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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1919/1998

18th September, 2012

GOPAL GUREJA

..... Plaintiff

Through: Mr. H.L.Tiku, Sr. Adv. with Mr. Thakur
Sumit, Advocate.

VERSUS

RICHARD ELLIS LTD. and ORS.

..... Defendants

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Rishabh
Maheshwari, Mr. Gaurav Mitra, Mr. Ajay
Gulati, Ms. Rupali Sharma, Ms. Samreen
and Ms. Shuchismita, Advocates for
defendant no.4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit seeking recovery of ₹ 1,75,38,515.00 has been filed by the plaintiff who was an employee of the defendant no.1. There were originally three defendants in the suit. Defendant no. 4 which is called as M/s C.B.Richard Ellis, was added as a party pursuant to an application filed by the plaintiff because as per the plaintiff, the defendant no.1 has changed its name to M/s C.B.Richard Ellis Ltd. Of course, as the facts will later show that the

defendant no.4's name is a mis-description and the correct name of defendant no.4 would be M/s C.B.Richard Ellis Mauritius Ltd. The suit claim for the total amount of ₹ 1,75,38,515.00 is broken down in different parts in para 21 of the plaint which reads as under:-

“21. The plaintiff accordingly through its Lawyer's letter dated September 25,1997 called upon the defendants to pay a sum of Rs.1,43,75,830/- and the interest thereon at the rate of 24% per annum within 10 days. The defendants failed to comply with the requisition. The defendants by their letter dated October 23,1997 in response to the Lawyer's letter dated September 25,1997 denied the plaintiff's claims. Hence the suit. The plaintiff therefore, is entitled to receive from the defendants the following amounts due and payable by the defendants:

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|-----|--|-----------------|
| (a) | Employment benefits for period from 1.9.1994 to 14.4.1997 as detailed in plaintiff's legal notice dated 25 th September, 1997 | Rs.73,75,830.00 |
| (b) | Compensation for humiliation and harassment undergone by plaintiff as a result of malicious and deceitful acts/actions of defendants | Rs.70,00,000.00 |
| (c) | Interest at the rate of 24% per annum from October, 1997 to August, 1998 | Rs.31,62,685.00 |

Total Rs.1,75,38,515.00
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(Rupees One Crore Seventy Five Lakhs Thirty Eight Thousand Five Hundred Fifteen only)”

2. Actually, the suit was preceded by a legal notice dated 25.9.1997 (Ex.P-6) sent by the plaintiff to the defendant no.1 and in which, the amount as stated in para 21 (a) of the plaint has been calculated as under:-

1.	Salary for the period April 1, 1997 to April 15, 1997	₹25,000.00
2.	Leave encashment for the period 2 & ½ months (Leave due but not permitted to be availed)	₹1,25,000.00
3.	Commission due from September 1, 1997 to April 15, 1997 @ ₹2 lacs per month	63,00,000
	Less Received	<u>6,49,178</u>
		₹56,50,830.00
4.	House Rent due but not paid – period from September 1, 1994 to April 15, 1997 @ ₹50,000/- per month	<u>₹15,75,000.00</u>
	Total	<u>₹73,75,830.00</u>

3. A reference to the plaint shows that plaintiff claimed that he was occupying a very high position as Assistant Vice President with his erstwhile employer Bank of America, and he left the said job on the representations made by defendant nos. 2 and 3. Plaintiff claims that though he joined the defendant no.1 company pursuant to the letter of appointment dated 1.9.1994 (Ex.P-4), however, he was promised many more items/benefits, which were denied to him. The plaintiff states that he continued to work with the defendant no.1 company in the

hope that the assurances given to him will be complied with however, the same were not made good. Plaintiff thereafter in para 15 of the plaint states that in October, 1996, he was appointed as an Associate Director in the defendant no.1 company yet, the terms of employment even as originally promised were not given. The plaintiff thereafter states that he worked with the defendant no.1 till 15.5.1997. The subject suit thereafter came to be filed claiming the amounts as already stated in para 21(a) of the plaint read with the legal notice dated 25.9.1997 (Ex.P-6).

4. Defendant no.1, the employer company, filed no written statement and was proceeded ex parte. Defendant no.3 also did not file any written statement and was proceeded ex parte. Defendant no.2 filed written statement, however, he subsequently failed to appear and did not lead any evidence.

5. Defendant no.4 filed the written statement but did not lead any evidence. The only defence raised by defendant no.4 before me is that there is no entity in the name of C.B.Richard Ellis and defendant no.4 has nothing to do with the plaintiff. Counsel for defendant no.4 however concedes that defendant no.4 is a branch office of M/s C.B.Richard Ellis Mauritius Ltd. Defendant no.4 M/s C.B.Richard Ellis Mauritius Ltd. is stated to be a company different than the defendant no.1 which is stated to be incorporated in U.K. The only reason why

defendant no.4 contends that it is not liable is that it has no co-relation with the defendant no.1.

6. In this case, whereas the plaintiff has led evidence, there is no evidence on behalf of the defendants, however, it is now settled law that even if, there is no defence on behalf of the defendants, this Court has to independently decide as to whether the plaintiff has proved his case, and is so held by the Supreme Court in the judgment in the case of *Balraj Taneja & Anr. vs. Sunil Madan & Anr. 1999 (8) SCC 396*. In the present suit, the nature of the plaint itself shows that there existed disputed facts and the plaintiff was required to prove the facts as alleged in the plaint. Let us now see whether the plaintiff has discharged the onus of proof even assuming there is no evidence led on behalf of the defendants.

7. Following issues were framed in this suit on 20.1.2004.

- “1. Whether there was any privity of contract between the plaintiff and defendant No.2 and defendant No.4? OPP
2. Whether there was any breach of the said contract by defendant No.2 or by defendant No.4?OPP
3. Whether the suit is bad for misjoinder of parties?OPP
4. Whether C.B.Richards Ellis Mauritius Ltd. and Richard Ellis are the same entity or is there any connection between the two?OPP

5. Whether the plaintiff is entitled to interest? IF so at what rate and for what period?OPP
6. Relief.

Issue Nos.1,2 and 5

8. Issue nos. 1,2 and 5 are related to each other and therefore are being disposed of together.

9. The two main aspects under these issues would be whether there is any privity of contract between the plaintiff and the defendant no.4, and whether the plaintiff is entitled to the suit amount from the defendant no.1 and/or defendant no.4. I must at this stage, state that actually there ought to have been an issue as to what is the amount which the plaintiff will be entitled to and against which defendant, however, there is no such issue, but my discussion on issue nos. 1,2 and 5 will therefore necessarily include a discussion on this aspect.

10. So far as the fact that the plaintiff acted upon the letter of appointment dated 1.9.1994(Ex.P-4) and joined the defendant no.1 company, is not an issue as the plaintiff admits this fact. Once there are specific terms of appointment, and it is only pursuant to which the plaintiff joined the defendant no.1, there will be heavy onus upon the plaintiff to show that in spite of a specific contract dated 1.9.1994, the amounts claimed by him in the suit are based on agreed terms and referable to a

specific document or contract with the defendant no.1. Let us now examine each head which is contained in para 21(a) of the plaint read with the relevant para of the legal notice dated 25.9.1997 (Ex.P-6).

11. The first sub-head of para 21(a) is the claim of ₹ 25,000/- for the salary from 1.4.1997 to 15.4.1997. It was for the plaintiff to prove that what is the amount of salary received by him for April, 1997 and how is the balance of Rs. 25,000/- still payable to the plaintiff. Firstly, it may be noted that the salary is for half a month i.e. 15 days and the salary in terms of letter dated 1.9.1994 (Ex.P-4) for 15 days will be about roughly ₹ 16,500/-. Therefore, this figure of Rs. 25,000/- is quite clearly misconceived. Nothing else has been pointed out to me on behalf of the plaintiff as to how the plaintiff was agreed to be paid a monthly salary of Rs. 50,000/- inasmuch as in terms of Ex.P-4 annual salary was Rs.4,02,000/- and which translates to roughly about ₹33,000/- per month. Plaintiff has failed to discharge the onus of proof by leading evidence as to how this amount of Rs.25,000/- is claimed by him. Of course, plaintiff could have filed his bank account or salary voucher to show that he has only received a particular amount for the month of April, 1997, but the plaintiff has failed to do so. The plaintiff is hence not entitled to this claim/amount.

12. The second head in the legal notice Ex.P-6 is the claim for leave encashment for 2 ½ months of Rs.1,25,000/-. When we look at the terms of appointment Ex.P-4 dated 1.9.1994, we do not find that there is any term of employment entitling the plaintiff to leave encashment. No other document or any contract has been pointed out to me on behalf of the plaintiff to show that there was any other contract between defendant no.1 and plaintiff with respect to leave encashment. This claim of the plaintiff is also therefore not sustainable and is rejected.

13. The same will be the position with respect to house rent inasmuch as, the terms of appointment contained in Ex.P-4 dated 1.9.1994 does not contain any term as to house rent. This claim is also accordingly rejected.

14(i) That takes us to the point no.3 of the notice Ex.P-6 and which pertains to the claim of commission. This claim of commission is from 1.9.1994 (sic 1997) to 15.4.1997 at the rate of Rs. 2 lacs per month.

(ii) Firstly, the subject suit has been filed on 5.9.1998. Though, there is no issue framed with respect to limitation, but the claim for commission for the year 1994 as on 5.9.1998 would be barred by limitation. Even the claim for the financial year ending 31.3.1995 would again be barred by limitation as the limitation for the same would end on 31.3.1998. Therefore, though no issue is

framed however, since I am referring to admitted facts, in terms of Section 3 of the Limitation Act, which binds the Court to decide the issue of limitation, I hold that claim with respect to the commission for the years upto 31.3.1995 would be barred by time.

(iii) Let me now assume that the entire claim for commission is within limitation and deal with the same on merits. To succeed in this claim, it is for the plaintiff to establish that there was a contract between the plaintiff and the defendant no.1 with respect to payment to the plaintiff of a fixed commission of ₹ 2 lacs per month. Once again, there is not even a single document on record proved by the plaintiff which substantiates the fact that the plaintiff is entitled to commission at the rate of ₹ 2 lacs per month. Of course, learned senior counsel for the plaintiff is correct, in showing that the entitlement to commission of the plaintiff was an additional benefit given to the plaintiff, inasmuch as, that commission paid to the plaintiff is clear from the letter dated 4.2.1997 (Ex.P-5), however, even if we take that the letter Ex.P-5 proves that commission was paid to the plaintiff, however, the same in no way proves that the commission was Rs. 2 lacs per month i.e. ₹ 24 lacs per year. Before fastening a huge monetary liability, it is necessary that the plaintiff must satisfactorily discharge the onus of proof that he was entitled to commission of ₹ 2 lacs per month. Mere self-serving

avermment in my opinion in the facts of the present case cannot amount to discharge of onus of proof for the plaintiff to claim commission of Rs. 2 lacs per month. I accordingly hold that the claim of the plaintiff for the commission of Rs. 56,56,830/- is misconceived and is accordingly dismissed.

15. This now takes us to the claim of Rs.70 lacs, a claim in para 21(b) of the plaint which pertains to the compensation for humiliation and harassment undergone by the plaintiff as a result of malicious and deceitful acts of the defendants. A claim under the head such as the one stated in para 21(b) of the plaint, is actually not under the law of contract but under the law of torts. However, though the claim will be actually under the torts what the plaintiff in effect pleads in the plaint that this claim is on account of failure of the defendant no.1 to abide by the terms of contract of giving the additional payments which have been stated in the legal notice Ex.P-6, and as discussed above. It is settled law that in contractual matters, there does not arise any issue of grant of compensation for alleged humiliation or harassment or malicious and deceitful acts. Also, this claim would have been allowed only if the claim in para 21(a) was to be allowed, inasmuch as, the claim under para 21(b) is in fact consequential to claim in para 21(a), and since I have rejected the claim of para 21(a), this consequential claim in para 21(b) will also be liable to be rejected. This rejection

on merits is in addition to rejection on account of the fact that in contractual matters compensation for alleged humiliation and harassment cannot be granted. To complete narration in this discussion, I must state that plaintiff has not led any credible evidence, except his own self serving affidavit, as to how this huge claim of Rs.70 lacs is sustainable. The claim of ₹70 lacs is also rejected accordingly.

16. The final claim will be the claim of interest at 24% per annum. Since I have rejected the claims in para 21(a) and 21(b) of the plaint, there does not arise any issue of grant of interest, much less at 24% per annum. Claim of interest is accordingly rejected.

17. In my opinion plaintiff is also estopped from raising the claim in the plaint. This is because he acted upon, and that too for about 2-1/2 years, the terms contained in the letter of employment dated 1.9.1994 i.e plaintiff accepted the terms absolutely without objection because otherwise he would have quit the employment. Plaintiff thereafter cannot turnaround to dispute the terms of employment dated 1.9.1994. In fact, the plaintiff not only accepted the employment, acted on it, but, in fact he even took a promotion in October, 1996 and took further benefits under the same. The suit of the plaintiff is therefore liable to be dismissed on the ground of estoppels.

18. I therefore, answer issue nos. 1,2 and 5 in favour of the defendants and against the plaintiff. It is held that the plaintiff is not entitled to any amount from any of the defendants.

Issue Nos. 3 and 4

19. Issue nos.3 and 4 are issues of mis-joinder of parties. The only aspect qua this issue no.3 will be whether the defendant no.4 has been improperly joined in the present suit inasmuch as defendant no.4 claims that it is in no way connected to the defendant no.1 and it is only a branch office of company M/s C. B. Richard Ellis Mauritius Ltd. incorporated in United States of America whereas, the defendant no.1 is incorporated in U.K and therefore defendant Nos.1 and 4 are totally separate entities.

20. Learned senior counsel for the plaintiff has drawn my attention to the documents Ex.P-3/A (colly) and which show that the name of the company M/s Richard Ellis Ltd. was changed to M/s C.B.Richard Ellis Mauritius Ltd. Learned senior counsel for the plaintiff argues that once M/s Richard Ellis Ltd. has changed to M/s C.B.Richard Ellis Mauritius Ltd., and the defendant no.4 admits that it is a branch office of M/s C.B.Richard Ellis Mauritius Ltd., there cannot be misjoinder of parties. I agree with this submission on behalf of the learned senior counsel for the plaintiff because once there is mention in Ex.P-3/A that the name of

Richard Ellis Ltd is changed to M/s C. B. Richard Ellis Mauritius Ltd. and no evidence is led by the defendant No.4 that M/s C.B.Richard Ellis U.K Ltd has no connection to defendant No.4, I have to hold that since defendant No.4 is admitted to be the branch office of C.B. Richard Ellis Mauritius Ltd, the defendant No.4 is the new name of defendant No.1. In any case, nothing will turn on this issue inasmuch as on merits I have held that the plaintiff is not entitled to any money decree against the defendants. These issues no. 3 and 4 are therefore, answered in favour of the plaintiff and against the defendant no.4 though of course, the decision will only be theoretical as the main suit has otherwise been dismissed.

Relief:-

21. In view of the above, the suit of the plaintiff is dismissed leaving the parties to bear their own costs.

SEPTEMBER 18, 2012
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VALMIKI J. MEHTA, J.