

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

Date of Reserve: 20th Janaury, 2010
Date of Order: January 25, 2010

CM(M) No. 73/2010

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25.01.2010

Mr. Yogesh Bhatia & Anr.

... Petitioner

Through: Mr. Kapil Kher, Advocate

Versus

RTC Restaurants (India) Ltd.

... Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This petition under Article 227 of the Constitution of India has been preferred against an order dated 27.11.2009 passed by the Trial Court whereby an application of the defendant (petitioner herein) under Order 37 Rule 5 CPC was disposed of and conditional leave to defend was granted to the petitioner on the condition of his depositing a sum of Rs. 1.75 lac (50% of the suit amount) in the Court within 45 days.

2. The respondent had filed a suit under Order 37 CPC on the basis of a written agreement between the parties which the petitioner entered into with the respondent at the time of taking employment with respondent. Vide this contract, the petitioner had agreed that it would serve the respondent for a period of three years minimum. The petitioner was also to undergo training in USA during this period of service at the expense of the respondent. It was provided that in case the petitioner did not serve the respondent for stipulated period of three years, he shall pay a sum of Rs.3.5 lac to the respondent. The petitioner had taken a defence before the Trial Court that the petitioner was not willing to undergo the training since at that time he was blessed with a baby daughter and he needed some time to spend with his wife and newborn child but the respondent failed to understand this and coerced him to

undergo the training. He agreed to undergo the training under these circumstances and he also was made to sign the agreement and furnish a guarantee of Rs.3.5 lac under coercion. The respondent denied all the assertions. The Trial Court considered all the documents filed by the parties. One of the documents, filed by the respondent was the resignation letter dated 17.5.2008 addressed by the petitioner to the respondent which reads as under:

*"To
The Chief Operating Officer
Ruby Tuesday
New Delhi*

Sub: Resignation

Sir,

The purpose of this letter is to announce my resignation from Ruby Tuesday, with immediate effect. I am taking this decision for better opportunity that will act as a catalyst in my career.

This was not an easy decision to make on my part. The past one and half years have been very rewarding. In the same breath, I would like to thank everyone for the cooperation extended to me for making my stint great and unforgettable learning experience.

*Yours faithfully
Yogesh Bhatia
Training Manager"*

3. It is not the contention of the petitioner that he had written resignation letter under coercion. After considering the resignation written by the petitioner, the Trial Court came to the conclusion that the defence taken by the petitioner was a sham defence and the petitioner was not truthful. The tenor of letter shows that he had resigned from the company for better opportunities. The Trial Court also considered that the defendant (petitioner) had at no stage protested against the plaintiff company (respondent herein) about any harassment, torture, ill treatment etc. The Trial Court found no force in the defence raised however, still granted conditional leave to defend.

4. The Counsel for the petitioner has relied upon *Yuvneet Suri & Anr. v. Round the Clock Stores Ltd.* CM(M) 829/2007 and submitted that under similar circumstances this Court had upheld the decision of the Trial Court of granting unconditional leave.

5. It is settled law that every case has to be decided on the basis of facts of that case. The broad principles of granting leave to defend have been noted by the Trial Court in this case and the trial Court after considering facts of the case had come to the conclusion that it was not a fit case for grant of unconditional leave. Under Article 227 of the Constitution of India, this Court is not to substitute its own discretion in place of discretion of the Trial Court nor this Court acts as a Court of Appeal to re-appreciate the entire facts & law and to pass a judgment as Court of Appeal. This Court exercises only supervisory jurisdiction only to ensure that the procedure followed by Trial Court was in accordance with law and the Trial Court has not ignored the basic principles of law applicable in this case and has not stepped outside the jurisdiction.

6. It is submitted by Counsel for the petitioner that the judgment was cited by him but it has not been analyzed by the Trial Court. It is observed that many a times the irrelevant judgments which do not have any bearing on the case are cited by the advocates. It is not necessary for the Trial Court to quote each and every judgment in its judgment and analyze each judgment and give a finding whether the judgment was applicable in the case or not. It is expected from the Trial Court only to apply correct principles of law and apply its discretion in a judicious manner. It is not necessary for the Trial court to burden its judgment with all cited judgments of both the parties whether relevant or irrelevant. The precedents are for guidance of Trial Court so that Trial Court applies correct law. Precedents of the superior courts are not to be mechanically reproduced in judgments passed only to say that this judgment was not applicable or the facts were different and make the order unnecessary long. An order of the Trial Court cannot be interfered on the ground that the Trial Court did not cite the judgment in its order which was produced before it so long the trial court has applied correct law.

I find no force in the petition. The petition is hereby dismissed.

January 25, 2010
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SHIV NARAYAN DHINGRA, J.