

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

+ **R.F.A. No.733/2017**

% **4th September, 2017**

ROMILA MAYANK SHARMA Appellant
Through: Ms. Rekha Rani Dey, Advocate.

versus

ZEE MEDIA CORPORATION LTD. (EARLIER KNOWN AS
ZEE NEWS LIMITED) Respondent
Through: Mr. Bhagabati Prasad Padhy, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.742/2017

Since there is appearance on behalf of the caveator, caveat stands discharged.

C.M. Nos.29677-29679/2017 (for exemption)

Exemption allowed subject to just exceptions.

CMs stand disposed of.

C.M. No.29676/2017 (for delay)

For the reasons stated in the application, delay of 49 days in filing the appeal is condoned.

CM stands disposed of.

RFA No.733/2017 & C.M. No.29675/2017 (for stay)

1. This Regular First Appeal under Section 96 of the Code Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the Trial Court dated 7.3.2017 by which trial court has decreed the suit filed by the respondent/plaintiff for two sums of Rs.6,45,722/- and Rs.10 lacs along with interest @ 8 per cent per annum. Suit was filed by respondent/plaintiff for recovery of Rs.18,59,309/- by pleading that a sum of Rs.10 lacs was taken by the appellant/defendant/employee as a loan which was not repaid and also that another sum was due from the appellant/defendant as balance payable on the car loan.

2. The facts of the case are that appellant/defendant, during the course of her employment with the respondent/plaintiff, was given a loan of Rs.10 lacs on 29.7.2008. Further and additionally the Appellant/defendant along with the respondent/plaintiff also jointly purchased a new Maruti SX4 car bearing registration No.UP-16V-0894 whose cost was Rs.7,70,312/-. Out of the amount of Rs.7,70,312/-, Rs.69,587/- was paid as down payment and the

remaining sum was financed from M/s. Kotak Mahindra Prime Limited vide loan agreement dated 12.9.2008 repayable in 47 equal monthly installments of Rs.18,191/-. Appellant/defendant's services were terminated by the respondent/plaintiff with effect from 15.4.2009. Since appellant/defendant did not repay the loan or return the vehicle, the subject suit came to be filed.

3. Appellant/defendant contested the suit and pleaded that termination of her services were not justified. Appellant/defendant also pleaded that amount advanced to her be adjusted against incentives to be received by the appellant/defendant in March, 2009 for her services during the year 2008-09. As regards the car loan, appellant/defendant pleaded that as per the company policy, the car was to be replaced after every four years and transferred in the name of the employee.

4. After pleadings were complete, trial court framed the following issues :-

"1. Whether the plaintiff is entitled to recover Rs.8,59,309/- from the defendant for unauthorised possession and usage of plaintiff's car viz Maruti MA – SX ZXI, Registration No.UP 16V 0894?

.....OPP

2. Whether the plaintiff is entitled to recover Rs.10,00,000/- from the defendant which is alleged to have been advanced by the plaintiff to the defendant? OPP
3. Relief.”

5. As regards issue No.1 of entitlement of respondent/plaintiff for the amount of car loan, trial court has referred to the fact that M/s. Kotak Mahindra Prime Limited had filed arbitration proceedings for recovery of the amount due, and in which proceedings respondent/plaintiff paid amount to the said M/s. Kotak Mahindra Prime Limited of Rs.3,09,247/-. After giving adjustment for amount already paid by appellant/defendant, trial court passed a decree for a sum of Rs.6,45,722/-. Trial court has also held that appellant/defendant never sent any communication to the respondent/plaintiff/company alleging that her services were illegally terminated. Trial court has also rightly held that entitlement of an employee to take the car is after four years whereas appellant/defendant's services were terminated only after six months of purchase of the car, and therefore, there is no entitlement in the appellant/defendant to have the car transferred to her name.

6. In my opinion, no fault or illegality can be found in the aforesaid reasoning and conclusions of the trial court inasmuch as car loan was taken, respondent/plaintiff was forced to pay the amount to M/s. Kotak Mahindra Prime Limited as respondent/plaintiff had undertaken itself to be liable, jointly and severely with the appellant/defendant, and since the appellant/defendant had retained the vehicle, hence, appellant/defendant was liable to repay the amount of loan paid by the respondent/plaintiff to M/s. Kotak Mahindra Prime Limited.

7. On the issue of entitlement of appellant/defendant to have the amount adjusted, incentive for the year 2008-09, towards loan amount, trial court has observed in para 17 of the impugned judgment that appellant/defendant has not filed any document as to her being entitled to any incentive for the year 2008-09. Trial court has held that appellant/defendant also admitted in her cross-examination that she was never intimated by the respondent/plaintiff that she would be getting any incentive for the year 2008-09. In any case, as rightly held by the trial court, grant of incentives is subject to appraisal of every employee done by the company on the basis of performance and only

where after incentive is given and that appellant was never promised for any incentives for the year 2008-09. This para 17 of the judgment of the trial court reads as under :-

“17. The onus of proving this issue was also upon the plaintiff. Admittedly, the defendant had obtained an advance/loan from the plaintiff in the sum of Rs.10 lacs vide letter dated 29.07.2008 and has not returned the said amount to the plaintiff after termination of her services. Her defence is that this amount was to be adjusted towards the incentive which she was to receive in April, 2009 for the year 2008-09. However, she has not proved any such document on record to show that this advance amount of Rs.10 lacs was to be adjusted towards the incentive to be received by her for the year 2008-09 or that she in fact was entitled to receive any such incentive for the said year. Photocopies of certain letters have been filed by her which are not admissible in evidence in the absence of their original and, therefore, cannot be considered. It has nowhere been explained by her as to why the originals of these letters have not been filed. Even no notice under the relevant provisions of law has been served upon the plaintiff for production of originals of those letters. Mere fact that the defendant may have received incentives for the years preceding to the year 2008-09 cannot be taken to mean that she would have received incentive for the said year also. Even in this regard also, no document has been proved on record by the defendant. She has admitted in her cross-examination that she was never intimated by the plaintiff that she would be getting incentives for the year 2008-09. She has also admitted that the appraisal of every sales employee is done by the company annually and on the basis of the performance of the employee, incentive is given to him/her. She has deposed that after receiving the letter of termination, she did not enquire about any incentive payable to her for the year 2008-09.” (emphasis is mine)

8. In my opinion, no fault can be found with the aforesaid reasoning and conclusion contained in the impugned judgment. Dismissed.

SEPTEMBER 04, 2017
‘AA’

VALMIKI J. MEHTA, J.

