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

+ RFA 858/2015

MORPH INFORMATION TECHNOLOGIES
PVT LTD

..... Appellant

Through: Mr Samdarshi Sanjay, Adv.

versus

GAURAV KAPOOR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **18.12.2015**

CM No. 31171/2015 (Exemption)

1. Allowed subject to just exceptions.

CM No. 31172/2015 (Condonation of delay)

2. This is an application seeking condonation of delay of one day in filing the appeal. For the reasons given therein, the application is allowed and the delay is condoned.

3. The application is, accordingly, disposed of.

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4. This appeal has been preferred against the judgement and decree dated 18.08.2015 passed by the trial court. The appellant had filed a suit for recovery of a sum of Rs. 10 lacs from the respondent with interest at the rate of 12% per annum. The interest was calculated w.e.f. 30.04.2013.

5. Briefly, the facts obtaining in the present case are as follows:

5.1 The respondent was employed with the appellant. For this purpose,

an offer letter dated 19.03.2013 was issued, according to the appellant. The offer made to the appellant was accepted by the respondent. Therefore, according to the appellant, a contract emerged between the parties. There are several terms and conditions incorporated in the communication dated 19.03.2013. One such term and/or condition, on which reliance is placed by the appellant, reads as follows:

“... Note: If you choose to leave the organization with in the first three years of joining you would have to pay an amount of Rs. 10,00,000/- against the on the job training charges....”

5.2 It appears that the respondent was relieved from his employment with the appellant, on 30.04.2013. A relieving-cum-confidentiality letter of even date i.e. 30.04.2013, was generated in this behalf. Admittedly, this letter bears only the signatures of the authorized signatories of the appellant. The respondent's signatures do not appear on the said letter.

5.3 It appears that the respondent, after filing his written statement, did not appear and was, therefore, proceeded ex parte by the trial court vide the order dated 20.07.2015. The appellant, though, led its evidence in the matter. The trial court, based on the pleadings framed the following issues:

- “....1. Whether the document containing confidentiality obligation dated 17.04.2013 is a forged document? OPD
2. Whether the defendant has violated the terms of offer letter, letter of appointment, agreement of equipment and confidentiality agreement, if so, its effect? OPP
3. Whether the plaintiff is entitled for the decree for recovery of money of Rs. 10,00,000/-? OPP
4. Whether the plaintiff is entitled for pendent-lite and future interest @ 12% per annum or at any other rate? OPP
5. Relief...”

5.4 By virtue of the impugned judgement, the trial court found issue no.1 in favour of the appellant, while all other issues were found against the appellant.

6. The heart of the matter, though, was whether or not the respondent was required to pay Rs. 10 lacs, as he had left the organization, according to the appellant, prior to the period of three years as stipulated under the terms of his employment. The appellant's suit was pivoted on the note, which has been extracted hereinabove.

6.1 The trial court, however, came to the conclusion that the appellant could not recover the money as, at the point in time when the relieving-cum-confidentiality letter was issued, said obligation placed on the respondent, was not sought to be enforced. The observations of the trial court, in this regard, are contained in paragraph 16 of the impugned judgement. The same, are extracted hereinbelow:

“.... 16. This clause is incorporated in the letter of appointment dated 19.03.2013, however, when the defendant was relieved vide letter dated 30.04.2013, no such condition was sought from the defendant. This particular fact can be sought from the defendant at the time of leaving his job. As far as the letter of relieving defendant is concerned, the same is Ex. PW1/6 dated 30.04.2013. When no such demand is sought in this letter, but only confidential aspects are dealt, it can be safely presumed that plaintiff was never intended to invoke for Rs. 10 lacs as a condition on leaving the job prior to 3 years....”

6.2 This aspect of the matter, however, is not disputed by the appellant.

7. Learned counsel for the appellant, however, states that since a huge amount of money was spent on the training of the respondent, the appellant, was entitled to recover the money.

8. I have asked the learned counsel for the appellant as to whether any

evidence was led on this aspect of the matter, that is, as to the amount actually spent on training the respondent. Learned counsel for the appellant says that no such evidence was led.

9. In my view, having regard to the findings of the trial court, and given the fact that no evidence was led as to the expenses incurred on training the respondent, no interference is called for with the impugned judgement.

10. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

DECEMBER 18, 2015

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