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

+ RFA 16/2017 and CM APPL. 386/2017

RAJAN KOCHHAR

..... Appellant

Through: Mr. V.S. Chauhan, Advocate with
Mr. N. Chaudhary, Advocate

versus

M/S BRANDBARON MARKETING PVT LTD

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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06.01.2017

1. The appellant/plaintiff has assailed the judgment dated 27.09.2016 passed by the learned trial court in a suit for recovery of Rs.3,27,048/- instituted by him against his employer, the respondent/defendant towards the dues of incentive, notice pay and arrears of salary alongwith interest. By the impugned judgment, the trial court has partly allowed the appellant's suit by passing a decree in his favour to the tune of Rs.1,58,132/- alongwith interest @24% per annum with effect from 30.11.2013 to 27.09.2016 and had granted future interest @ 6% per annum.

2. Before examining the submissions made by the counsel for the appellant, it is considered necessary to recapitulate the facts of the case. The version of the appellant/plaintiff as set out in the plaint, is that he was employed with the respondent/defendant with effect from April, 2012 to

April, 2013; he was forced to resign from the defendant/company by sending an e-mail dated 06.05.2013, which was accepted on 07.05.2013. At the time of tendering his resignation, an amount of Rs.34,534/- was due to the plaintiff from the defendant towards incentive for the business generated by him from Mahinder Rally, Rs.17,231/- for the business generated from Panasonic Experience Centre and Rs.25,158/- for the business generated from Honda Motors. Claiming that he was forced to resign by the respondent/defendant, the appellant/plaintiff had demanded his salary for the month of April, 2013 for the notice period, for being made to tender an immediate resignation. On the defendant failing to pay any amount, the appellant/plaintiff had issued a legal notice dated 31.12.2013, to which a reply was given by the respondent/defendant on 17.01.2014, denying *inter alia* all the allegations levelled against them. In this background, the appellant/plaintiff had instituted the suit on 22.02.2014.

3. After the summons were served on the respondent/defendant, it had filed a written statement taking several preliminary objections and questioning the maintainability of the suit. On merits, it was stated that the appellant/plaintiff had himself opted to tender his resignation without furnishing any reason and therefore, he was liable to pay the notice period salary. It was also stated that the appellant/plaintiff had failed to pay the amount received by him for and on behalf of the respondent/defendant from M/s Panasonic Experience Centre alongwith laptops, pen drive etc. belonging to the respondent/defendant. It was alleged that the appellant/plaintiff had handed over the payment received from M/s Panasonic Experience Centre to the respondent/defendant only after a legal notice dated 22.11.2013 was issued to him, whereafter the parties had

arrived at a settlement that reduced into writing on 29.11.2013. Under the settlement, the appellant/plaintiff agreed to pay a sum of Rs.4,25,937/- to the respondent/defendant in full and final settlement. The respondent/defendant asserted in the written statement that as the appellant/plaintiff was fully conscious of having wrongfully withheld a sum of Rs.4,25,937/- received by him from M/s Panasonic Experience Centre for and on their behalf and the company was planning to initiate civil/criminal proceedings against him, so as to avoid any such litigation, he had voluntarily arrived at a settlement with the respondent/defendant and had handed over the said amount.

4. After the pleadings in the suit were completed and admission/denial of documents was conducted, the following seven issues were framed on 14.09.2015:-

“1. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD

2. Whether the suit is bad for non-joinder of necessary parties? OPD

3. Whether the plaintiff withheld the payment received from M/s Panasonic Digital Branding at Reliance Store, if so, its effect? OPD

4. Whether the plaintiff had resigned from the job and withheld the belongings of defendant, if so, its effect? OPD

5. Whether the plaintiff is entitled for recovery of amount claimed in the suit? OPP

6. Whether the plaintiff is entitled for interest, if so, at what amount, for which period and at what rate? OPP

7. Relief.”

5. During the trial, the plaintiff had examined himself as PW-1 and the Director of the defendant/company had entered the witness box as DW-1. After examining the documentary and ocular evidence produced by the parties, the trial court decided issues No.1 and 2 pertaining to the suit valuation and non-joinder of parties against the respondent/defendant. Coming to issue No.3, which was framed on whether the appellant/plaintiff had withheld the payment received by him from M/s Panasonic Digital Branding at Reliance Store and its effect, while referring to the terms and conditions of the Settlement Agreement dated 29.11.2013 (Ex.PW1/6), the trial court held that nothing was due or payable from the appellant/plaintiff in respect of the said transaction. In respect of issue No.4, which related to the plaintiff's resignation from the employment of the defendant, the finding returned by the trial court was that once a resignation was tendered by him in writing, the onus was on the appellant/plaintiff to prove that it was obtained forcibly, which he had failed to discharge. Accordingly, the said issue was decided against the appellant/plaintiff.

6. As for issues No.5 & 6, framed with regard to the claim of the appellant/plaintiff for recovery of amounts and interest, the learned trial court held that he is entitled to the principal amount of Rs.1,58,132/- towards arrears of salary and incentives due for business generated from Mahinder Rally and Honda Motors. However, the claim of the appellant/plaintiff for a sum of Rs.17,231/- towards incentive was rejected and it was held that he is not entitled to any incentive due from M/s Panasonic Experience Centre for the reason that all the disputes between the parties were fully and finally settled in terms of the Settlement Agreement dated 29.11.2013 (Ex.PW1/6) and the No Due Certificate dated 29.11.2013

issued by the respondent/defendant (Ex.PW1/7). Aggrieved by the rejection of his claim towards notice period salary and the incentive towards business generated from M/s Panasonic Experience Centre, the appellant/plaintiff has filed the present appeal.

7. Learned counsel for the appellant argues that the trial court has failed to return any finding on the issue relating to the forceful resignation of the appellant/plaintiff. He contends that the onus in respect of the said issue had been placed on the respondent/defendant, which it had failed to discharge. It is also stated that the trial court had erred in returning a finding to the effect that no incentive in respect of the business generated was payable to the appellant/plaintiff, by completely overlooking the correspondence between the parties, including various e-mails exchanged between the parties.

8. Coming first to the aspect of the purported forcible resignation tendered by the appellant/plaintiff, the records reveal that even as per the averments made in the plaint, it is an undisputed position that the appellant/plaintiff had sent an e-mail dated 06.05.2013 to the respondent/defendant, wherein he had requested that his resignation from the post of AVP (Operation and CS) be accepted with effect from 01.05.2013. In the said communication, he had also sought a clarification about his exit procedure and undertaken to return the laptops etc. to the respondent/company. The aforesaid e-mail was duly replied to by the respondent/defendant on the very next day, i.e., on 07.05.2013, accepting *inter alia* the appellant/plaintiff's resignation and explaining the procedure of exit. At no stage thereafter, did the appellant/plaintiff write to the respondent/defendant seeking withdrawal of his resignation letter. In fact, till the end of the year 2013, the appellant/plaintiff did not raise any

grievance about being forced by the respondent/defendant to resign from his job. It was only when the legal notice dated 22.11.2013 was issued by the respondent/defendant to the appellant/plaintiff seeking recovery of a sum of Rs.4,25,937/- towards the dues collected by him from M/s Panasonic Experience Centre, that as a counterblast, the appellant/plaintiff issued a legal notice dated 31.12.2013 to the respondent/defendant, wherein for the first time, he levelled an allegation that he had been forced to resign and on that account, he claimed one month's salary in lieu of the notice period, apart from the amounts that he claimed were due and payable on account of various incentives alongwith the salary for the month of April, 2013.

9. Though the term 'resignation' has not been specifically defined in the Service Rules, the dictionary meaning of the word, 'resignation' means "*spontaneous relinquishment of one's own right*", which has been described by a Latin maxim as '*Resignation est juris propii spontanea refutatio*' i.e., resignation is a spontaneous relinquishment of one's own right. Thus, once a person tenders a resignation from a post, he severs his link with his office and terminates his tenure. In the present case, the appellant/plaintiff had tendered his letter of resignation on 06.05.2013; the said resignation was unconditional and unqualified and on the respondent/defendant writing back to the appellant/plaintiff on 07.05.2013, accepting his resignation, the jural relationship between the employee and employer had come to an end.

10. This Court is of the opinion that if the version of the appellant/plaintiff that he was forced to resign was to be accepted, then he ought to have proved that he had taken some steps to withdraw his resignation before the same was accepted by the respondent/defendant. However, there is no material on record to demonstrate the said position. In

fact, it has not been denied that the appellant/plaintiff had not withdrawn his resignation at any stage. Once, the appellant/plaintiff had tendered his resignation on 06.05.2013, with effect from 01.05.2013 and the same was accepted by the respondent/defendant on the very next day, i.e., on 07.05.2013, the relationship of an employee and employer stood terminated between the parties. Given the fact that the terms and conditions of the appellant/plaintiff's employment contemplated that an employee must give 30 days' notice for leaving the company or pay salary for the notice period, having tendered his resignation without giving 30 days' notice, the appellant/plaintiff is not entitled to claim any notice period salary from the respondent/defendant.

11. It is settled law that a resignation can be validly withdrawn only before its acceptance and once it is accepted, the resignation cannot be validly withdrawn [Refer: Modern School vs. Shashi Pal Sharma and Ors.; (2007) 8 SCC 540]. This being the position in law, there was no requirement for the trial court to delve into the causes for the appellant/plaintiff to have tendered his resignation or arrive at any conclusion as to whether the same had been forcibly obtained by the respondent/defendant. It was in this context that the learned trial court had observed in para 29 of the impugned judgment that it is not supposed to look into the any circumstance, which had led to the resignation of the appellant/plaintiff. This Court does not find any error in the aforesaid findings returned by the trial court.

12. Coming to the second limb of the arguments addressed by the counsel for the appellant/plaintiff to assail the impugned judgment on the ground that the trial court had erred in overlooking the entire correspondence

exchanged between the parties with regard to the incentives allegedly payable by the respondent/defendant for the business generated by the appellant/plaintiff from Panasonic Experience Centre, a reference to the terms and conditions of the Settlement Agreement dated 29.11.2013 (Ex.PW1/6) is considered relevant and the same is reproduced hereinbelow for ready reference:-

“SETTLEMENT AGREEMENT

A SETTLEMENT HAS BEEN ARRIVED at Delhi on 29.11.2013 between M/s Brandbaron Marketing Pvt. Ltd. Registered Office: P-27, 1st Floor, Malviya Nagar, New Delhi-110017 and Mr. Rajan Kochar S/o Shri Sarkar Kumar Kochhar Address – C-152, Lajpat Nagar-1, New Delhi-110020 called as first and second party to this agreement respectively on the following terms and conditions:

- 1. That there was a dispute of payment between both the party and with the Panasonic Experience Center as well, for which a legal notice dt 22/11/2013 was issued by Rajesh Anand (Advocate) on behalf of Brandbaron Marketing Pvt. Ltd. which has been amicably settled per se, and the 1st party hereby withdraw the said legal notice dt 22/11/2013 and same shall be treated as cancelled.*
- 2. That the second party's voluntary wants to settle the disputes with the first party. And the second party is also representing M/s Panasonic Experience center.*
- 3. That the Invoice No.BMPL/DL/0513/014 dt 02/05/2013, Amounting Rs.4,25,937.00 (Rupees Four Lac twenty five thousand Nine hundred & thirty Seven only) was due on the second party, and also due on M/s Panasonic Experience center.*
- 4. That the first party is also voluntary accepted the proposal made by the second party and agreed to settle the dispute between the parties.*

5. That the second party shall make Rs.4,25,937.00 (Rupees Four Lac twenty five thousand Nine hundred & thirty Seven only) to the first party as full and final settlement by cash between the parties against the above said invoice No.BMPL/DL/0513/014 dt 02/05/2013.

6. That both the party declares that no other claim or dispute shall be raised at any forum in regard to the above said invoices.

7. That the first party shall not demand any payment from M/s Panasonic Experience center, Address: GF, ABW Tower, IFFCO chow, Sector 25, Gurgaon, Haryana-122001 and M/s Panasonic Experience center Address- Off New York Road, Andheri West, Mumbai (Maharashtra)-400058.

8. That both the parties are desirous to follow the above mentioned condition strictly.

9. That the first party shall issue the no dues certificate to the second party and also to M/s Panasonic Experience Center.

That the settlement has been arrived at between the parties in presence of two witnesses and executed the same.

FIRST PARTY
Brandbaron Marketin gPvt. Ltd.

SECOND PARTY

Witness:

1. RISHI DUGGAL
S/o Raj Kumar Duggal
Flat No.102, Vasant Kunj, D-6,
New Delhi.

2. Abhishek Tiwary,
S/o Ram Byas Tiwary
D-86, Munirka, New Delhi-67.”

13. A bare reading of the aforesaid Settlement Agreement executed by the parties makes it clear that the same had been voluntarily arrived at between the parties and the appellant/plaintiff's offer to pay a sum of Rs.4,25,937/- to the respondent/defendant was duly accepted by the latter. Furthermore, both the parties had agreed that they shall not raise any other claim or dispute with regard to the said amount before any other forum. On the assurance given by the appellant/plaintiff that he shall pay a sum of Rs.4,25,937/- to the respondent/defendant, the latter had agreed to issue a No Dues Certificate in favour of the appellant/plaintiff and M/s Panasonic Experience Center, which it did on the very same date.

14. On the parties executing the Settlement Agreement dated 29.11.2013 of their own free will and volition, all the previous correspondence exchanged between them on the aforesaid issue pales into insignificance. It was for the said reason that the learned trial court has held that nothing further was due to either party in respect of the transaction with M/s Panasonic Experience Center. It is not out of place to mention that in para 24 of the plaint, the appellant/plaintiff has himself stated that on 29.11.2013, the respondent/defendant had received the Panasonic payment from him and had entered into a settlement and agreed to withdraw its legal notice dated 22.11.2013, whereafter a No Due Certificate was also issued in terms of the said settlement. For the appellant/plaintiff to subsequently claim that he had paid the said amount to the respondent/defendant without prejudice to his rights, loses any meaning, in view of clause 6 of the very same Settlement Agreement, that has recorded that both the parties agree that there is no other pending claim or dispute between them with regard to the said invoices for Rs.4,25,937/- .

15. Given the aforesaid facts and circumstances, this Court is of the opinion that there is no illegality, perversity or mis-appreciation of facts, for this Court to interfere in the impugned judgment. As a result, the appeal is dismissed in *limine* as being devoid of merits alongwith the pending application.

JANUARY 06, 2017
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HIMA KOHLI, J

