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

Judgment Pronounced on: 29th May 2014

+ **CS (OS) No. 225 of 2009**

SHRI DINESH CHADHA Plaintiff
Through Ms.Nandini Sahni, Advocate
Versus

M/s HOTEL QUEEN ROAD PVT. LTD. Defendant
Through Mr. Mohit Choudhary, Mr.Imraan and
Ms.Damini Chawla, Advocates for D-
1 & D-3
Mr.Nitesh Jain and Mr.Sugam Seth,
Advocates for D-2

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present suit is filed by the plaintiff seeking relief of declaration and damages. As per the plaint the plaintiff was employed by defendant No.1 in its hotel, namely, Hotel Ramada Plaza at the post of General Manager vide contract letter dated 10.10.2007. Defendant No.2 is said to be a director of defendant No.1. Defendant No.3 is the younger brother of defendant No.2 who is said to have taken over the control of defendant No.1 with effect from 14.01.2009.
2. It is averred that the plaintiff officially joined the Hotel on 15.11.2007 at the post of General Manager and continued to work till 02.01.2009.
3. As per the plaint the plaintiff was entitled to receive salary of ₹18 lacs per annum for the first six months and thereafter at the rate of ₹24 lacs per

annum. Further it is averred that the plaintiff was to be paid a monthly sum of ₹1.50 lacs in cash as incentive for the first six months and a sum of ₹2 lacs per month in cash as incentive thereafter.

4. It is further averred that the plaintiff went on leave from 26.12.2008 till 01.01.2009. On 02.01.2009 when the plaintiff joined back his duties, the plaintiff was called by defendant No.2 and was orally asked to resign from the job as General Manager. It is averred that no reasons were assigned and the plaintiff was asked to leave the office abruptly. The plaintiff could not even take his original papers lying in the office containing important documents, bills, etc. The plaintiff returned the laptop and the company car provided to the plaintiff was also taken away forcibly.

5. It is the contention of the plaintiff that various dues have not been paid. A part of the salary was stated to be not paid. The cash incentive was said to have been paid very infrequently and at the whims and fancy of defendant No.2 and has not been paid in full. It is further averred that though the plaintiff was provided a car as agreed, he was not provided a driver and even the fuel was provided subject to a ceiling limit of 200 litres in a month whereas the plaintiff had to incur expenses of above 200 litres of petrol in a month. It is further averred that the plaintiff was entitled to medical bills and medical insurance which has not been paid. Statutory benefits of provident fund have also not been deducted. The statement of alleged dues of the plaintiff is attached as Schedule-I to the plaint (Ex.PW-1/9). The same reads as follows:-

SCHEDULE-I

STATEMENT OF PENDING DUES OF SHRI DINESH CHADHA, GENERAL MANAGER, HOTEL RAMADA PLAZA.

Salary Arrears from 15th May 2008 to 3,27,419/-

30 th Nov.2008		
Cash Incentive Arrears till Nov.2008	6,89,919/-	
Salary for Dec.2008	2,00,000/-	
Cash Incentive for Dec. 2008	2,00,000/-	
Salary from 1 st Jaun.2009 to 2 nd Jan.2009	12,903/-	
Cash Incentive from 1 st Jan.2009 to 2 nd Jan.2009	12,903/-	
Sub Total		14,43,144/-
Company Car DL 4C AE 9035	5,654	
Maintenance Expenses		
Petrol Expenses	60,000/-	
Unpaid driver's Salary @ Rs.5500/- p.m. w.e.f. 1.1.2008 to 31.12.2008	66,000/-	
Sub total		1,31,654/-
Provident Fund	1,47,392/-	
Approx. Interest on PF	13,454/-	
Sub total		1,60,846/-
Medical Reimbursement	11,220/-	
Medical Insurance	20,412/-	
Sub total		31,632/-
Unutilised earned Leave (Privileged Leave) of 24 days		1,60,000/-
Notice Period Salary (3 months)		6,00,000/-
Total amount due to plaintiff by defendants		<u>25,27,276/-</u>

6. On the basis of the above averment, the plaintiff seeks a decree of declaration declaring that the termination of his services is illegal, arbitrary and in violation of the terms of the employment and principles of natural justice, a decree of declaration declaring that the plaintiff shall be deemed to be in service of the defendants and for consequential orders of reinstatement with full back wages and other dues and a decree of damages for a sum of ₹25 lacs to be paid jointly or severally by the defendants.

7. Defendants No.1 and 3 filed their written statement claiming that the senior staff working with defendant No.1 at the relevant point of time, on CS(OS) No.225/2009

inquiry informed that the plaintiff was not discharging his duties well and was having a highly unprofessional attitude. It is further averred that an oral notice of termination of three months on 01.10.2008 was given to the plaintiff. It is averred that due to improper, unprofessional and negligent conduct of the plaintiff whereby the hotel company suffered a lot, the salary of the plaintiff for the month of December 2008 has been forfeited. The claim of the plaintiff for cash incentive has been denied stating that defendants No.1 and 3 were not a party to any such alleged understanding inasmuch as earlier the hotel was under the control of defendant No.2. It is further averred that even if any such understanding was arrived at, the same is illegal and against public policy and cannot be enforced in a court of law. The other claims of the plaintiff for unpaid dues have been denied.

8. Defendant No.2 has filed a separate written statement which substantially takes the same stand as defendant No.1 and 3. Defendant No.2 has further added that the plaintiff was misusing the hotel services for his personal and family use inasmuch as he is said to be getting his personal clothes dry cleaned, invited his family and friends at the coffee shop without paying the bills, etc.

9. On 29.05.2009 in IA No.6260/2009 this court passed an order holding that the forfeiture of the salary of the plaintiff for the month of December 2008 cannot be sustained and a direction for release of the salary of ₹2 lacs being the salary for the month of December 2008 was issued. The appeal filed by the defendants against the said order was dismissed by the Division Bench. The said payment was made by defendants No.1 and 2 in court as recorded in order dated 03.08.2009. Similarly on 24.09.2009 in IA No.9918/2009 this court noted that salaries have been paid to the plaintiff at the rate of ₹1.50 per month after 30.04.2008. Accordingly this court directed

that arrears of salary in the sum of ₹3,27,419/- for the period 15.05.2008 to 30.11.2008 as well as salary of ₹12,903/- for one day i.e. from 01.01.2009 to 02.01.2009 be paid to the plaintiff. The other claims of three months' salary in lieu of notice period, provident fund, etc. were directed to await the conclusion of trial.

10. Issues were framed on 08.09.2009 which read as follows:

- “(i) Whether the suit is not maintainable as claimed by the Defendants? OPD
- (ii) Whether the termination of the Plaintiff's services by the Defendants was invalid and if so, to what effect? OPD
- (iii) Whether the Plaintiff is entitled to damages and if so, to what amount? OPP
- (iv) Whether the Plaintiff is entitled for a declaration as prayed for and consequential relief of reinstatement with full back wages as claimed? OPP
- (v) Relief.”

11. Plaintiff led evidence of three witnesses, namely, the plaintiff himself as PW1, Mr.K.K. Mittal, Assistant Local Authority, Department of Prevention of Food Adulteration as PW2 and Mr.Sunil Kumar Chadha, the brother of plaintiff as PW3. The plaintiff has exhibited 21 documents i.e. PW1/2 to PW1/22 (PW1/1 being the plaint). Seven of these documents have also been marked exhibits twice over, presumably in the course of admission/denial of documents, as Ex.P-1 to Ex.P-5 and Ex.P-7 to Ex.P-8.

12. The defendants filed the evidence of three witnesses i.e. Mr.Mandeep Gambhir as DW1, Mr.Dinesh Gupta as DW2 and Mr. Ashok Mittal as DW3. However, due to non-payment of cost, the right to lead further evidence on behalf of defendants No.1 and 3 was closed vide order dated 16.01.2012. The witnesses of the said defendants were never cross-examined. Similarly, as per order dated 24.04.2012 the right to lead evidence by defendant No.2 was also closed.

13. Learned counsel appearing for the plaintiff has strongly argued that the services of the plaintiff have been wrongfully terminated without giving the three months' notice as prescribed in the letter of appointment. Termination being illegal and wrongful, it is urged, it is void and hence the plaintiff is entitled to be reinstated with full back wages.

14. It is argued that as far as the cash incentive, as claimed by the plaintiff is concerned, the plaintiff has successfully proved the same. In the evidence by way of affidavit of PW1 the said witness has proved that he was entitled to cash incentives. It is urged that there is no cross-examination of the said witness on the same. It is further urged that PW3 has also proved that his brother, namely, plaintiff used to receive cash incentives. On damages it is urged that on account of wrongful termination, the plaintiff suffered damages.

15. Learned counsel appearing for defendants No. 1 & 3 and 2 respectively have reiterated the contentions raised in their separate written statements. They have reiterated that the claim of the plaintiff for cash incentive, even if any such agreement took place is void as being against the public policy and hit by Section 24 of the Indian contract Act. It is further urged that there can be no damages for termination of the contract as alleged.

16. Learned counsel for defendants No. 1 and 3 has also urged that the employment to plaintiff was given by defendant No.2 and the liability if any to pay the plaintiff is of defendant No.2.

17. I will first deal with issue No.1 which reads as follows:-

“(i) Whether the suit is not maintainable as claimed by the Defendants? OPD”

18. The only ground urged in this regard is that on account of the fact that

the plaintiff is claiming a cash component, which term is hit by Section 24 of the Indian Contract Act, hence the entire contract is void. Apart from the above no other argument has been made as to why the suit is not maintainable. There is no merit in the said contention of the defendants and the same is rejected. The claim for cash incentive is not based on the terms of the written contract as contained in letter dated 10.10.2007. The said contract is not in any way effected by the claim of the plaintiff for cash incentive. Accordingly I hold that the suit is maintainable.

19. I will now deal with issues No.2 and 4 together, which read as follows:-

“(ii) Whether the termination of the Plaintiff’s services by the Defendants was invalid and if so, to what effect? OPD
(iv) Whether the Plaintiff is entitled for a declaration as prayed for and consequential relief of reinstatement with full back wages as claimed? OPP”

20. The facts that emerge as above are that as per the terms of the letter of appointment dated 10.10.2007 issued to the plaintiff, his services were terminable on giving a three months’ notice from either side. Relevant clause of the Appointment letter reads as follows:-

“Notice Period : Three (3) months notice from either side.”

21. According to the plaintiff, he was orally asked to leave the services on 02.01.2009. He was abruptly deprived of the use of the car and laptop on the same date. The defendants in their written statements have claimed that an oral notice of termination of three months on 01.10.2008 was given to the plaintiff. There is no evidence on record to show that any oral notice of termination was given to the plaintiff. The defendants have not been able to lead any evidence in as much as the right of defendant to lead evidence was closed before the witness of defendant Nos. 1 and 3 were cross-examined.

Further had any such oral notice been given, the conduct of the parties after the oral notice would have shown so. In the absence of this evidence on record, the said contention of the defendants cannot be believed.

22. Accordingly, the version of the plaintiff is accepted, namely, that he was abruptly asked to leave the services on 02.01.2009 on an oral communication. No notice of three months, as required under the terms of the appointment letter was given. Accordingly, the termination of the services of the plaintiff is illegal inasmuch as it is contrary to the terms of his employment contract.

23. The issue would be what would be the effect of the said action of the defendants. The plaintiff seeks consequential relief of reinstatement with full back wages.

24. In my view, the said relief as sought for by the plaintiff cannot be granted in view of Section 14 of the Specific Relief Act which provides that where a contract in its nature is determinable or a contract the performance of which involves the performance of a continuous duty which the court cannot supervise, such a contract cannot be specifically enforced. The present contract provides a termination clause meaning that it is determinable. Hence, on this ground itself the present contract cannot be specifically enforced.

Reference in the above context may also be had to the judgment of the Supreme Court in the case of *State Bank of India vs. S.N.Goyal, AIR 2008 SC 2594* wherein para 11 the Court held as follows:-

“11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of

the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement.”

Accordingly it is held that the plaintiff is not entitled to any relief of reinstatement with full back wages as claimed.

25. The issue now comes as to whether the plaintiff is entitled to damages which issue is covered by issue No.3 which reads as follows:-

“(iii) Whether the Plaintiff is entitled to damages and if so, to what amount? OPP”

26. The claim for damages has not been fully spelt out. There are two components of monetary compensation that has been sought by the plaintiff, one is the pending dues as per Schedule-I of the employment contract and the second is a sum of ₹25 lacs claimed as damages from the defendants. Unfortunately the issue is not very properly phrased in as much it does not specifically mention about unpaid dues. However, money that was payable to the plaintiff in terms of the employment contract, if wrongly withheld, can be claimed as a component of damages. The defendants have not argued to the contrary.

27. I will first deal with the claim as stipulated under Schedule-I. Certain amount is claimed on account of unpaid salary arrears. In view of the earlier orders passed by this Court, the salary arrears as per the terms of the employment contract have already been directed to be paid to the plaintiff. One component that remains to be settled is the claim of cash incentives which as per the plaintiff had been agreed to be paid by the defendants orally. The plaintiff is claiming cash incentives of ₹1.50 lacs per month for the first six months and ₹2 lacs per month thereafter. According to the plaintiff as said by him in his cross-examination on 08.03.2010, he claims to

have received a sum ₹ 10.75 lacs as cash incentive. He confirms that this incentive was not shown by him in his income tax returns.

28. In my view a perusal of the terms of the employment as contained in letter dated 10.10.2007 would show that the remuneration and perks receivable by the plaintiff have been comprehensively spelt out. There is no mention of any incentive other than the salaried package which is stipulated. Based on the bald averments of the plaintiff, it is not possible to accept that the terms of the written contract were varied by any oral communication. That apart, as rightly argued by the learned counsel for the defendants, the contract being an attempt to evade income tax, any such agreement if it was ever entered into would possibly be hit by Section 24 of the Contract Act. Such claim of the plaintiff for cash incentive is accordingly rejected.

29. The next component as per Schedule-I pertains to the maintenance of the company car, petrol expenses, unpaid driver's salary, provident fund, medical reimbursement and medical insurance. The total amount claimed on this account is ₹3,10,678/-.

30. A perusal of the employment letter dated 10.10.2007 would show that the said letter provides for company maintained car and fuel with driver. There is no cap on the fuel consumption of the plaintiff. The letter also provides for reimbursement of medical expenses/insurance for the plaintiff and his family. Provident fund and gratuity have also to be provided by defendant No.1. Hence, the claim of the plaintiff pertaining to maintenance of company car, petrol expenses, unpaid driver's salary, provident fund, medical reimbursement and medical insurance is covered by the terms of the employment letter dated 10.10.2007.

31. We may now look at the pleadings of the parties. In the plaint, on the above issue the plaintiff has averred as follows:-

“5. That apart from other terms and conditions, the plaintiff was also provided for a Toyota Car No.DL 4C AE 9035 and however as agreed the plaintiff was not provided the Driver by defendants and even the fuel was provided for with a ceiling limit of 200 liters per month. Whereas the plaintiff had to incur from his own pocket the expenses for extra 100 to 200 liters of Petrol as well as Salary for his Driver from his pocket to the tune of Rs.5500/- per month.

6. That apart from this, the plaintiff was also entitled to for Medical bills and Medical insurance to be reimbursed by the hotel. Even the said bills were never cleared by defendant no.1 hotel though tendered to hotel by plaintiff from time to time.

7. That the plaintiff is also insured with United India Insurance and is paying premium of Rs.1512/- per month. Even the said amount of Insurance was not paid to the plaintiff by defendant No.1 hotel even though it forms the part of terms and conditions as agreed to vide letter dated 10.10.2007 by defendants.

8. That even the Statutory benefits of the Provident Fund was not deducted and paid by defendant No.1 hotel as their contribution and there is total confusion about the status of Provident Fund as the plaintiff was never informed as to whether defendant no.1 hotel is actually deducting the Provident Fund and are also contributing from their side towards the same or not. Thus the plaintiff has not been paid even his statutory benefits by defendants till date.”

32. Defendants No.1 and 3 in their written statement on the above paras of the plaintiff reply as follows:-

“6. That the contents of para 5 of the suit plaint is wrong and is vehemently denied. That the plaintiff should be put to the strict proof of the same. It is submitted that the plaintiff was provided for a Toyota Car No. DL 4C AE 9035 and that the expenses towards the driver and fuel were claimed by him and the same were reimbursed to him in routine.

7. That the contents of para 6 and 7 of the suit plaint is wrong and vehemently denied due to want of knowledge. That

the plaintiff should be put to the strict proof of the same.

8. That the contents of para 8 is a matter of record and need no reply.”

33. The written statement of defendant No.2 on the above paras reads as follows:

“6. That the contents of para 5 of the suit plaint is wrong and is vehemently denied and the plaintiff should be put to the strict proof of the same. It is submitted that the plaintiff was provided for a Toyota Car No.DL 4C AE 9035 and that the expenses towards the driver and fuel were being claimed by him and the same were being reimbursed to him in routine.

7. That the contents of para 6 and 7 of the suit plaint is wrong and vehemently denied due to want of knowledge. That the plaintiff should be put to the strict proof of the same.

8. That the contents of para 8 is a matter of record and need no reply.”

34. In my view the pleadings of the defendants justify the above claim of the plaintiff. On the issue of pleadings a Division Bench of this Court in the case of ***Grand Vasant Residents Welfare Association vs. DDA & Ors.*** in LPA no. 775/2003 decided on 05.03.2014 in paras 30 and 32 held as follows:-

“31. On November 21, 2011 this Court while deciding RFA (OS) 78/2011 P.K. Gupta vs Ess Aar Universal (P) Ltd. held as under:-

11. We need to highlight that the fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material

documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates uberrima fides when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Placing all relevant facts in a civil litigation cannot be reduced to a game of hide and seek. In the decision reported as 2011 (6) SCALE 677 Rameshwari Devi vs. Nirmala Devi the Supreme Court highlighted that pleadings are the foundation of a claim of the parties and where the civil litigation is largely based on documents, it is the bounden duty and obligation of the Trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties.

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32. In the decision reported as 2012 (6) SCC 430 A. Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:-

"27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands."

35. The above denial of the defendants being utterly vague, the claim of the plaintiff can be allowed on this basis itself.

36. That apart, the plaintiff in his evidence (PW1) duly reiterated the submissions made in the plaint. There is no cross-examination on the same by the defendants.

37. Accordingly I allow the above claim of the plaintiff for a sum of ₹3,10,678/-.

38. I have already recorded a finding above about termination of the

services of the plaintiff being illegal as no termination notice as provided in letter dated 10.10.2007 of three months' was given to the plaintiff. Accordingly, the plaintiff on account of the said illegality perpetuated by the defendants would be entitled to claim salary for the said period of three months. This damage arose as a direct and inevitable consequence of the breach of the employment contract by the defendant. The said salary would come to ₹6 lacs i.e. ₹ 2 lacs per month. Accordingly, the plaintiff would be entitled to the said sum of ₹6 lacs.

39. Apart from the above, the plaintiff has also claimed interest on provident fund and unutilized earned leave. There is nothing on record to show as to how the plaintiff is entitled to the same. The claims on this count are accordingly rejected.

40. Regarding the claim of damages of ₹25 lacs, no cogent evidence has been placed on record on the basis of which this claim can be adjudicated upon. Even otherwise in terms of Section 73 of the Indian Contract Act, compensation for any remote or any indirect loss or damage sustained by the party complaining a breach cannot be granted. Accordingly the claim for ₹25 lacs is rejected.

41. Accordingly the plaintiff would be entitled to recover a sum of ₹9,10,678/-.

42. The plaintiff has claimed a decree against the defendants. It appears that defendants No. 2 and 3 have been impleaded as defendants being directors or promoters of defendant No.1. There is no clear averment in the plaint or otherwise to show as to how defendants No. 2 and 3 would be personally liable for the dues of defendant No.1 which is a private limited company. The employment contract of the plaintiff is with defendant No.1. It is settled legal position that a company is limited by its liability as per

Memorandum & Article of Association of the company. Other than where directors have made themselves personally liable by way of guarantee, indemnity, etc., a liability of a director or officer of a company under common law is only confined to cases of malfeasance and misfeasance. In the present case there is no such allegation of malfeasance and misfeasance. Accordingly the claim of the plaintiff can only succeed against defendant No.1.

43. Accordingly the suit is decreed in favour of the plaintiff and against defendant No.1 for a sum of ₹9,10,678/-. The plaintiff is also entitled to pendente lite simple interest @ 9% per annum from the date of filing of the suit till recovery. The plaintiff shall also be entitled to costs.

**JAYANT NATH
(JUDGE)**

**MAY 29, 2014
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