

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

+ **C.R.P. 11/2015**

% Decided on: 30th January, 2015

NEERAJ SHUKLA Petitioner
Through Mr. Kamal Kr. Pandey, Adv.

versus

FRANKFINN AVIATION SERVICES (P) LTD. Respondent
Through None

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

CM Nos. 1639-1640/2015

Exemptions allowed subject to just exceptions.

C.R.P. 11/2015 & CM 1638/2015 (stay)

1. The petitioner aggrieved by the order dated 5th December, 2014 whereby leave to defend was granted to the respondent prefers the present petition.

2. The petitioner filed suit under Order 37 CPC claiming that he was an employee of the defendant company and was appointed as Regional Head, Sales and Operations of Southern Region vide appointment letter dated 4th May, 2012 on which day he joined. On 7th August, 2012 by a communication through e-mail he tendered his resignation with request for

waiving of the notice period and his resignation was duly accepted with effect from the same date and the notice period was also waived off. The petitioner surrendered all the assets of the defendant company and on 21st August, 2012 sent a mail requesting the defendant/respondent to clear all the dues by making full and final payment which include his salary from 26th July, 2012 to 7th August, 2012 amounting to ₹1,95,000/-, reimbursement of ₹61,082/- as travel expenses vide travel bills dated 10th June, 2012, 24th June, 2012, 4th July, 2012 and 5th August, 2012 and reimbursement on heads of medical, driver, petrol and entertainment amounting to ₹50,753/- for the period from 5th May, 2012 to 7th June, 2012. Since despite repeated reminders the amount has not been paid, the plaint was filed for recovery of ₹3,07,701/- along with interest thereon.

3. The learned Trial Court vide the impugned order noted that in fact in the circumstances of the case suit under Order 37 CPC itself was not maintainable, there being no liquidated demand and no contract out of which the amount claimed by the plaintiff has arisen; however since initially summons were sent as prescribed under Order 37 CPC and triable issues have been raised by the defendant, unconditional leave to defend was granted.

4. In the leave to defend application filed by the respondent, the following issues were raised:

“I) Whether the defendant waived off in favour of the plaintiff one month’s written notice from the plaintiff as per term No.10 of employment regarding termination/resignation on 07/08/2012 during probation?

- II) Whether the plaintiff in the absence of one month's written notice is entitled to claim one month's salary in lieu thereof as per term No.10 of employment regarding resignation during probation?
- III) whether the defendant ever admitted that the plaintiff is entitled to Rs.1,95,865/- (one lakh ninety five thousand eight hundred sixty five) as salary payable to the plaintiff by the defendant?
- IV) Whether the plaintiff is entitled to ₹1,95,865/- (one lakh ninety five thousand eight hundred sixty five) as salary payable to the defendant under contract of employment or as a debt?
- V) Whether the defendant ever admitted in favour of plaintiff for reimbursement of travel expenses to the tune of ₹61,082/-? or admitted the alleged documents relied in this regard by the plaintiff?
- VI) Whether the plaintiff is entitled to ₹61,082/- (sixty one thousand eighty one) as reimbursement of travel expenses incurred for defendant?
- VII) Whether the defendant ever admitted in favour of plaintiff for reimbursement for period from 05.05.2012 (date of joining) to 07.08.2012 (date of resignation) on heads of medical, driver, petrol & entertainment to the tune of ₹50,753/-?
- VIII) Whether the plaintiff is entitled to ₹50,753/- on heads of medical, driver, petrol and entertainment reimbursement for period from 05.05.2012 (date of joining) to 07.08.2012 (date of resignation) from the defendant? Or admitted the alleged documents relied in this regard by the plaintiff?
- IX) Whether the plaintiff is entitled to ₹5000/- as legal notice fee against the defendant without any admission/acknowledgement/debt/contract in this regard by defendant?

- X) Whether the plaintiff is entitled to ₹25,000/- as counsel fee against the defendant for filing this suit without any admission/acknowledgement/debt/contract in this regard by defendant?
- XI) Whether the plaintiff is entitled to 12% interest against the defendant without any admission/acknowledgement/ debt/contract in this regard?
- XII) Whether there is an acknowledgement or admission debt/contract made by the defendant in favour of the plaintiff for an amount of ₹3,07,701/-?
- XIII) Whether the relief for decree of ₹3,07,701/- and/or pendente lite interest @ 12% p.a. as prayed in suit can be granted as liquidated debt or contract amount in favour of the plaintiff and against the defendant?

5. Vide the appointment letter dated 4th May, 2012 the monthly salary of the petitioner with the break-up was as under:

S.No.	COMPONENT	AMOUNT P.M.(₹)
1	Basic Salary	80000.00
2	HRA	40000.00
3	Conveyance Allowance	800.00
4	Special Allowance	19104.00
	TOTAL	139904.00

6. Learned counsel for the petitioner further contends that besides this letter another communication was sent to him on 4th May, 2012 stating that the petitioner would be entitled to additional reimbursement for office use wherever applicable subject to upper limits as indicated:

S.No.	EXPENSE HEAD	Entitlements Up to (₹ P.A.)
1	Medical	15,000
2	Driver	60,000
3	Petrol	60,000
4	Entertainment	60,000

7. In the leave to defend application the respondent denied the claim of the petitioner with regard to medical, driver, petrol and entertainment dues to the extent of ₹50,753/-. A perusal of the letter dated 4th May, 2012 now being relied by the petitioner would show that the upper limit for reimbursement for medical, driver, petrol and entertainment was ₹1,95,000/- per year. In the plaint the petitioner himself stated that he was claiming a sum of ₹50,753/- as reimbursement on the heads of medical, driver, petrol and entertainment for a period from 5th May, 2012 to 7th June, 2012. As noted above, the reimbursement on account of medical, driver, petrol and entertainment being ₹1,95,000/- per annum and the claim for one month itself being ₹50,753/- itself raises a triable issue. Thus even without going any further on the issues raised, I find no infirmity in the impugned order granting leave to defend.

8. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2015
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