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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 854/2008 & CC No.65/2009

RAKESH LAMBA

..... Plaintiff

Through Mr. Naresh K.Daksh, Advocate

versus

M/S JAIN STUDIOS LTD.

BA+

..... Defendant

Through Mr. Vibhore K.Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER

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15.09.2009

1. The defendant in CS(OS) No.855/2008 i.e. M/s Jain Studios Ltd., counter-claims by these proceedings against the plaintiff Shri Rakesh Lamba.
2. The facts necessary for this purpose are that the said plaintiff (hereinafter referred to as "Rakesh") sought recovery of the claimed amount plus interest @ 18% p.a., in a summary suit under Order 37 CPC. The suit was filed on 4.11.2003; it was based on a written agreement for payment of salary.
3. Rakesh claimed that he joined the employment of the defendant (for convenience referred to as "M/s Jain Studios Ltd." on 7.3.2000 and was confirmed by a letter dated 15.4.2000 on a monthly salary of Rs.54,400/- and other benefits – the aggregate amounting to Rs.62,564/- p.m. It was claimed that M/s Jain Studios Ltd., the employer defaulted in payment of monthly salary and the accumulated arrears worked out to more than Rs. 7 lakhs, compelling Rakesh to resign from the services on

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19.05.2000, requesting that one month's notice period should be adjusted from his Leave Encashment Account. It was contended that the resignation was accepted and the plaintiff-Rakesh handed over charge of M/s Jain Studios Ltd. on 25.3.2003. It is contended that at that stage he was issued a cheque for Rs.51,804/-

4. The suit was initially filed under Order 37 CPC being Civil Suit No.181/2003 before the Additional District Judge. The defendant in that suit i.e. Jain Studios but applied for leave to defend, contending inter alia among other defences that Rakesh had not repaid certain amount on account of purchase of IRDs, from its cable network operators and that he had not counted for certain amounts. M/s Jain Studios relied upon a letter dated 8.1.2004, in that regard. Initially leave to defend was refused and a decree was directed to be drawn up.

5. Aggrieved M/s Jain Studio approached this court which in an appeal set aside the decree and granted leave to the said defendant M/s Jain Studio on condition that he deposited the amount claimed.

6. M/s Jain Studio Ltd. preferred a counter claim alleging inter alia as follows :-

"The cause of action for the counter-claim arose to the company first in the early part of the year 2003 when it received feed-back about the misconduct of the plaintiff and on 19.05.2003 when it called upon the plaintiff to explain about his misconduct and to provide information demanded from him and the plaintiff, instead of rendering his explanation tendered his resignation and disappeared from the scene. It arose thereafter on each date when the counter-claimant continued to receive information from various sources with regard to the plaintiff having misappropriated the company's property and also having sold the IRDs of the company to various cable operators. In this connection, the counter-claimant specifically points out the letters dated 03.06.2003 received from

Alankrit Jerath and 08.01.2004 from World View and various other pieces of information received thereafter on various dates regarding the misconduct of the plaintiff. The cause of action is a continuing one. In fact, the limitation for the purposes of this counter-claim did not run between 15.05.2004 when the above suit was decreed by the Court of Shri Vinay Kumar Gupta, Additional District Judge, Delhi, against the defendant/counter-claimant and 01.11.2006 when the aforesaid judgment and decree dated 15.05.2004 was set aside by the Hon'ble High Court of Delhi by allowing RFA No.388/2004-Jain Studios Ltd. v/s Rakesh Lamba. The present counter-claim of the defendant is accordingly within limitation. In any event, the defendant/counter-claimant also claims a set-off of its claim for damages against the plaintiff against his claim against the defendant in the above suit."

7. Since the counter claim on the suit exceeded the pecuniary jurisdiction of the District Court it was directed to be transferred to this court.

8. The plaintiff Rakesh contends that the counter claim is not maintainable as it is time barred. Learned counsel points out to para 32 and states that the plaintiff Rakesh left employment of M/s Jain Studios with effect from 20.5.2003 and that in case it had any claim against him it should have been pressed within three years from that date. The counter claimant M/s Jain Studios, on the other hand, submits that the occasion for counter claim arise after the judgment and decree directed to be drawn up by the District Court dated 15.5.2005 was set aside on 1.11.2006 in RFA No.388/2001.

9. The court has considered the submissions of the parties. M/s Jain Studios does not deny that the plaintiff Rakesh left employment in May 2003. It was aware of the claim made by him in the suit instituted before the District Court in November, 2003. It received summons and after having ensured appearance within the prescribed time sought to leave to defend. In that application undoubtedly the employer M/s Jain Studios did mention about the liability of the plaintiff Rakesh to pay it some amounts.

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Yet there is no denial of the fact that no steps towards pressing alleged claims by filing an independent suit or present a counter claim in the same suit were resorted to within the prescribed time at that stage. M/s Jain Studios banks upon the setting aside of the decree of the District Court on 01.11.2006 and suggests that the time between November, 2003 and November, 2006 should not be reckoned. No ruling was pointed to the court in support of this argument. The claims if any of M/s Jain Studios are independent and to say the least ought to have been pressed within the prescribed period of limitation. There is no warrant to the argument that jurisdiction of the court in respect of such reliefs by counter claimants is dependent on the contingency of decision in an appeal. No cause of action is said to "arise" or accrue in such cases, by virtue of a judgment. The defendant was aware of its right to claim the amount; this is discernible from the "leave to defend" application moved by it. In the opinion of the court, the counter claim cannot be maintained as it is time barred. It is accordingly dismissed.


S. RAVINDRA BHAT, J

SEPTEMBER 15, 2009

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- Fresh I.P. No. 2623/10 vs 1510PC.
Filed by pleader