

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Sri. SUNIL ANDANEPPA SHETTAR, B.Sc., LLB (SPL)
LXXXVI ADDL.CITY CIVIL JUDGE

Dated this the 3rd day of April, 2021

Com.O.S.No.7686/2019

Plaintiff/s : Mr. Shastri Gyaneshwar

- Vs -

Defendant/s : M/s. Tata Consultancy
Services Ltd.,

* * * *

ORDER ON MEMO DATED 03.03.2021

The advocate for the defendant No.1 has come up this memo to re-transfer the records to the City Civil Court, Bangalore as the dispute between the parties is not a commercial dispute as defined U/s 2 (1) (c) of the Commercial Courts Act, 2015.

2. The main ground urged in the memo is that the suit is for damages in view of the termination of the employment of the plaintiff.

3. The plaintiff has filed his objections to the memo through his counsel and contended that the nature of dispute between the parties is a commercial dispute and the defendant ought to have filed an interim application U/O 7 Rule 11 (d) of C.P.C. for rejection of plaint or return of plaint or an application U/o 14 Rule 2 of C.P.C. for framing preliminary issue with respect to the maintainability of the suit.

4. It is further contended that by invoking Sec.6 and 15 of the Commercial Courts Act the Hon'ble Court at CCH-83 has transferred the suit to this court and the orders passed by the said court is a judicial order and the aggrieved party has to challenge the said order by way of writ since interim orders cannot be challenged U/s 8 of the Commercial Courts Act, 2015. The defendant having not raised any objection before the CCH-83 at the time of transferring the suit is deemed to have waved of its right and thus the defendants have no locus-standi to raise such objection.

5. The plaintiff claims that considering the object and intent of the Commercial Courts Act, 2015, the subject matter of the dispute in the suit falls under later part of sub section (xviii) of Sec.2 (1) (c). It is an admitted fact that the plaintiff is an ex-employee of defendant as per the letter of appointment dated 15.06.2011 with terms and conditions of the employment. The defendant has committed breach and terms of the said agreement and as such the plaintiff has instituted the suit claiming compensation/damages. The plaintiff has rendered his personal services for more than seven years in the defendant company under letter of appointment dated 15.11.2011 with terms and conditions. It is alleged that the memo is filed only to prolong the matter.

6. It is further contended that all the terms and conditions of the employment between the plaintiff and the defendant are one sided favoring the defendants without leaving any space for the plaintiff to safeguard himself. The plaintiff by making allegations against the defendants

claims to have instituted this suit. Hence, on these grounds the plaintiff has prayed to dismiss the memo.

7. Based on the contentions of the respective parties the following point arises for my consideration.

1. Whether the dispute involved in the suit falls within the ambit of 'Commercial Dispute' as defined U/s 2 (1) (c) and (xviii) of the Commercial Courts Act, 2015 and this court has jurisdiction to entertain the suit?

8. Having heard the arguments of both the counsels on the memo and considering the pleadings of the respective parties and the materials available on record, I answer the above point in the 'Negative' for the following:

REASONS

9. The suit of the plaintiff against the defendant is for liquidated damages of Rs.5 crores for causing defamation to himself with interest at the rate of 18% P.a from the date of suit till realization and for cost. As per the averments of the plaint the plaintiff claims that he has rendered his personal services under the letter of appointed dated 15.11.2011 and the letter of appointment dated 15.06.2011 under the defendant No.1 company. The defendants No.2 to 6 are the

employees of defendant No.1 company working under various capacity. It is the allegation of the plaintiff that the defendants have mentally tortured and conducted domestic enquiry in violation of the service jurisprudence and without observing the principles of natural justice. The plaintiff has made other various allegations against the defendants in respect of termination of his employment and claimed compensation/damages of rupees five crores. The plaintiff also claims that he has not violated any of the terms and conditions of his employment and claims that his termination for employment is illegal.

10. It is a fact that the defendants have already filed their written statement and resisted the suit and admitted that the plaintiff was an employee of defendant No.1 company and contends that his employment was terminated for violation of terms and conditions of his appointment. Various allegations of violation of forwarding the confidential data from his personal laptop to personal email ID.

11. With these factual aspects of the case and the requirement of law as stated above, the point to be decided is “whether the suit of present nature falls within the ambit of ‘commercial dispute’ as defined U/s 2 (1) (c) of the said act. “

12. The jurisdiction of the commercial court is defined U/s 6 of the Commercial Courts Act 2015, wherein it is said that ‘the commercial court shall have jurisdiction to try all suits and applications relating to a commercial disputes of a specified value arising out of the entire territory of the state over which it has been vested territorial jurisdiction. The meaning of ‘commercial dispute’ has been defined U/s 2 (1) (c) of the said act. The specified value in relation to a commercial dispute has been defined U/s 2 (1) (j) of the said act, which shall not be less than rupees 3 lakhs or such higher value as may be notified by the Central Government. The mode of determining the specified value is stated in sec.12 of the said Act.

13. The main contention of the plaintiff is that the subject-matter of the dispute falls within the ambit of

Sec.2(1)(c)(xviii) of the Commercial Courts Act, 2015. As per the said provision, dispute arising out of agreements for sale of goods or provision of services are termed as commercial dispute. In order to bring the suit within the purview of the Commercial Courts Act, the plaintiff has to satisfy that the nature of the dispute in the suit should be commercial in nature as defined under Section 2(1)(c) of the said Act with a specified value as defined under Section 2(i) r/w Section 12 of the said Act.

14. While ascertaining the nature of the dispute, it is the averments of the plaint which are very much relevant. On going through the averments of the plaint, the plaintiff is seeking compensation/damages for his termination of his employment under different heads. In reality the dispute between the plaintiff and defendants is in respect of termination of the plaintiff from his services. In my opinion, the nature of the dispute involved in the suit will not come within the ambit of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015.

15. The word 'services' as stated under Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015, should be understood in relation to the sale of goods and not the services of employer and employee. The nature of the dispute between plaintiff and defendants will not fall under any of the sub-sections of Section 2(1)(c) of the said Act.

16. The learned counsel for the plaintiff in support of his contentions, has relied upon two judgments of Hon'ble Allahabad High Court and Hon'ble Supreme Court i.e.,

(1) M/s. Tata Consultancy Services Vs. The Commissioner of Trade Tax, U.P. Allahabad Highf Court. Trade Tax Revision No.1566/2006, Judgment date 04.04.2019;

(2) M/s. Tata Consultancy Services Vs. State of Andhra Pradesh. Supreme Court of India. Appeal (Civil) No.2582/1998. Judgment date 05.11.2004.

17. I have gone through the said judgments and I am not able to assess as to how the said judgments will come to the rescue of the plaintiff. The facts and circumstances of the said cases and the present case as well as the point involved in the said cases are totally different from the present case.

18. One of the contention of the learned counsel for the plaintiff that the defendant has to file an application under Order VII, Rule 7(d) of CPC or for return of plaint or an application under Order XIV, Rule 2 of CPC with respect to the jurisdiction is not proper and correct. It is for the Commercial Court to decide that the nature of dispute involved in the suit as per Section 6 coupled with Section 2(1)(c), Section 12 & Section 2(j) of the Commercial Courts Act, 2015. Hence, for the above discussion, I am of the considered opinion that the subject-matter of the dispute involved in the suit will not fall within the ambit of any of the sub-sections of Section 2(1)(c) of the said Act. Hence, I answer the above point in the 'Negative' and proceed to pass the following:

ORDER

The memo filed by the advocate for defendant No.1 dated 03.03.2021, is hereby allowed by holding that the subject-matter of the dispute between the parties is not a commercial dispute and this court has no jurisdiction to entertain the suit.

Office is hereby directed to place the entire records before the Hon'ble Prl. City Civil & Sessions Judge, Bengaluru, for necessary action.

Both the parties to the suit are hereby directed to appear before the transferee court on 17.04.2021.

(Dictated online to the Judgment Writer,& computerized by him, corrected on computer and signed by me then pronounced in the Open Court, dated this the 3rd day of April, 2021)

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge,
Bangalore.

