

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

% *Judgment Reserved on: July 12, 2013*
Judgment pronounced on: July 16, 2013

+ **CM(M) No.659/2012 & C.M.No.10027/2012**

ESCORTS LTD & ORS Petitioners
Through Mr.Naresh Khanna, Adv.

versus

NEELAM MALHOTRA & ORS Respondents
Through Mr.Sanjeev Bajaj, Adv. for R-1.
Mr.Satpal Singh, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The abovementioned petition has been filed by the petitioners against the impugned order dated 5th March, 2012 passed by the learned trial Court whereby the application filed by the petitioners/defendants under Section 151 CPC for rejecting the evidence by way of affidavit filed on behalf of respondent No.1/plaintiff has been partly dismissed.

2. As far as the facts of the case are concerned, respondent No.1/plaintiff was an employee of petitioner No.1 for over 28 years and in view of the financial crisis faced by the petitioners, she was asked to tender her voluntary resignation. However, aggrieved by the amount and payments received as full and final settlement due to her, respondent No.1 filed a suit for recovery of an amount of ₹11,54,757/- against the petitioners.

3. After the respondent No.1 filed her evidence by way of affidavit on 16th July, 2010, the petitioners filed an application under Section 151 CPC on 20th December, 2011 seeking rejection of the affidavit on the ground that in the said affidavit, respondent No.1/plaintiff had gone beyond the pleadings inasmuch as the averments made in paras No.24 to 32 were not part of the plaint and as such, the evidence given in this regard was out of pleadings which was impermissible in law.

4. The learned trial Court in this regard observed that while an important feature of law of evidence is that no amount of evidence beyond pleading is permissible, the elementary rule of pleadings is that only facts shown of evidence are to be pleaded. In this regard, for the reasons set out, five paras of the affidavits were ordered to be deleted and the application was allowed to that extent.

5. However, with regard to other paragraphs No.24, 25, 26, 29 & 30, it was observed that those paras were necessary to describe the documents of which late production was allowed by the Court and whose authenticity had not at all been doubted by the petitioners in their reply to the application of the respondent No.1 under Order VII, Rule 14 CPC for production of certain documents. It was further observed that even otherwise, the pleadings already made reference to the related events and defined circumstances in which letters were issued by the petitioners. In view of the same, the abovementioned paras were not allowed to be deleted from the affidavit and the application of the petitioners was partly dismissed by the learned trial Court by the impugned order dated 5th March, 2012.

6. Aggrieved by the partial dismissal vide the impugned order, the petitioners filed the present petition on the ground mainly that after the late

production of documents was allowed by the Court, respondent No.1 ought to have made necessary amendments in the plaint whereafter alone the respondent No.1 could lead evidence in that regard by way of affidavit.

7. In para 24 of the affidavit which is filed as evidence, it is stated by respondent No.1 that “in response to defendant No.1 letter dated 20th April, 2006 (Exh.PW-1/7), the defendant No.2 released the gratuity amount of ₹1,91,746/- and sent to the plaintiff vide their letter dated 17th April, 2006, copy of which is marked as Exh.PW-1/16.” Similarly, in para 25 of the affidavit, it was stated that “in response to defendant No.1 letter dated 20th April, 2006, the defendant No.3 released the provident fund to the plaintiff vide their letter dated 18th May, 2006, copy of the same is marked as Exh.PW-1/17.” In para 26 of the affidavit filed as evidence, it is stated that “the plaintiff always worked to the best satisfaction of the defendant No.1 and on account of rendering good and efficient services by the plaintiff, the officials of defendant No.1 have issued various appreciation letters to the plaintiff, copies of which are marked as Exh.PW-1/18-Colly.”

8. In para 29 of the evidence by way of affidavit, it is stated that “subsequent to the plaintiff’s meeting with Mr.Ashok Mudgil on 19th September, 2007, she has sent a letter dated 20th September, 2007 to defendant No.1 and defendant No.4 which was sent to them under Registered A.D. Cover as well as through Under Postal Certificate thereby she again requested the defendants for release of the superannuation pension, copy of said letter is marked as Exh.PW-1/21.” Similarly, in para 30, it is stated that “on 19th September, 2007 when Mr.Ashok Mudgil called the plaintiff to meet him in the office and the plaintiff went to meet him on the said date, Mr.Mudgil gave few papers and asked her to sign those papers

before her pension under superannuation scheme is considered. The said papers were marked as Exh.PW-1/23.”

9. After hearing the learned counsel for the parties and having gone through the pleadings in the matter, I am of the view that the order passed on 5th March, 2012 cannot be interfered with, due to the reason that the pleadings with regard to paras No.24, 25, 26, 29 & 30 of the affidavit dated 16th July, 2010 contain the reference to the related events and circumstances in which the letters were issued by the petitioners/defendants. Therefore, it is not required that the said paras be deleted from the said affidavit. The said statements have to be considered at the time of trial. Therefore, the contention of petitioners/ defendants No.1 to 4 cannot be accepted. The petition is accordingly disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 16, 2013/ka