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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.29/2001 & RFA No. 66/2001

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31st January, 2011

1. RFA No. 29/2001

CDR D.S.BRAR

..... Appellant

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora, Mr. Sumit Khosla and Ms. Divya Bhalla, Advocates.

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VERSUS

M/S GENERAL MOTORS INDIA LTD.

..... Respondent

Through: None.

2. RFA No. 66/2001

M/S GENERAL MOTORS INDIA LTD.

..... Appellant

Through: None.

VERSUS

D.S.BRAR

..... Respondent

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora, Mr. Sumit Khosla and Ms. Divya Bhalla, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. These are two cross-appeals against the impugned judgment and decree dated 18.11.2000 of the trial court whereby the suit of the appellant/plaintiff in RFA No. 29/2001 has been decreed, however without any interest. Reference in this judgment to the appellant and respondent would mean the said parties in RFA 29/2001. By the impugned judgment and decree, the suit of the appellant was decreed for recovery of Rs.3,40,000/- being the balance amount payable for the contractual period of 2 years.

2. The facts of the case are that the appellant was appointed as a consultant by the respondent for a fixed period of 2 years under the contract dated 12.8.1995 which did not contain a termination clause. The trial court, therefore, held that the termination of contract was not permissible within the fixed period of 2 years and since, the contract was illegally terminated without any reason, the appellant was held entitled to the balance payable for the remaining contract period which was terminated pre-maturely by the respondent vide its letter dated 17.4.1996 w.e.f.20.4.1996. The trial court has dealt with relevant issues, being issue no. 2 and 3, in detail, and held the respondent guilty of breach of contract, and thereby has partly decreed the suit for recovery. The relevant portion of the impugned judgment and decree and with which I agree reads as under:-

“xxxxxxx I also perused the letter dated 17.4.96 and it is revealed that there is nothing mentioned about the unsatisfactory work done by the plaintiff during his tenure. Moreover, the defendant Vice President written to the plaintiff that “We would like to thank you for all consultancy work

which you have provided to us till date". It means that the defendant is not annoyed with the work of the plaintiff. Even in the cross examination the plaintiff has stated about his claim of Rs.3,40,000/- and he also stated that it is correct that it was a contract and the defendant was to pay Rs.5,52,000/- over a period of two years by the defendant company and he denied the suggestion of the defendant that he has been appointed by the defendant company on the monthly basis and he has further stated that it is correct that the maximum period would be two years and it is not fact that his services to the company was not found to be satisfactory and therefore, they have terminated his services. Even in DW1 Examination chief he has stated that the nature of the contract of the plaintiff with the defendant company was of hiring the consultancy services relating to the public relation & administration. On perusal of the cross examination of DW1 I find that the plaintiff had entered into a contract with the defendant for two years for providing the consultancy services as per Ex. DW1/P-1 at Delhi office of the defendant for a period of two years as per Ex.PW1/1 and the total amount was to be paid was Rs.5,52,000/- within the period of two years and the plaintiff has to perform his duties of consultancy which have been mentioned in Ex.PW1/2 and he has performed this duty for about seven months. An amount of Rs.23,000/- was given to him by the defendant for the month of Dec. 95 as per Ex.PW1/3. The employment of the plaintiff was for a definite period for two years to service the defendant at his Delhi office and he has served the same for 7 months. If the contract provides for termination of service of the plaintiff by notice the defendant can lawfully terminate the service of the plaintiff on giving the required notice but the contract for the service of the consultancy of the plaintiff was for a definite period. So before expiry of two years the defendant has no right to terminate the service of the plaintiff and if so the defendant is liable to pay the stipulated salary for the definite period. The record does not show that the plaintiff has done any misconduct or breach of his duties in his tenure of 7 months service towards the defendant. While the plaintiff was ever ready and willing to perform his part of the contract and his service upto the contract period for two years. It is held in AIR 1957 MP 144 that 'the plaintiff was every ready and willing to perform his part of the contract and his service could not therefore, be terminated before the expiry of the contract period unless employee was at fault. The plaintiff was therefore, entitle to get damage equivalent to 7 months salary.' It is observed by the Bombay High Court in AIR 1969 Bombay 373 in the case of contract of employment for a fixed period in the case of breach by the employer, normal measures of damages his salary for the whole of the unexpired period of service', Section 73 of explanation contemplated contract of employment for a fixed period-breach of, by the employer, employee is entitled for a

salary for the whole unexpired service, under Section 73 of Indian Contract Act 1872 compensation for loss or damages caused by the breach of contract-without the contract has been broken, the period who suffer by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damages caused to him thereby, which naturally arose in the usual course of thing from such breach of which the period from the breach of it. Such compensation is not to be given for any remote or indirect loss or damages, damages sustain by reason of breach."

3. Even after the aforestated detailed discussion and finding in favour of the appellant, the trial court has however not granted any interest to the appellant on the ground that in case of a relationship of an employer and employee, the question of interest does not arise. I fail to understand the conclusion of the trial court whereby the interest has been declined to the appellant. Even assuming interest could have been refused for the pre-suit period, the same cannot be refused for the pendente lite and future period till realization of the decretal amount inasmuch as substantial time has passed during the pendency of litigation. A person who is deprived for the use of money is entitled to interest which is really in the nature of damages for illegally withholding of money. The appellant had also issued legal notices to the respondent which have been duly proved in the trial court as Ex.PW1/5, the AD card as Ex.PW1/7 and another notice as Ex.PW1/9 (with respect to which the AD cards are exhibited as Ex.PW1/11 and Ex.PW1/12). The appellant would therefore surely be entitled to interest both pendente lite and future till realization of the decretal amount and which in the facts and circumstances of the case ought to be 9% per annum simple.

4. So far as the appeal of the respondent being RFA No. 66/2001 is

concerned, I do not find any illegality in the impugned judgment and decree in view of the afore quoted portion of the judgment of the trial court. Since the appellant was not guilty of any wrong doing and there was no case of premature termination of the fixed contractual period of 2 years. I do not find any reason to interfere with the impugned judgment and decree in RFA No. 66/2001, which is the appeal of the employer.

5. In view of the above, the appeal being RFA No. 29/2001 is partly allowed by granting pendente lite and future interest till realization @ 9% per annum simple or till the decretal amount being deposited in this court i.e., interest will be payable on the suit amount at 9% per annum simple from the date of filing of the suit on 30.7.1997 till the decretal amount has been deposited in this court by the appellant in RFA No. 66/2001 and respondent in RFA 29/2001. Decree sheet be prepared.

The appellant had withdrawn the deposited decretal amount subject to the furnishing of a security. Since RFA 66/2001 has been dismissed, the security furnished by the respondent in the said appeal will stand discharged. Trial court record be sent back.

JANUARY 31, 2011
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VALMIKI J. MEHTA, J.