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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 483/2015 & C.M. No.9458/2015

CAMPUS EAI (INDIA) PVT LTD

..... Petitioner

Through Mr. Vivek Sharma, Ms. Mamta Sharma
and Ms. Prabjot Kaur Chhabra, Advs.

versus

HITESH CHADHA

..... Respondent

Through Mr. K.D. Kaushal, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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10.02.2016

Present suit was filed under Order XXXVII of the Code of Civil Procedure (hereinafter referred to as the 'Code') but the Trial Court vide its order dated 31.01.2015 had construed it as an ordinary suit. This is the grievance of the petitioner.

Record shows that the plaint has been filed under the provision of Order XXXVII of the Code. It is a suit for recovery of an amount of Rs.3,50,000/-. The written document on the basis of which the suit is premised is the agreement dated 04.09.2013 entered into between the parties. This document has been perused. It was a training agreement by virtue of which the plaintiff company was to impart training to its employee i.e. the defendant for a period of two years; Clauses 3 & 4 of the said agreement are relevant. They read as under:-

“3 The Employee further agrees that in the event of breach of any of the terms and conditions of this Agreement, of which the company shall

be the sole judge, the Employee not being or is unable for any reason whatsoever to complete the training or is unable to work for the Company for the period as aforesaid, he shall forthwith pay to the Company by way of compensation as follows:

If the Employee leaves the employment during the period of training or if the Employee fails to take up regular employment after completion of the training or for any reason leaves the services of the Company before completion of the aforesaid minimum period of 2 years, the employee shall pay to the Company INR 3,50,000/- (Rupees Three Lacs Fifty Thousand only)

4 *It is understood and agreed by the parties hereto that the amount mentioned aforesaid, is a fair and reasonable estimate of the sum total of the cost and expenses incurred by the Company towards the training provided to the Employee and the foreseeable loss to the Company and foreseeable future expenses to be incurred on the replacement of the Employee, in the event of the Employee leaving the Company before the stipulated terms, and on account of the delay and disruption in its work as a consequence of the Employee leaving prematurely.*

The expression 'leave the employment or leaving the services of the Company' for the purpose of this Agreement would mean separation of the Employee from the Company by any of the following means:

- (a) Separation by way of the Employee tendering his resignation;*
- (b) Separation by way of dismissal of the Employee on grounds of indiscipline/misconduct;*
- (c) Continued absence of the Employee without sufficient cause or authorization of which the Company shall be the sole judge or*

abandoning his services.”

The suit was admittedly premised on a fixed amount which was payable by the defendant to the plaintiff in case he did not complete the training.

There is a clear averment made in para 11 of the plaint that before the training could be completed and inspite of the fact that the defendant had been paid a full salary for the month of December, 2013, he for no apparent reason and without giving any intimation to the plaintiff did not return for work and absented himself from the work w.e.f. 07.01.2014. His unexplained absence without any cause had led to the filing of the present suit. The present suit has made a prayer for claim of Rs.3,50,000/- as damages which is the amount stipulated in the written document dated 04.09.2013.

The impugned order had recorded a written fact finding that there was no averment in the plaint that the training had not been imparted to the defendant or that the defendant had not contravened the terms of the agreement. This has clearly been mentioned in para 11 of the plaint which has been discussed supra.

The respondent is present. He submits that he has filed his written statement.

This Court is of the view that the suit should have been treated as a suit under Order XXXVII of the Code as all the essential ingredients of Order XXXVII of the Code have been fulfilled.

Summons of the suit have accordingly been accepted by the learned counsel for the respondent/defendant. Defendant seeks permission to file his application seeking leave to defend and the

arguments urged before this Court today will, needless to state, find mention in his application seeking leave to defend. This application be filed by him within a period of 10 days which 10 days be counted from 15.02.2016. After completion of pleadings, the Court shall deal with the application seeking leave to defend and if there is any triable issue, needless to state the Court shall pass an appropriate order.

Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

FEBRUARY 10, 2016

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