

KABC010283052024



**IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.**

DATED: THIS THE 17TH, DAY OF JANUARY, 2026.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru

O.S.NO.7793/2024

PLAINTIFF : Mr.Arun Cyril
S/o. Francis Cyril Antoy,
Aged about 55 years,
R/At. Sobha Silicon Oasis,
Flat No.11143, 11th Block,
Hosangadi Road, Pragathi Nagar,
Basapura Hosa Road, Pragathi Nagar,
Basapura, Bengaluru-560 100.
(By Smt.Anusha B Reddy, Advocate)
V/S

DEFENDANTS Swiggy Limited,
(Formerly Known as Swiggy Private
Limited and Bundl Technologies Private
Limited) and others.

(Sri.A.A., Adv.,for D-1

**ORDER ON INTERLOCUTORY APPLICATION No.2 FILED
BY THE DEFENDANT NO.1 UNDER ORDER VII RULE 11
R/W SEC.151 OF CODE OF CIVIL PROCEDURE:**

I.A.No.2 is filed by the defendant No.1 under Order 7 Rule 11(d) r/w Sec.151 of C.P.C., praying to reject the plaint, in the interest of justice and equity.

2. In support of the application, the authorized representative of defendant No.1 has sworn to an accompanying affidavit stating that the suit is filed by the plaintiff before this Court, seeking reliefs in relation to his termination from employment of defendant No.1. In the present plaint, the plaintiff prays for: (a) a declaration that the termination of the plaintiff's employment by way of Termination Notice dated 16 August 2024 (Termination Notice) is illegal and not binding on the Plaintiff; (b) a declaration that the ESOP Expiration Notice dated 16 August 2024 (ESOP Expiration Notice) issued by defendant No.1 is illegal and not binding on the plaintiff; and (c) directions to

defendant No.1 to allow the plaintiff to exercise 185.454 vested, but unexercised stock options and not buy back the 24 exercised options from the Plaintiff granted to him vide grant letters dated 15 June 2015 1 April 2016, 1 April 2018, 1 April 2019, 1 April 2022 and 1 April 2023 (ESOP Grant Letters). The said Termination Notice and ESOP Expiration Notice were issued by defendant No.1 as the plaintiff was conducting himself in abject disregard of the policies of the defendant No.1.

2(a). The Facts of the case is that:- The plaintiff was employed with defendant No.1 in the position of Assistant Vice President (AVP)-Customer Experience Delight. During the term of his employment, the plaintiff was contractually bound to adhere to defendant No.1's policies, including but not limited to defendant No.1's Code of Conduct, the plaintiff's Employment Agreement dated 10 May 2015 (Employment

Agreement), the Employee Stock Option Plan Policy of 2015 and 2021 (ESOP Policy), and the Information Technology Policy. (collectively Internal Policies). As per the plaintiff's Employment Agreement and the ESOP Policy, the plaintiff was granted 324, 507 employee stock options (Granted Options) between 15 June 2015 and 1 April 2023 by way of the ESOP Grant Letters which were subject to the terms and conditions specified in defendant No.1's ESOP Policy. Pertinently, out of the Granted Options, 298.7633 stock options have vested with the plaintiff (Vested Options), whereas 25.7434 stock options are yet to be vested (Unvested Stock Options). Further, out of the Vested Options, 89.3093 stock options have been previously surrendered by the plaintiff (Vested and Surrendered Options). 24 stock options have been exercised by the Plaintiff (Exercised Options) and 185.454 stock options have been vested, but not exercised (Vested but not

yet Exercised). Further, a bare perusal of the ESOP Grant Letters, makes it evident that the option available with the plaintiff to exercise the Vested Options is "*co terminus with the plaintiff's employment*". Therefore, upon termination of the plaintiff's employment for cause, the plaintiff's entitlement/right to exercise the Vested Options and buy back options as sought in prayer (c) ceased to exist. On 16 August 2024, the plaintiff was terminated for acting in contravention of the aforesaid Internal Policies, after fully complying with the termination clauses in the Employment Agreement and ESOP Policy. Clause 11 of the Employment Agreement (annexed as Document No. 1 to the Plaint) is mentioned below:

"11. Your employment shall be terminable by either of us, with or without cause, by giving the other 1 (one) months' prior written notice. The Company reserves the absolute right, at its sole discretion, to pay

or recover salary in lieu of the notice period. It is clarified that the company shall not be required to serve any notice or pay any compensation or salary in lieu of the notice if you breach any of the provisions of this agreement or act contrary to the company's policy of interest or if you indulge In any unlawful activities.”

The rules, regulation and policies of Defendant No.1 including the ESOP Polices are also part of the Employment Agreement and deemed to be incorporated in the Employment Agreement by reference. Clause 5 of the Employment Agreement specifically provides that *"You will be governed by and will abide by the Companies rules, regulations and policies which are in force and as may be modified from time to time. The rules, regulations and policies are deemed to be incorporated herein by reference."* In 2015 and 2021 ESOP Policies, Clause 15.1 (c) and Clause 18.6 (a) deals with automatic expiration and

termination of stock options upon termination of the employment for causes attributable to the Plaintiff. Clause 15.1 (c) and Clause 18.6 (a) of 2015 ESOP Policy (annexed as Document No. 5 to the Plaint) are reproduced herein below for the convenience of this Court:

“15.1 (c) In the event of termination of employment of an Optionee with the Company for Cause, all Options including those which are vested with the Optionee but not exercised at the time of such termination of employment, shall expire and stand terminated with effect from the date of such termination.

18.6 (a) In the event of termination of employment of an Optionee with Cause, the Company shall have an option to purchase the shares so allotted to such an Optionee at a price determined by the Board at such time”

The actions carried out by the plaintiff represented a clear breach of his obligations as per the Internal Policies of defendant No.1 and in view of the same,

vide Termination Notice dated 16 August 2024, defendant No.1 terminated the employment of the plaintiff 'for cause'. The Termination Notice provided a detailed summary of the various violations by the plaintiff. Additionally, in view of issuance of the Termination Notice on account of causes attributable to the plaintiff, the plaintiff was also informed that the same resulted in automatic and immediate expiration/termination of the stock options granted to him by way of ESOP Expiration Notice dated 16 August 2024. Subsequent and as a result of his termination, the Plaintiff issued a legal notice to defendant No.1 on 12 September 2024 which was responded to by defendant No.1 on 7 October 2024. Rejoinder to defendant No.1's response was issued by the plaintiff on 26 October 2024. Thereafter, the plaintiff filed the present Suit on 5 November 2024 and on 7 November 2024 obtained an ex parte ad interim

order in the injunction application filed by the Plaintiff seeking an order of temporary injunction restraining defendant No.1 from creating any charge, interest or alimenting the alleged 185.454 vested and unexercised stock options and alleged 24 exercised options of the plaintiff pending disposal of the suit. However, the same was dismissed by the Court by way of Order dated 2 December 2024 and the aforesaid ad interim order passed in favor of the Plaintiff was vacated and the court observed that prima facie is not proved by the plaintiff and no irreparable harm will be caused to the plaintiff if interim reliefs regarding stock options is not granted to the plaintiff. With the above-mentioned background on the dispute between the plaintiff and defendant No.1, the present Application is being filed by the plaintiff seeking rejection of the Plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 on the grounds that the prayers sought by the plaintiff in

its plaint are barred by law. It is submitted that the prayers sought in the plaint are barred by Section 14 of the Specific Relief Act, 1963.

2(b). Contracts of personal service cannot be specifically enforced:- The Employment Contract between the Plaintiff and Defendant No. 1 and ESOP Policies are a determinable contract and contract of personal service. The performance of such contracts cannot be specifically enforced in law in accordance with the bar existing under the provisions of Section 14 of the Specific Relief Act, 1963. The prayer sought by the Plaintiff in its Plaint for declaring the Termination Notice and ESOP Expiration Notice as illegal is in effect a prayer seeking the effect of the Termination Notice and ESOP Expiration Notice to be reversed, against the will and consent of the defendant No.1. The plaintiff has also sought a direction to defendant No.1

to allow the plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the plaintiff granted to him. Such direction sought by the plaintiff is an attempt to seek specific performance of the Employment Agreement and ESOP Policies which is impermissible in law and cannot be granted by any Court of law. In cases of private employment, the principles applicable in public law domain do not apply and such employment is governed by the terms and conditions of the employment contract executed between the parties. Since in the present case, the Termination Notice and ESOP Expiration Notice was validly issued by defendant No.1 in accordance with the terms of the Employment Contract and ESOP Policies, the courts cannot enforce the performance of the Employment Contract against the defendant No.1. It is settled law that even if the termination of an employment contract

is illegal or in breach of the terms of such contract, the courts cannot declare such termination to be a nullity and at best an employee is entitled to the salary for the notice period and not seek specific performance of the contract. The notice period salary also stands duly paid to the Plaintiff by the Defendant No.1 in the present case. The Plaintiff in paragraph 15 of the Plaint categorically admits that the Plaintiff has received amount towards full and final settlement "It is submitted that when things stood thus, on 05.09.2024, the Plaintiff received an amount of INR 27,73,972/- as full and final settlement. Therefore, in the present case, there is no relief which the plaintiff can possibly seek against the defendants as defendant No.1 has duly paid the plaintiff as per the contracts entered between the parties. **The present case does not fall within any exceptions carved out by law for specific performance of contracts of personal service:** The

Employment Agreement and ESOP Policies between the Plaintiff and Defendant No. 1 are purely contractual in nature as opposed to public employment which is governed by statutory rules. Further, neither the service of the plaintiff herein is covered by the protection granted under Article 311 or any other law made under Article 309 of the Constitution of India, nor a contract where a statutory body acted in breach of the mandatory provisions of a statute. Accordingly, the performance of the Employment Contract and ESOP Policies between the plaintiff and defendant No.1 cannot be specifically enforced by this Court and the prayers sought by the plaintiff are barred by Section 14 of the Specific Relief Act. **The Employment Contract of the plaintiff is determinable in nature:** The performance of the Employment Contract between the plaintiff and defendant No.1 can also not be specifically enforced because it permits defendant No.1 to

terminate the services of any employee with or without cause by giving 1(one) months' notice as per Clause 11 of the plaintiff's Employment Contract. Even the ESOP Expiration Notice has been issued in accordance clause 15.1 (c) and 18.6 (a) of ESOP Policies which provide for immediate expiration and termination of stock options in case the employment is terminated for causes attributable to an employee of defendant No.1. Additionally, in prayer (c), the plaintiff has also sought specific direction defendant No.1 to allow the Plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the Plaintiff granted to him. Accordingly, the ESOP Policies and Employment Contract is determinable in nature, the performance of which cannot be specifically enforced in view of Section 14(1)(d) of the SRA. In view of the aforesaid, it is clear that the reliefs being sought by the plaintiff are

barred by the SRA and cannot be granted by this Court. In view of the above facts and circumstances, it is submitted that the performance of the Employment Contract and terms of ESOP Policies, which are a contract determinable in nature as well as a contract of personal service, cannot be specifically enforced in view of the clear bar imposed by Section 14 of the SRA. Accordingly, prayers sought by the Plaintiff are barred by law and the Plaint ought to be rejected under Order VII Rule 11(d) of the CPC. There is a strong prima facie case in favor of the defendant No.1 and against the plaintiff. Grave prejudice will be caused to the defendant No.1 in case the present application is not allowed. Hence, prayed to allow this application.

3. On the other hand, the plaintiff has filed objections to the I.A. stating that the present suit is filed by the plaintiff seeking for declaration that the termination notice dated 16.08.2024 issued by

Defendant No 1 is illegal; Declaration that the ESOP notice dated 16.08.2024 issued by Defendant Company is illegal; Consequently direct the Defendant Company to allow the Plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the plaintiff granted to him vide various grant letters. The defendant Company with an oblique motive to prolong the proceedings in the present case and to usurp the stock options granted to the plaintiff, has filed the instant application. The defendant Company has filed present interlocutory application under Order VII Rule 11 (d) of the Code of Civil Procedure ('CPC') seeking rejection/dismissal of the plaint. It is submitted that at the outset, the application filed by the Defendant Company is an abuse of process of law, wholly misconceived and bereft of merits, vexatious and is not maintainable either in law or on facts and the same is liable to be

dismissed in limine. The defendant company has filed the present application on the grounds that the contracts of personal services cannot be specifically enforced. The present case does not fall within any exception carved out by the law for specific performance of contract of personal service. The employment contract of the plaintiff is determinable in nature. It is submitted that it is trite law that while adjudicating an application under Order VII Rule 11 of Code of Civil Procedure, the Court is required to confine its consideration solely to the averments made in the plaint and the documents annexed thereto. The Court ought not to be influenced by the pleas or defences raised in the written statement. The defendant company has filed the instant application in a casual and routine manner without there being any cause for the same. Further, it is evident from the tenor of the application that it is filed in a casual manner and

with a sole intention to drag the matter. The filing of this application is an attempt by the defendant company to protract the proceedings before this Court by making baseless, vexatious claims in the application. It is apparent from the construction of the instant application that the defendant company wants to delay the trial and has resorted to abuse of the process of law.

3(a). In the present case the plaintiff is not seeking for enforcement of a contract for personal service, but is seeking for declaration from this Court that the termination of the plaintiff is void as the plaintiff had already tendered his resignation upon defendant company's request as the plaintiff's position had become redundant. It is further submitted that the plaintiff is vitally affected by the termination notice and ESOP notice which afforded him the cause of action for this suit against the Defendant Company. The

plaintiff has instituted this suit not for seeking reinstatement of employment, but for declaration that the termination notice and ESOP notice are superfluous and untenable in law. The suit, therefore, is not one for enforcement of contract of personal service. It is submitted that if this Court finds that the plaintiff is entitled to such declaration, the plaintiff would be entitled to consequential and ancillary reliefs which flow from such declaration. This is a far cry from a suit for declaration that a termination was wrongful or for enforcement of contract of personal service. Section 14 of the Specific Relief Act, 1963 ('SRA') would thus be no bar to the suit for declaration as it is not for enforcement of contract for personal service but for declaration of a legal right that termination notice and ESOP notice affecting the plaintiff's status is void. In the instant case, the relief sought by the plaintiff is that his service in Defendant Company has been

terminated despite the plaintiff tendering resignation upon Defendant Company's request on his position becoming redundant and the same is issued without complying with the principles of natural justice. In other words the case of the Plaintiff is that the termination notice and ESOP notice which are under challenge are void and non-existent in the eye of law and the Plaintiff is therefore seeking declaration to the effect. Further, it is submitted that in giving the Plaintiff the declaration which they seek, this Court is not required to delve into the terms and conditions of the contract of service between the parties. This Court is required to look into whether the termination notice, and ESOP notice are valid or invalid. In the event that this Hon'ble Court finds that the termination notice and ESOP notice as invalid, then this Court has to only make declaration to that effect and such a declaration does not amount to

passing a decree for specific performance of contract of personal service.

3(b). It is submitted that the question of specific performance of a contract of personal service would have arisen if it were found that there has been in fact a termination but where the conclusion is that there has been no termination of the Plaintiff from service on account of the fact that principles of natural justice had not been complied with, termination notice and ESOP notice are void and therefore non-existent in the eyes of law. The present suit is instituted with the prayer before this Court seeking to declare the termination notice dated 16.08.2024 and ESOP notice dated 16.08.2024 issued by the Defendant company as illegal and not binding on the Plaintiff, the said prayer is not indicative in any manner of specific performance and does not fall under the umbrella of Section 14 of the Specific Relief Act. The plaintiff has approached

this Court seeking direction for Defendant Company to allow the plaintiff to exercise ESOPs which the Plaintiff is legally entitled to as Defendant Company by way of issuing termination notice and ESOP notice dated 16.08.2024 has usurped the ESOPs from the Plaintiff what rightfully belong to him. Hence the remedy sought by the plaintiff before this Court is unerring. The defendant company has breached the contract by depriving the plaintiff of the benefits arising out of it. In the present case, the termination notice and ESOP notice is in question as to the validity of the issuance of the same and if the same is in accordance with law. Hence, it does not fall into the category of the specific performance of contracts of personal service. The other averments made in the affidavit are denied by the plaintiff as false. Therefore, prays to dismiss the application.

4. On basis of the rival contentions raised by both the parties the following points raise for my consideration -

1. Whether the application filed by the defendant No.1 to deserves to be allowed?
2. What order?

5. Heard arguments of both the side and perused the materials on record.

6. My answer to the above points are as under:-

Point No.1 :- In the **Negative**,

Point No.2 :- As per final order,
for the following;

REASONS

7. **POINT NO.1:-** The plaintiffs have filed the above suit against defendants for a declaration that the termination of the plaintiff's employment by way of Termination Notice dated 16 August 2024 (Termination

Notice) is illegal and not binding on the Plaintiff; (b) a declaration that the ESOP Expiration Notice dated 16 August 2024 (ESOP Expiration Notice) issued by defendant No.1 is illegal and not binding on the plaintiff; and (c) directions to defendant No.1 to allow the plaintiff to exercise 185.454 vested, but unexercised stock options and not buy back the 24 exercised options from the Plaintiff granted to him vide grant letters dated 15 June 2015 1 April 2016, 1 April 2018, 1 April 2019, 1 April 2022 and 1 April 2023 (ESOP Grant Letters).

8. I.A.No.2 is filed by the defendant No.1 under Order 7 Rule 11(d) r/w Sec.151 of C.P.C., praying to reject the plaint, in the interest of justice and equity.

9. The defendant No.1 has stated that the suit is filed by the plaintiff before this Court, seeking reliefs

in relation to his termination from employment of defendant No.1. The said Termination Notice and ESOP Expiration Notice were issued by defendant No.1 as the plaintiff was conducting himself in abject disregard of the policies of the defendant No.1. The Employment Contract between the Plaintiff and Defendant No.1 and ESOP Policies are a determinable contract and contract of personal service. The performance of such contracts cannot be specifically enforced in law in accordance with the bar existing under the provisions of Section 14 of the Specific Relief Act, 1963. The prayer sought by the plaintiff in its Plaint for declaring the Termination Notice and ESOP Expiration Notice as illegal is in effect a prayer seeking the effect of the Termination Notice and ESOP Expiration Notice to be reversed, against the will and consent of the defendant No.1. The plaintiff has also sought a direction to defendant No.1 to allow the

plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the plaintiff granted to him. Such direction sought by the plaintiff is an attempt to seek specific performance of the Employment Agreement and ESOP Policies which is impermissible in law and cannot be granted by any Court of law. In cases of private employment, the principles applicable in public law domain do not apply and such employment is governed by the terms and conditions of the employment contract executed between the parties. Since in the present case, the Termination Notice and ESOP Expiration Notice was validly issued by defendant No.1 in accordance with the terms of the Employment Contract and ESOP Policies, the courts cannot enforce the performance of the Employment Contract against the defendant No.1. It is settled law that even if the termination of an employment contract

is illegal or in breach of the terms of such contract, the courts cannot declare such termination to be a nullity and at best an employee is entitled to the salary for the notice period and not seek specific performance of the contract. The notice period salary also stands duly paid to the Plaintiff by the Defendant No.1 in the present case. The Plaintiff in paragraph 15 of the Plaint categorically admits that the Plaintiff has received amount towards full and final settlement "It is submitted that when things stood thus, on 05.09.2024, the Plaintiff received an amount of INR 27,73,972/- as full and final settlement. Therefore, in the present case, there is no relief which the plaintiff can possibly seek against the defendants as defendant No.1 has duly paid the plaintiff as per the contracts entered between the parties. The present case does not fall within any exceptions carved out by law for specific performance of contracts of personal service. The Employment

Contract of the plaintiff is determinable in nature. The prayers sought by the plaintiff are barred by law and the Plaint ought to be rejected under Order VII Rule 11(d) of the CPC. There is a strong prima facie case in favor of the defendant No.1 and against the plaintiff. Grave prejudice will be caused to the defendant No.1 in case the present application is not allowed. Hence, prayed to allow this application.

10. On the other hand, the plaintiff has filed objections to the I.A. stating that the present suit is filed by the plaintiff seeking for declaration that the termination notice dated 16.08.2024 issued by Defendant No.1 is illegal; Declaration that the ESOP notice dated 16.08.2024 issued by Defendant Company is illegal; Consequently direct the Defendant Company to allow the Plaintiff to exercise 185.454 vested but unexercised stock options and not buy back the 24 exercised options from the plaintiff granted to

him vide various grant letters. The defendant Company with an oblique motive to prolong the proceedings in the present case and to usurp the stock options granted to the plaintiff, has filed the instant application. The application filed by the Defendant Company is an abuse of process of law, wholly misconceived and bereft of merits, vexatious and is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The defendant company has filed the present application on the grounds that the contracts of personal services cannot be specifically enforced. The present case does not fall within any exception carved out by the law for specific performance of contract of personal service. The employment contract of the plaintiff is determinable in nature. In the present case the plaintiff is not seeking for enforcement of a contract for personal service, but is seeking for declaration from this Court that the

termination of the plaintiff is void as the plaintiff had already tendered his resignation upon defendant company's request as the plaintiff's position had become redundant. It is further submitted that the plaintiff is vitally affected by the termination notice and ESOP notice which afforded him the cause of action for this suit against the Defendant Company. In the present case, the termination notice and ESOP notice is in question as to the validity of the issuance of the same and if the same is in accordance with law. Hence, it does not fall into the category of the specific performance of contracts of personal service. The other averments made in the affidavit are denied by the plaintiff as false. Therefore, prays to dismiss the application.

11. According to the defendants, the suit is barred u/Sec.14 of Specific Relief Act wherein, enforceable contract cannot be questioned. Therefore,

the ESOPs questioned by the plaintiff herein is a enforceable contract according to the employment agreement. Therefore, the plaint is liable to be rejected. Whether the contract is enforceable or not is a point of trial and a full-fledged trial is required for proper adjudication of the matter. As it is a settled law that while disposing applications under Order 7 Rule 11 of CPC, only the plaint averments and the documents filed with the plaint are to be seen. It appears that in para No.9 of the plaint, he states that after discussion with defendant No.1 company, the plaintiff submitted his resignation on 20.02.2024 which came to be accepted by defendant No.1 company and has prayed for declaration that the termination notice dated 16.08.2024. Therefore, trial is required. Hence, at the threshold the plaint cannot be rejected. As such, this I.A. deserves to be rejected. Therefore, I answer **Point No.1 in the Negative.**

12. **POINT NO.2.** For the foregoing reasons, I proceed to pass the following:-

ORDER

I.A.No.2 filed by the defendant No.1 under Order 7 Rule 11 r/w Sec.151 of C.P.C, is hereby rejected.

(Dictated to the Steno Gr.III, transcript thereof, typed by her, after correction pronounced by me in open Court on this day **17th day of January, 2026**).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**