

\$~5

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

%

Judgment delivered on: 02.08.2016

+ **FAO(OS) 152/2016**

RAJEEV SURANA

..... Appellant

versus

M/S OCM INDIA LIMITED & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant

:

Mr Siddharth Yadav with Mr Wasim Ashraf.

For the Respondent

:

Mr Akhil Sibal with Ms Hima Rawrence.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 19134/2016 (delay)

We have heard the learned counsel for the parties. The delay in filing the appeal is condoned.

The application stands disposed of.

FAO(OS) 152/2016 and CM 19132/2016 (stay)

1. This appeal has been filed against the order dated 03.03.2016 read with order dated 29.01.2016. The issue in this appeal revolves around the deletion of defendant no.5 (respondent no.2 before us) from the array of parties.
2. On 29.01.2016, the issues were framed in the suit. The issues were to the

following effect:

(i) “Whether the plaintiff is entitled to money amounts as claimed in prayer paras A & B of the plaint on the basis of the cause of action as alleged in the plaint? OPP

(ii)Relief.”

3. Since the prayers ‘A’ and ‘B’ have been mentioned in issue no.1, it would be appropriate to set out those prayers. They read as under:

“(a) Pass a decree for a sum of Rs.2,31,28,405 (Rupees two crore thirty one lakh twenty eight thousand four hundred and five only) as per paragraph 20 herein above, in favour of the plaintiff and against the defendants, severally and/or jointly.

(b)Pass a decree of declaration in favour of the plaintiff and against the defendants declaring that the plaintiff is entitled to an amount equal to 23,22,105 (twenty three lakh twenty two thousand one hundred and five) shares in the defendant no.1 company or an amount equal to 23,22,105 shares and wherever the plaintiff has claimed allotment of shares, the above lines will be added.”

4. In the course of the hearing, on that day, i.e. on 29.01.2016 itself, it was suggested by the learned counsel for the defendants and in particular defendant nos.2 to 5 that the appellant/plaintiff was only an employee of defendant no.1 (respondent no.1) and any breach of contract which was alleged would be relatable to the defendant no.1 and the right to claim recovery of money etc was also with regard to the defendant no.1 and not the other defendants. It was further contended on behalf of the defendant nos.2 to 5 that they were

unnecessarily impleaded as parties. Defendant nos.2 to 4 were merely shareholders in defendant no.1 company and defendant no.5 was not even a shareholder, though defendant no.5 was the chairman of the defendant no.1 company. It was also contended on behalf of the defendants that neither the shareholders nor any individual were personally liable for the alleged liability of the company and therefore, defendant nos.2 to 5 were not to be impleaded as defendants. In this context, the learned single Judge observed as under:

“I must also note that counsel for the plaintiff also very fairly admits that the entitlement of the plaintiff, who is an ex-employee of the ex-employer/ defendant no. 1, will be to claim moneys and reliefs as claimed in the present suit only from the ex-employer. Accordingly defendant nos. 2 to 5 are deleted from the array of parties. Plaintiff will file amended memo of parties within a period of two weeks from today.”

5. The learned single Judge also observed that the deletion of defendant nos.2 to 5 would not in any manner affect the entitlement of the plaintiff/appellant herein to prove his case in accordance with law including the summoning of witnesses as the law would permit.

6. Shortly after the order dated 29.01.2016 was passed, an application was filed being IA No.2995/2016 for modification of the order dated 29.01.2016. Essentially the appellant/plaintiff, by virtue of the said application, sought the re-inclusion of the defendant no.5 as a defendant although he did not press for any modification with regard to the deletion

of defendant nos.2 to 4. According to the learned counsel for the appellant, he did not concede before the learned single Judge on 29.01.2016 that the defendant nos.2 to 5 could be deleted from the array of parties. This is what the learned counsel for the appellant argued before us. But, there is no such statement in the said IA No.2995/2016 nor is there any such statement in the present appeal. We also find that the learned single Judge, while considering the said IA, came to the conclusion that the application was misconceived. The learned single Judge observed that looking at the averments of the plaint and the arguments urged before the Court, he could not find any averment with regard to any personal liberty of defendant no.5 which was urged as a cause of action against defendant no.5 and therefore, the plaintiff/appellant did not claim any relief in the suit against defendant no.5.

7. After hearing the learned counsel for the parties, we are of the view that no interference is called for with the impugned order dated 03.03.2016 or the order dated 29.01.2016. It is first of all to be noted that the issues that have been framed relate only to prayers in paras 'a' and 'b' of the plaint which we have already referred to above. There is no issue

with regard to prayer 'D' which is the only one where there is a reference to defendant no.5. In fact prayer 'D', according to us, was only by way of interim relief till the relief, if granted, under prayer 'B' was implemented. Prayer 'D' does not survive in any event because the admitted position is that the defendant no.5 does not hold any shares in the defendant no.1. This is specifically stated in the application being IA No.2995/2016 in paragraph 4 where the appellant/plaintiff stated that the statement of the counsel for the defendant was incorrect, inasmuch as "defendant no.5 is not a shareholder of defendant no.1".

8. In the amended plaint which has been placed on record before us a claim has been made with regard to an amount of Rs.2,31,28,405/- which are set out hereunder:

	Particulars	Amount (Rs.)
(i)	Arrears of Salary (8 months @ Rs.1,09,500)	8,76,000.00
(ii)	Notice (3 months) (Basic Salary @ Rs.5,91,083)	17,73,249.00
(iii)	Guaranteed Bonus	7,48,251.00
(iv)	Normal Bonus	5,577.00
(v)	Gratuity	19,39,615.00
(vi)	Leave Encashment	33,19,975.00
(vii)	Severance Package (1 Years CTC)	1,37,36,808.00
(viii)	Loss of reputation & mental agony	50,00,000.00
	Total Amount	2,73,99,475.00
	Less Recoveries	7,93,526.00

	Net Amount	2,66,05,949.00
	Less Amount received	34,77,544.00
	Total Amount Payable	2,31,28,405.00

(PF & Superannuation wherever applicable is payable)

The entire amount is claimed from defendant no.1. Prayer 'b' is also a sum of money which has been claimed and that too viz-a-viz defendant No.1.

9. As such the reliefs that survive in the suit after the framing of issues are entirely relatable to defendant No.1 and not to defendant No.5 as is sought to be argued by the learned counsel for the appellant. In any event, the appellant cannot resile from the statement made on 29.01.2016 by the learned counsel that the entitlement of the plaintiff will be to claim moneys and reliefs as claimed in the present suit only from the ex-employer i.e. the defendant No.1.

10. In view of the foregoing, we do not see any reason to interfere with the impugned orders whereby defendant Nos.2 to 5 have been deleted from the array of parties.

11. The appeal is dismissed.

12. We have not gone into the merits of the claim and, obviously, that will be decided by the learned single Judge in the trial.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

AUGUST 02, 2016
ab

