. Even the suit in hand was filed prior to promulgation of the Sexual Harassment Act.

It is rightly argued by learned counsel for plaintiff that once the suit is instituted on a legally valid cause of action before a Court of competent jurisdiction under Section 9 of CPC any future legislation cannot unsuit such a suit or make it infructuous in any manner. Order 7 Rule 11 CPC provides for rejection of plaint only on specific circumstance and situations.

Order 7 Rule 11 CPC -

11.Rejection of plaint.-The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law.*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9.*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Upon analyzing the facts of the case in hand vis-a-vis the statutory provisions it is seen that learned counsel for the defendant could not show anything that as on the date when the suit in hand was filed, there was any ambiguity in the frame of the suit or in the jurisdiction of the Court in taking cognizance thereof.

As such I have no hesitation in concluding that subsequent promulgation of **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** does not in any manner adversely effect the maintainability of this suit. I see no legal strength or logic in plea of learned counsel for defendant no.3 that subsequent promulgation of the above law not only takes away the Jurisdiction of this Court to hear the suit but also automatically takes over all such pending proceedings which were initiated on the cause of action which could arise prior to its promulgation.

Moreover, in the suit in hand the relief sought are as under -

PRAYERS-

- 1. Pass judgment and decree of Rs.40,00,000/- (Rs.Forty lacs only) as damages with interest pendente-lite and future @ 24% p.a. In favour of the plaintiff and against defendants, jointly and severally.*
- 2. Pass decree of declaration thereby declaring that the report of defendant no.4 is sham, bogus and incorrect and holding that the defendants no.1 and 2 have subjected the plaintiff to sexual harassment and consequently direct the defendant no.3 to take appropriate action against defendants no.1 and 2 in*

accordance with the guidelines of Vishakha's judgment of Hon'ble Supreme Court and the sexual harassment policy of defendant no.3.

3. *Pass a decree of mandatory injunction (in the event relief (b) above is granted) thereby directing that the discharge letter of the defendant no.1 be amended and it be recorded that the defendant no.1 be amended and it be recorded that the defendant no.1 has been guilty of sexual harassment and the same may be communicated to the new employer of defendant no.1.*

4. *Pass a decree of permanent injunction restraining the defendants their employees, representatives etc. from circulating the committee report or warning letter, in any manner whatsoever.*

5. *Award costs of the suit to the plaintiff against the defendants.*

6. *Pass any other or further order, which the Hon'ble Court deem fit and proper under the facts and circumstances of the case.*

Plain reading of the above prayers shows that the reliefs prayed are beyond the scope of the Sexual Harassment Act and are aimed at agitating the breach of human rights and enforcing tortious liability.

Furthermore, it is a settled legal proposition that while deciding the application under Order 7 Rule 11 CPC all that the Court is supposed to read and rely is that the text of the plaint and its supporting documents.

In case titled **Mayor (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V.**

Fortune Express, AIR 2006 SC 1828, Hon'ble Court observed-

The plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct.

In view of the above, I see no merits in the application. Same is accordingly dismissed with cost of Rs.10,000/- which shall be paid to the plaintiff by way of draft within four weeks.

To come up for disposal of applications on **16.11.2016**.

(Surinder S. Rathi)
ADJ-03/PHC/NEW DELHI
15.10.2016