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

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Date of Decision: March 18, 2016

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FAO(OS) 687/2015

VINOD KUMAR ABBEY

..... Appellant

Represented by: Mr.APS Ahluwalia,
Sr.Advocate instructed by
Mr.S.S.Ahluwalia, Advocate

versus

M/S MOUNTAIN FALL INDIA PVT LTD & ORS..... Respondents

Represented by: Mr.Ashish Dholakia, Advocate
with Mr.Gautam Bajaj,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

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1. The appellant filed a suit under Order XXXVII of the Code of Civil Procedure praying for a decree in sum of ₹33,52,003/- (Rupees Thirty Three Lacs Fifty Two Thousand and Rupees Three only). He pleaded that the defendant No.1, of which defendants No.2 and 3, were directors employed him on terms contained in the letter of appointment dated November 08, 2010. As recorded therein, he had to be paid remuneration in sum of ₹8,18,000/- (Rupees Eight Lacs Eighteen Thousand only) per month. He pleaded that the defendant No.1 was in financial crises and requested the plaintiff to forego a part of the remuneration. It was agreed that the remuneration to be received by the plaintiff would be ₹5,00,000/- (Rupees Five Lacs only) per month and for which a revised letter dated December

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By:AMULYA FAO(OS) 687/2015

16, 2011 was issued.

2. Thereafter the singular becomes plural and reference is made to the defendants. Plaintiff pleaded that the attitude of the defendants become unprofessional compelling him to submit a resignation on April 17, 2012 which was accepted and he was relieved of the duties on April 30, 2012. As per him, ₹20,56,270/- (Rupees Twenty Lacs Fifty Six Thousand Two Hundred Seventy only) was payable towards remuneration not paid from February 2012. He also pleaded that the defendants acknowledged liability evidenced by the fact that Form 16A was submitted to the Income-tax Department on June 29, 2012 showing that the defendants had deducted tax on remuneration payable to him in sum of ₹20,00,000/- (Rupees Twenty Lacs only).

3. Served with the summons in the suit the defendants entered appearance. Thereafter, summons for judgment was served upon the defendants who filed IA No.23685/2015 urging pleas on which leave to defend was prayed for.

4. Vide impugned order dated November 16, 2015, the learned Single Judge has recorded that the suit was not maintainable under order XXXVII of the Code of Civil Procedure. For the reason, though based on a written document, but it did not contain a specified liquidated amount.

5. The impugned order records that counsel for the plaintiff could not show how the specific liquidated amount was claimed.

6. Suffice it to state that the liquidated payment is inherent in the letter of employment as per which remuneration in sum of ₹5,00,000/- (Rupees Five Lacs only) per month was to be paid. This is the claim in the plaint. Additionally, there is a reference to Form 16A submitted by the defendant

No.1 to the Income-tax authorities showing sum of ₹20,00,000/- (Rupees Twenty Lacs only) credited to the account of the plaintiff and tax deducted at source thereon.

7. The learned Single Judge has held that he was inclined to dismiss the suit but has shown benevolence by directing the plaintiff to delete reference in the plaint to order XXXVII of the Code of Civil Procedure.

8. This part of the direction is contrary to law for the reason a summary suit if opined to be worthy of being defended, requires leave to defend to be granted and not that the plaintiff be called upon to amend the plaint.

9. Be that as it may, with respect to the main issue, learned counsel for the defendants submits that various grounds have been urged in the application seeking leave to defend which have not been even considered by the learned Single Judge. Counsel states that since the view taken by the learned Single Judge concerning pleadings in the plaint is found to be incorrect, after setting aside the impugned order the learned Single Judge be requested to re-decide IA No.23685/2015.

10. We note at this stage that as regards defendants No.2 and 3, there are no pleadings as to in what manner they would be liable. There are no pleadings that the directors of defendant No.1 would be personally liable for the dues of defendant No.1. The plaint predicates a right under a written agreement between the plaintiff and the defendant No.1. This is as per the letter of appointment.

11. Learned counsel for the plaintiff concedes to said fact. We have recorded so because we find that in the application seeking leave to defend this aspect qua defendants No.2 and 3 has not been highlighted.

12. The learned Single Judge would look into this issue when IA

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No.23685/2015 filed by the defendants seeking leave to defend is decided. Notwithstanding defendants No.2 and 3 not taking a plea concerning their personal liability, the learned Single Judge would consider whether qua said defendants there are pleadings to show liability of defendants No.2 and 3 to pay the dues of defendant No.1 to the plaintiff.

13. The appeal is disposed of. Order dated November 16, 2015 is set aside.

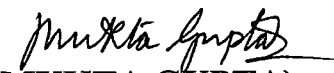
14. IA No. 23685/2015 is restored for adjudication afresh on merits.

15. No costs.

CM No.31961/2015

Dismissed as infructuous.


(PRADEEP NANDRAJOG)
JUDGE


(MUKTA GUPTA)
JUDGE

MARCH 18, 2016

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