

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

+ **RFA No. 608/2014**

% **6th August, 2018**

M/S. AITHENT TECHNOLOGIES PVT LTD Appellant

Through: Mr. Sumit Chaudhary, Advocate.

versus

ARCHANA VERMA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No.608/2014 and C.M. Appl. No. 19392/2014 (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 8.8.2014 by which the trial court has decreed the suit filed by the respondent/plaintiff/ex-employee for a sum of Rs.2,23,200/- with interest at the rate of 7% per annum, on account of part unpaid salary for the period from 1.4.2002 to 31.3.2003.

2. The facts of the case are that respondent/plaintiff was appointed by the appellant/defendant with effect from 1.11.2001 and the respondent/plaintiff worked at the Gurgaon Office of the appellant/defendant company. The respondent/plaintiff as per her plaint pleads that on account of appellant/plaintiff facing a cash crunch it was agreed with the employees that a part of their salary for the financial year 2002-2003 would be payable in the next financial year i.e. from 1.4.2003, however the appellant/defendant company from 1.4.2003 though restored the gross salary at Rs. 62,000/- per month with enhancement from 1.4.2003, but the appellant/defendant did not pay the deducted portion of the salary from 1.4.2002 to 31.3.2003.

3. Respondent/plaintiff worked with the appellant/defendant till 14.5.2004 and subsequently got employment with a company Hewitt Associate India Private Limited. The respondent/plaintiff sent a Letter dated 20.3.2006 setting out her claim on account of the appellant/defendant failing to pay the amount of part unpaid salary for the financial year 2002-2003 and thereafter the subject suit for deferred salary and compensation bonus totalling to Rs.3,87,688/- was filed.

4. Appellant/defendant contested the suit and pleaded that there was no agreement that the portion of the salary not paid in the financial year 2002-2003, has to be paid subsequently as deferred salary, inasmuch as the fact of the matter was that there was restructuring of salary of employees for the financial year 2002-2003 on account of financial difficulties of the appellant/defendant company. It was contended by the appellant/defendant that if the claim of the respondent/plaintiff had been genuine, then there was no reason as to why for two years after 2002-2003 till the respondent/plaintiff worked with the appellant/defendant that no claim was at all lodged by the respondent/plaintiff, and which claim was only lodged after the employment of the respondent/plaintiff with the appellant/defendant company ceased, and that too after about two years of leaving of the employment.

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

- “1. Whether this court has territorial jurisdiction to try this suit? OPP
2. Whether plaintiff was a party to the restructuring of salary as alleged by defendant? OPD
3. Whether plaintiff was a part of the management of defendant as such estopped from bringing this suit? OPD

4. Whether a part of the salary of plaintiff had been deferred with assurance to be paid at a alter stage? OPP
5. Whether plaintiff is entitled to recovery of the suit amount? OPP
6. Whether plaintiff is entitled to any interest on the suit amount? If so, what period and at what rate? OPP
7. Relief.”

6. Parties thereafter led evidence and these aspects are recorded in paragraphs 8-11 of the impugned judgment and these paras read as under:-

“8. The plaintiff appeared as PW1 in evidence and examined herself vide affidavit Ex.PW1/A. The plaintiff relied upon letter dated 06.05.2004, Ex.PW1/1, letter revising salary dated 01.12.2002 Ex.PW1/2, original salary slips from February, 2002 to June, 2003 Ex. PW1/3 to 19. e-mail message sent on behalf of defendant Ex.PW1/20, letter issued on behalf of defendant dated 01.04.2005 Ex.PW1/21, letter issued by the plaintiff dated 21.03.2006 Ex.PW1/22. The witness has been cross-examined on behalf of defendant.

9. PW2: Sunil Vadhera has also been the employee of defendant company at the relevant time and worked as Unit Head/Director. The witness has supported the fact that salary of number of employee was deferred by the defendant company in order to overcome temporary cash flow issue. The witness has also supported the e-mail message Ex.PW1/20. The witness admitted during cross-examination that he also filed recovery suit against the defendant company.

10. PW3: Sanjay Verma was also an employee of the defendant company and happens to be the husband of plaintiff. He has also supported the claim of the plaintiff with respect to deferred salary. The witness has been cross-examined. Thereafter, plaintiff’s evidence was closed.

11. On the other hand, DW1: Banty Bisht (Manager-HR) appeared on behalf of defendant and tendered affidavit Ex.D1. The witness tendered his authority on behalf of defendant company to depose vide Ex.DW1/A. The witness has been cross-examined on behalf of plaintiff.”

7. The only issue to be examined by this Court is as to whether there was an agreement that employees will be paid a portion of the salary of 2002-2003 at a deferred rate or that there was an agreement between the employees and the appellant/defendant-company/employer for structuring of the salaries financial year 2002-2003 whereby the employees including respondent/plaintiff were to receive lesser salaries.

8. In my opinion, the trial court has erred in this regard while deciding issue nos. 3-5 that the respondent/plaintiff has proved her case that it was a case of deferred payment of salaries and not a case of restructuring of salaries at a lower level of salary inasmuch as trial court has not even discussed that there is no agreement whatsoever filed by the respondent/plaintiff that the portion of the salary not paid was agreed to be paid by the appellant/defendant as a deferred salary, and that there was not restructuring of the salary. There is a ring of truth in the statement of the appellant/defendant company that the amount not paid was on account of the salary being restructured of all the employees including the respondent/plaintiff and if restructuring stand was not correct then there was no reason why the

respondent/plaintiff would not have sent letters or a legal notice or initiated legal proceedings from 1.4.2003 till she continued as an employee of the appellant/defendant company till 14.5.2004, with the further fact that in fact the first claim of so called deferred salary was not made by the respondent/plaintiff till 20.3.2006, i.e. much much later than the year 2002-2003, being the so called period of deferred salary issue.

9. I agree with the contention of the appellant/defendant company that the claim of the respondent/plaintiff is not genuine because not only the respondent/plaintiff but all other employees were paid lesser salary on account of restructuring of salary because of financial crunch being faced by the appellant/defendant/company.

10. I may also note that the contract in question is a contract of private employment and if the respondent/plaintiff did not want to work at the reduced salary, the respondent/plaintiff could well have walked out of the employment, and which admittedly the respondent/plaintiff did not do, and this shows that for all the employees including the respondent/plaintiff there was restructuring of salary and that there was no agreement of payment of the difference

of the salary, than the original rate and the restructured lesser salary amount ,more so because there is no document whatsoever filed by the respondent/plaintiff of any agreement that the portion of salary not paid during the year 2002-2003 was to be paid at a deferred rate.

11. In view of the aforesaid discussion this appeal is allowed and the impugned Judgment of the trial court dated 8.8.2014 is set aside. Suit of the respondent/plaintiff will stand dismissed. Any amount deposited by the appellant/defendant in this Court along with accrued interest be returned back by the Registry to the appellant/defendant within a period of four weeks from today. Decree sheet be prepared.

AUGUST 06, 2018

AK

VALMIKI J. MEHTA, J