

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

% **Date of decision: 19th September, 2018.**

+ **RSA 140/2018**

KLINTOZ PHARMACEUTICALS PVT LTD. Appellant

Through: Mr. Gautam Kumar, Adv.

Versus

RAVINDER SHANKAR MATHUR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.38496/2018 (for exemption) & CM No.38497/2018 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

RSA 140/2018.

3. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 21st May, 2018 in RCA No.24/2013 (20202/2016) of the Court of District Judge (South-East)] partly allowing the First Appeal under Section 96 of the CPC filed by the respondent/plaintiff against the judgment and decree [dated 30th September, 2013 in Suit No.121/2013 of the Court of Additional Senior Civil Judge (South-East)] of dismissal of suit filed by the respondent/plaintiff against the appellant/defendant for recovery of Rs.49,185/- on account of dues of salary, bonus, leave encashment, refundable security amount along

with interest. Resultantly, the First Appellate Court has passed a decree in favour of the respondent/plaintiff and against the appellant/defendant for recovery of Rs.35,220/- with interest @ 6% per annum w.e.f. 1st November, 2008 till the date of payment.

4. The counsel for the appellant/defendant has been heard.

5. The counsel for the appellant/defendant has argued, (i) that the respondent/plaintiff joined the employment of the appellant/defendant in the capacity of a manager in the month of November, 2007; (ii) the respondent/plaintiff resigned from the said employment on 31st October, 2008; (iii) that it was a term of employment of the respondent/plaintiff, that his employment was terminable by a two months notice from either side; (iv) that the respondent/plaintiff did not serve two month notice period and the appellant/defendant, out of the dues of the respondent/plaintiff, was entitled to deduct two months salary; (v) that holding so, the suit was dismissed; and, (vi) that the First Appellate Court has however partly allowed the appeal and passed a decree for recovery of monies against the appellant/defendant.

6. I have enquired from the counsel for the appellant/defendant, that the appellant/defendant having approached this Court in Second Appellate jurisdiction, what is the substantial question of law which the appeal raises.

7. The counsel for the appellant/defendant is unable to state the same.

8. The judgments of the Suit Court and the First Appellate Court and copies of the Suit Court record filed along with the memorandum of appeal have been perused.

9. The admitted position is, that the letter dated 26th October, 2007 of appellant/defendant, of appointment of the respondent/plaintiff, merely provides as under:-

“Sub: Offer Letter.

Dear Mr. Mathur,

With reference to our discussion, we are pleased to inform you that you have been offered the post of Business Development Manager in the organisation with effect from 26th October, 2007.

Terms and conditions will remain as discussed and agreed upon. The detailed offer letter mentioning your salary, expenses and other prerequisites will follow after we receive your intimation of joining in the Office.

Please send your acceptance and join your duty accordingly.

Yours sincerely.

Yours faithfully

For KlintoZ Pharmaceuticals Pvt. Ltd.”

10. The aforesaid letter was signed by the respondent/plaintiff under the endorsement “I have read, understood and accepted the terms and conditions of the appointment”.

11. It was the case of the appellant/defendant that the terms and conditions of appointment are contained in a separate document titled “Terms and conditions of TGE appointment for the post of Business Development

Manager” and clause 8 whereof titled “Termination of Service/Resignation from the company” *inter alia* provided as under:-

“Similarly the employee only after the confirmation of services shall be at liberty to resign from the services of the company after giving minimum two month’s prior notice or amount equivalent to two month’s of last drawn salary in lieu thereof. If the employee resigns and leaves without giving two month’s prior notice and without submitting no objection certificate form all departments of company, the amount equivalent to two month salary will be deducted/adjusted from his salary/security deposit/bonus/leave encashment. No notice would be required by the management if services are terminated for any misconduct, concealed or any covered up information, mental disability or infirmity or continued ill health absence in account of unsanctioned leave. The employee will be liable to face a legal action and or financial penalties with misconduct indulge in corruption or data loss or any other action which may harm the company’s image or cause financial losses to the company. Company financial year ends on 31st March every year. The business development manager will not be entitled for the bonus, leave encashment for the part of the financial year in which he tenders his resignation.

The employee shall not leave the company after resignation/termination without approval in writing by way of a “No Objection Certificate” from all departments. The employee has to hand over the company’s property including stationery items, bags, mobiles, laptop, projectors etc. to the authorised

person if the management before leaving the company. IN case of no compliance and/or the employee being found indulged in any financial irregularities or holding of company's properties, the amount equivalent to financial irregularities or/and cost of company's properties will be adjusted/deducted from his salary/Security Deposit/Bonus/Leave Encashment."

12. The First Appellate Court has reasoned, that (i) that the document titled "Terms and conditions of TGE appointment for the post of Business Development Manager" does not bear the signatures of the respondent/plaintiff or even of the appellant/defendant or even of the person who signed the appointment letter dated 26th October, 2007; (ii) the document titled "Terms and conditions of TGE appointment for the post of Business Development Manager" does not even bear any date; (iii) the respondent/plaintiff in his deposition expressly denied that the said terms and conditions were received by him or communicated to him; (iv) one of the witnesses of the appellant/defendant examined as DW2 also in his cross-examination stated that he did not know whether the document titled "Terms and conditions of TGE appointment for the post of Business Development Manager" had been handed over to the respondent/plaintiff along with the appointment letter dated 26th October, 2007 or not; (v) the appointment letter dated 26th October, 2007 proved as Ex.D-1 showed that the detailed offer letter mentioning salary, expenses and other perquisites was to follow after the respondent/plaintiff had joined the services; (vi) it could not be believed that the document titled "Terms and conditions of TGE appointment for the post of Business Development Manager" formed part of the appointment

letter dated 26th October, 2007 Ex.D-1; (vii) the appellant/defendant had already failed to prove that the said document titled “Terms and conditions of TGE appointment for the post of Business Development Manager” was annexed to or was part of the appointment letter dated 27th October, 2007; (viii) moreover, the appellant/defendant did not insist upon the respondent/plaintiff continuing to work for two months of the notice period and which also indicated that there was no such term of employment by the appellant/defendant of the respondent/plaintiff; and, (ix) on the contrary, the resignation letter of the respondent/plaintiff was accepted and no claim against him for notice period salary was made.

13. I have enquired from the counsel for the appellant/defendant, what is the evidence led by the appellant/defendant to prove that the document titled “Terms and conditions of TGE appointment for the post of Business Development Manager” was annexed to the appointment letter dated 26th October, 2007 Ex.D1.

14. The counsel for the appellant/defendant has drawn attention to page 114 of the paper book, being the transcript of the deposition of DW5 Subhash Chand Kansal, who claimed to be present at the time of interview of the respondent/plaintiff and to be a member of the interview panel. However, a perusal of the examination-in-chief of the said witness shows that the said witness nowhere deposed, either of the appointment letter dated 26th October, 2007 Ex.D-1 or of the document titled “Terms and conditions of TGE appointment for the post of Business Development Manager”. All that he deposed was, that “usual terms and conditions for the appointment and salary of the plaintiff was discussed”.

15. The counsel for the appellant/defendant has not drawn attention to any other evidence or raised any other arguments.

16. It is thus not a case of the First Appellate Court, which is the final court of facts, having returned the factual finding qua non entitlement of the appellant/defendant to deduct notice period salary out of the dues of the respondent/plaintiff, without there being any evidence on record. No fault has been shown with the reasoning given by the First Appellate Court for holding that the appellant/defendant was not entitled to deduct notice period salary. Supreme Court in *Damodar Lal Vs. Sohan Devi* (2016) 3 SCC 76 as well as in *Krishnan Vs. Backiam* (2007) 12 SCC 190 has held that as long as the finding of the First Appellate Court is based on some evidence, even if little evidence, the Second Appellate Court cannot appropriate to itself the jurisdiction to adjudicate the facts by calling such a finding perverse.

17. There is another aspect of the matter. As per the law now in force, deduction from admitted dues, of amounts by way of forfeiture, without proving any loss or damage, cannot be effected. Reference in this regard can be made to *Union Bank of India Vs. C.G. Babu* 2018 SCC OnLine SC 962, *UCO Bank Vs. Anju Mathur* 2013 SCC OnLine P&H 5014 (FB), *Kamla Rameshchandra Sharma Vs. Maharashtra Rajya Wakhar Mahamandal, Pune* 2008 SCC OnLine Bom 1433, *Jaswant Singh Gill Vs. Bharat Coking Coal* (2007) 1 SCC 663, all in the context of forfeiture of gratuity and *Kailash Nath Associates Vs. Delhi Development Authority* (2015) 4 SCC 136, *Palm Art Apparels Vs. Enkay Builders Pvt. Ltd.* MANU/DE/3533/2017, *Satish Verma Vs. Garment Craft (India) Pvt. Ltd.* 2018 SCC OnLine Del 6829 and to order dated 31st January, 2018 of this

Court in CS(OS) No.308/2016 titled *Mera Baba Pvt. Ltd. Vs. Ram Lubhaya Puri*. There is not a whisper in the written statement, of the appellant/defendant having suffered any loss owing to the respondent/plaintiff having not served the notice period even if any. Rather, on perusal of the testimonies it is found that it was the suggestion of the counsel for the appellant/defendant in cross-examination of the respondent/plaintiff that the respondent/plaintiff was not doing any work for the appellant/defendant and was receiving salary only for sitting idle in the office. That being the stand, the possibility of the appellant/defendant having suffered any loss or damages owing to the respondent/plaintiff having not served the notice period, even if any, did not arise.

18. There is no merit in the appeal. It does not raise any substantial question of law.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 19, 2018

‘pp’