

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.02.2017

Judgment pronounced on : 24.02.2017

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

C.S.No.1009 of 2010

Noorul Amin

... Plaintiff

Vs.

M/s.Kaar Technologies India Pvt.Ltd.,
Represented by its Chief Executive Officer
Mr.Maran,
8th floor, Shyamala Towers,
No.136, Arcot Road, Saligramam,
Chennai 600 093

... Defendant

Prayer:- Complaint filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S.Rules

a. declaration that the termination of the Independent Contractor Agreement dated 01.04.2010 is wholly bad in law, malafide, bereft of reasons, un-healthy trade practice, besides wholly unjustified, erroneous and illegal.

b. directing the defendant to pay a sum of Rs.7,38,842/- (Rupees Seven Lakhs Thirty Eight Thousand Eight Hundred Forty Two only) as on 04.11.2010 with interest at the rate of 18% per annum on Rs.7,38,842/- from the date of Complaint till the day of payment in full to the plaintiff

c. directing the defendant to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) as damages as on 10.11.2010 with interest at the rate of 18% per annum from the date of plaint till the day of payment in full to the plaintiff

d. costs

For Plaintiff : Mr.Abdul Hammed & Mr.Anand

For Defendants : Mr. K.M.Aasim Shehzad

JUDGMENT

The suit has been filed for declaration that the termination of the Independent Contractor Agreement dated 01.04.2010 is bad in law and illegal and for a direction against the defendant to pay a sum of Rs.7,38,842/- as on 04.11.2010 together with interest @ 80% p.a. till the date of realisation and for a further direction against the defendant to pay a sum of Rs.20,00,000/- as damages as on 10.11.2010 together with interest and for costs.

2. The plaintiff who is an Engineering graduate had worked at various companies and had joined the defendant Private Limited Company as Senior SAP Technical Consultant with a salary of Rs.13 lakhs per year. The defendant company is in the business of

software services. The plaintiff was deputed to work in Saudi Arabia by letter dated 30.04.2009 and his salary was fixed at 286 US\$ per day apart from salary other allowances like local conveyance facility, medical insurance, accommodation and two way air tickets were offered during the course of the project. The plaintiff joined the defendant company on 18.05.2009 and had stated that he faced many difficulties during his work period. It has been further stated that by e-mail dated 05.02.2010, the plaintiff resigned the job with effect from 05.03.2010. The defendant agreed to relieve the plaintiff from 31.03.2010 and agreed to take the plaintiff as Independent Consultant from 01.04.2010. This was confirmed by the defendant by e-mail dated 11.02.2010 and it was also accepted by the plaintiff by e-mail dated 11.02.2010. The plaintiff worked till 31.03.2010, the defendant did not issue relieving order till 17.04.2010. In the meanwhile, the defendant and the plaintiff entered into an Independent Contractor Agreement on 01.04.2010. According to the agreement the following are the main terms and conditions:-

- (i) consultant will work as a "SAP Technical Consultant" for the designated project.***
- (ii) agreement shall commence from 01.04.2010 and shall continue for a period of 6 months.***

- (iii) contractor shall pay consultant three hundred and twenty nine US dollars (\$329) per day (minimum of 8 hours/day) (for the work of minimum 8 hours/day) (the equivalent of the amount fixed in US \$ will be paid in Saudi Riyals as per the prevailing forex rates)***
- (iv) the contractor will take care of accommodation, shared local conveyance, medical insurance (only for self), two way airfare, visa expenses.***
- (v) The payment will be made on monthly basis by cash such amount payable for the month shall be disbursed between 16th and 20th of every subsequent month.***
- (vi) The contractor has the right to dismiss forthwith, without notice or pay in lieu of such notice and without the consultant being entitled to any other benefit, at any time, in the event the consultant commits any of the following acts:***
- (a) The consultant commits any material breach of his obligations under this Agreement;***
- (b) The consultant violates the contractor's/client's work rules; or***
- (c) The consultant accepts or solicits facilitating payments (bribes) for him or third parties.***
- (vii) Incapacity – if through no fault of his own, consultant becomes physically or mentally incapacitated or disabled and cannot properly perform***

- his duties as certified by a medical practitioner designated by the contractor, the contractor may at any time thereafter, terminate this agreement.***
- (viii) In the event that the client requests the removal of consultant from the project and the contractor is unable to offer alternative employment), the contractor will give the consultant an immediate notice of termination.***
- (ix) Consultant may terminate this contract by giving 30 days written notice.***
- (x) Contractor may terminate this contract by giving 30 days written notice.***
- (xi) If the consultant is unsuccessful in obtaining permanent visa or any other necessary visa for the country of employment, the contract will not be valid.***
- (xii) Upon the termination of this agreement, the consultant shall return all property belonging to the contractor/client in his possession. Upon the termination of this Agreement and the settlement of all outstanding matters, the parties shall execute a mutual release of all claims".***

3. According to the plaintiff, the defendant did not pay the remuneration on the agreed dates. The salary for the month of May 2010 which was due on 16.06.2010 was paid on 22.06.2010, causing

much hardship and loss to the plaintiff. The plaintiff by e-mail dated 21.06.2010 informed the defendant that he would like to terminate the agreement by 20.07.2010 and gave one month notice. The defendant discussed the issue with the plaintiff and by e-mail dated 14.07.2010, it was agreed by the plaintiff that he would continue his work till 31.08.2010. However, on 03.08.2010 the plaintiff's Kaar e-mail ID was blocked. By e-mail dated 04.08.2010, the defendant informed the plaintiff that his service towards Aramco e-banking project are not required and terminated the service of the plaintiff under clause 8 (c) of the Agreement. By e-mail dated 05.08.2010 the defendant again issued notice of termination to the plaintiff as per clause 8 (c) of the contract. It has been stated that his remuneration will be settled between 16th and 20th August for the month of July 2010 and till 4th August 2010.

4. It has been stated that the said termination is illegal and consequently the plaintiff has also sought damages for wrongful termination. The plaintiff by e-mail dated 05.08.2010 informed that he would return all the properties in his possession and sought termination notice with relieving letter and pay for 30 days and

pending salaries. The plaintiff returned the properties of the defendant. The defendant held a discussion on 20.08.2010 with the plaintiff and provided two options for payment. One was to accept full and final settlement without pay for four days of work in August and the other option was to submit time sheet from 01.08.2010 to 04.08.2010 and get the payment for those four days. This discussion was confirmed by e-mail dated 20.08.2010. The plaintiff accepted to that under pressure given by the defendant. The plaintiff gave the time sheet on 21.08.2010. Again the defendant did not make the payment and there was a discussion on 26.08.2010. The defendant stated that they would make the full and final settlement by cheque in India in rupees equivalent to the amount due after deducting 10% of TDS or they would give the cash in Saudi Riyals after full and final settlement. The plaintiff submitted the acknowledgment pay slips for April to July and sent an e-mail dated 28.08.2010. Since the defendant did not make the payment, the plaintiff issued legal notice dated 30.08.2010. The defendant issued a reply dated 16.09.2010 asking the plaintiff to tender unconditional apology. This suit has been filed seeking the reliefs as mentioned above.

5. In the written statement it had been stated that the claim of the plaintiff is an abuse of process and lacks bonafides. It had been further stated that the plaintiff has filed the suit for wrongful termination when he himself has sent notice to terminate the agreement. It had been further stated that the plaintiff had indulged in slanderous activities against the defendant causing loss of business and goodwill. It had been further stated that the defendant provides software services more specifically SAP Consultancy and Implementation Services. It was stated that the offer letter dated 30.04.2009 was issued and letter of appointment dated 18.05.2009 were also issued. It had been stated that the plaintiff by e-mail dated 05.02.2010 sent his resignation. Thereafter, as agreed, the plaintiff worked till 31.03.2010. It had been stated that the entire amount had already been paid to the plaintiff in July 2010. With respect to termination, the defendant relied on clause 8(c) of the Independent Contractor Agreement which is as follows:-

" (a) The contractor has the right to dismiss forthwith, without notice or pay in lieu of such notice and without the Consultant being entitled to any other benefit at any time, in the event the consultant

commits any of the following acts,

1. The consultant commits any material breach of his obligations under this agreement.

2. The consultant violates the contractor's/client's work rules; or

3. The consultant accepts or solicits facilitating payments (bribes) for him or third parties.

b) Incapacity-If through no fault of his own, consultant becomes physically or mentally incapacitated or disabled and cannot properly perform his duties as certified by a medical practitioner designated by the contractor, the contractor may, at any time thereafter, terminate this agreement.

c) In the event that the client requests the removal of the consultant from the project (and the contractor is unable to offer alternative employment), the contractor will give the consultant an immediate notice of termination.

d. consultant may terminate this contract by giving 30 days written notice.

e. contractor may terminate this contract by giving 30 days written notice.

f. If the consultant is unsuccessful in obtaining permanent visa or any other necessary visa for the country of employment, the contract will not be valid.

g. upon the termination of this Agreement, the consultant shall return all property belonging to the contractor/client in his possession. Upon the termination of this agreement and the settlement of all outstanding matters, the parties shall executive a mutual release of all claims".

6. The defendant stated that the plaintiff circulated scandalous mails amongst employees of the company. This caused confusion and loss of goodwill to the defendant. It had been already stated by the defendant that the salary for the month of June 2010 would be delayed because of technical problems. However by e-mail dated 21.06.2010, the plaintiff terminated his own contract with the defendant. Further the plaintiff stated that he will not work till arrears are paid and it had been stated that the defendant tried to settle the

issue. The plaintiff in breach of the terms of the agreement sent e-mail dated 10.07.2010 to their client Aramco informing that he will no longer work on the project. The said company informed the defendant about this e-mail. The defendant therefore took steps to terminate the service of the plaintiff under clause 8(c) of the agreement. The plaintiff refused to handover the properties of the defendant and e-mail dated 05.08.2010 had been sent. The plaintiff was asked to visit the office of the defendant and collect the payment by cheque in India or by cash in Saudi Arabia. The plaintiff, instead of collecting the arrears, sent a legal notice dated 30.08.2010 for which the defendant replied on 16.09.2010. The defendant denied each and every allegation given in the plaint. The defendant stated that the suit is not maintainable, they further stated that their own business had suffered loss because of the conduct of the plaintiff. It had been finally prayed that the suit should be dismissed with counter claim of Rs.25 lakhs.

7. On the basis of the pleadings, this Court framed the following issues:-

"1. Whether the termination of the services of the plaintiff by the Defendant was in accordance with the terms of the Agreement dated 01.04.2010 signed

by the plaintiff and is correct and justified in the facts and circumstances of the case?

2. whether the plaintiff resigned his job/position as Independent Consultant prior to the alleged termination?

3. Whether the Defendant failed to pay remuneration to the plaintiff on the agreed dates and failed to perform the obligation of the Independent Contract dated 01.04.2010?

4. Whether the plaintiff is entitled to the sum of Rs.7,38,842/- from the defendant?

5. Whether the plaintiff is entitled to a sum of Rs.20,00,000/- as damages from the defendant?

6. Whether the actions of the plaintiff in circulating scandalous and mischievous emails about the defendant have resulted in loss and damage to the defendant?

7. Whether the illegal acts of the plaintiff have effected and damaged the goodwill and reputation of the defendant?

8. Whether the defendant is entitled to the reliefs sought in the counter claim? If yes, what relief(s)?

9. To what relief the plaintiff is entitled to?"

8. Issue No.1 & 2

The defendant company is a Private Limited Company registered

under the Companies Act 1956. They are in the business of software services particularly in SAP applications. The plaintiff who is educationally well qualified, was offered the post of Senior SAP Technical Consultant by letter dated 30.04.2009 which was accepted by the plaintiff. The salary was fixed at Rs.13 lakhs per annum. Thereafter, the plaintiff was deputed to Saudi Arabia and his salary was fixed at 286 US\$ per day other than salary allowances like local conveyance facility, accommodation and two way air tickets were offered. The plaintiff stating that since he was not comfortable with the working environment, by email dated 05.02.2010, resigned from his post with effect from 05.03.2010 and gave one month notice. However, after discussion it was agreed that the plaintiff would be relieved on 31.03.2010 and the defendant would take him as an Independent Consultant from 01.04.2010. Thereafter, Independent Contractor Agreement was signed between the parties. The following are the important clauses in the said agreement.

(i) consultant will work as a "SAP Technical Consultant" for the designated project.

(ii) agreement shall commence from 01.04.2010 and shall continue for a period of 6 months.

(iii) contractor shall pay consultant three hundred

and twenty nine US dollars (\$329) per day (minimum of 8 hours/day) (for the work of minimum 8 hours/day) (the equivalent of the amount fixed in US \$ will be paid in Saudi Riyals as per the prevailing forex rates)

(iv) the contractor will take care of accommodation, shared local conveyance, medical insurance (only for self), two way airfare, visa expenses.

(v) The payment will be made on monthly basis by cash such amount payable for the month shall be disbursed between 16th and 20th of every subsequent month.

(vi) The contractor has the right to dismiss forthwith, without notice or pay in lieu of such notice and without the consultant being entitled to any other benefit, at any time, in the event the consultant commits any of the following acts:

(a) The consultant commits any material breach of his obligations under this Agreement;

(b) The consultant violates the contractor's/client's work rules; or

(c) The consultant accepts or solicits facilitating payments (bribes) for him or third parties.

(vii) Incapacity – if through no fault of his own, consultant becomes physically or mentally incapacitated or disabled and cannot properly

perform his duties as certified by a medical practitioner designated by the contractor, the contractor may at any time thereafter, terminate this agreement.

(viii) In the event that the client requests the removal of consultant from the project and the contractor is unable to offer alternative employment), the contractor will give the consultant an immediate notice of termination.

(ix) Consultant may terminate this contract by giving 30 days written notice.

(x) Contractor may terminate this contract by giving 30 days written notice.

(xi) If the consultant is unsuccessful in obtaining permanent visa or any other necessary visa for the country of employment, the contract will not be valid.

(xii) Upon the termination of this agreement, the consultant shall return all property belonging to the contractor/client in his possession. Upon the termination of this Agreement and the settlement of all outstanding matters, the parties shall execute a mutual release of all claims".

9. This Independent Contractor Agreement has been produced as Ex.P.6. The clause with respect to maintenance of confidentiality had been given as follows:-

"7. MAINTENANCE OF CONFIDENTIALITY:-

consultant will strictly comply with the confidentiality procedures of the client as well as that of the contractor and its business partner. Consultant shall not impart to anyone by word of mouth or otherwise any information to which he has gained access by virtue of working on this assignment. This includes but is not limited to information regarding the client the contractor or its business partner, remuneration, policies or any internal affairs or the personal issue or any topic of contention with the other".

The clause with relief to termination has been given as follows:-

(a) "The contractor has the right to dismiss forthwith, without notice or pay in lieu of such notice and without the Consultant being entitled to any other benefit at any time, in the event the consultant commits any of the following acts,

- 4. The consultant commits any material breach of his obligations under this agreement.**
 - 5. The consultant violates the contractor's/client's work rules; or**
 - 6. The consultant accepts or solicits facilitating payments (bribes) for him or third parties.**
- b) Incapacity-If through no fault of his own, consultant becomes physically or mentally incapacitated or disabled and cannot properly perform his duties as certified by a medical practitioner designated by the contractor, the contractor may, at any time thereafter, terminate this agreement.**
- c) In the event that the client requests the removal of the consultant from the project (and the contractor is unable to offer alternative employment), the contractor will give the consultant an immediate notice of termination.**
- d. consultant may terminate this contract by giving 30 days written notice.**
- e. contractor may terminate this contract by giving**

30 days written notice.

f. If the consultant is unsuccessful in obtaining permanent visa or any other necessary visa for the country of employment, the contract will not be valid.

g. upon the termination of this Agreement, the consultant shall return all property belonging to the contractor/client in his possession. Upon the termination of this agreement and the settlement of all outstanding matters, the parties shall executive a mutual release of all claims".

10. Ex.P.7 is the e-mail dated 21.06.2007 in which the plaintiff had stated as follows:-

"As per my contract (Ref:KT/ALS/0322) with Kaar Technologies, I should be paid my monthly salary between 16th and 20th of the subsequent month. Today is 21st of June 2010 and it is appalling that I haven't yet been paid the salary for the month of May 2010 though I have submitted my time sheet on time on 31st of May

2010. It is regrettable that there has been a breach of contract by Kaar Technologies. For the above said reasons I would like to terminate my contract with Kaar Technologies with a notice of 30 days starting from today (i.e my last working day would be 20th July, 2010).

Secondly I would not be reporting to work till my salary for the month of May 2010 is paid".

11. It is thus seen that the plaintiff had categorically terminated his contract with the defendant and had further stated that his last working day would be 20.07.2010 and had further stated that he would not report to work till the salary for the month of May 2010 is paid. At this juncture the quantum of salary payable to the plaintiff must be noted. It was fixed at 286 US\$ per day, apart from other allowances. The plaintiff cannot plead that he would be put in a situation wherein he was starving for food and shelter. The payment mode in Ex.P.6, the agreement between the parties, stipulated that the payment would be paid on monthly basis by cash and shall be paid between 16th and 20th of every subsequent month. Consequently

the plaintiff was not working in a post wherein he was wholly dependent even for day today bread and butter for the salary of the defendant. The salary which was to be paid between 15th and 20th though not paid must be also viewed by the plaintiff in giving credit to the defendant in having recognized his abilities and appointing him as an Independent Contractor. The plaintiff cannot blow this issue disproportionately. The defendant has not been wound up or have closed their business. The plaintiff is not their only employee/independent contractor.

12. I hold that the plaintiff should have exercised more restraints before informing the defendant about his unilateral termination of the agreement. It is seen that the plaintiff further stated that he will not report for work till salary for the month of May 2010 is paid to him. This statement is more akin to holding out a threat to the defendant. This attitude also exposes the lack of confidence which the plaintiff had on the defendant. It is also to be mentioned that, had the plaintiff been a little more conscious about his own duty to the defendant company, he would not have contemplated moving away at the first opportunity. As a software

personal, the plaintiff must be aware that the defendant was undertaking contracts on behalf of other companies. It is also common knowledge that these projects are extremely time bound. The services of each and every employee is very important. When that is the case and particularly when the defendant had reposed so much confidence that they have practically re-employed the plaintiff even though he offered to resign. I hold that the plaintiff's act was wholly unjustified. The plaintiff must have realised that as a consultant, his duty continued on an hour to hour basis and not just day to day. The threat that he would suddenly stop from coming to work would seriously dislocate the working of the defendant company. The plaintiff apart from sending Ex.P.7 e-mail, had also apparently informed Albilad that his services with their Aramco e-banking project would no longer be available. In this connection it must be pointed out that the company Albilad is a business partnership of the defendant and they were providing services for their client Aramco. In fact, a perusal of Ex.P.7 shows that the plaintiff had addressed not just the Human Resource Department of the defendant company but had also sent copies to as many as five other employees of the defendant. This naturally would have put the defendant to a very embarrassing position. It is also a

commonly accepted fact that competition in software services is very high. In this connection, the defendant had marked Ex.D.1 which is the e-mail sent by the plaintiff to the business partner Albilad. The e-mail dated 20.07.2010, is as follows:-

"Because there were some issues on the contractual terms between myself and my contractor Kaar Technologies, I have submitted my one month notice of termination on 21st of June 2010. There is no action from them on my notice till now. To avoid any surprises to you later this month, I would like to inform you that my services may not be available for the e-Banking project from 21st of July 2010. However I am still hopeful that the issues may be resolved before 20th of July 2010".

13. It was in these circumstances, the defendant was forced to terminate the services of the plaintiff. Thereafter the defendant also marked Ex.D.13 which is the mail dated 12.07.2010 addressed by the business partner Albilad of the defendant that, any issue or problem should be diverted to the business partner and not to the clients. In Ex.P.8, e-mail dated 14.07.2010, the defendant confirmed that they would clear the final month salary for August between 16th and 20th

September. By mail dated 19.07.2010 the notice was extended till 31.08.2010. The termination letter was marked as Ex.P.11, in which the defendant stated that the plaintiff service would no longer be required. The plaintiff did not return the properties of the defendant or of the clients and a notice was issued which was marked as Ex.P.12 and only thereafter properties were returned by the plaintiff. In this connection, the defendant also marked as Ex.D.11 which are extracts of blog in www.mouthshut.com in which the plaintiff had freely discussed about his assignment with the defendant. Under these circumstances the defendant had invoked clause 8(a) (i)&(ii) and they were forced to terminate the plaintiff under the said clause .

14. The learned counsel for the defendant stated that the plaintiff had committed breach of his obligations and had violated the contractor/clients working rules. In this connection, the learned counsel for the plaintiff stated that the plaintiff did not breach the confidentiality clause. However, it is a fact that the plaintiff stated that he would give their property only subject to various conditions. I hold that termination of the plaintiff is valid in law. In this connection the stand of the plaintiff that the invocation of the termination clause

is not proper or was illegal, cannot stand scrutiny particularly in software business where the competition is very high. The issues cannot be looked directly from a narrow legal perspective. The realities of the trade must be considered by the Court. The employer-employee relationship is always fragile. There is a high amount of confidentiality required from the employees. What may not sound important for a conventional judicial appreciation of evidence during the course of trial, would be very important in the business of software project which is time bound. Moreover, taking a decision to terminate the employee on the ground of violation of rules is the subject matter of satisfaction of the defendant company. I hold that the defendant company had every reason to terminate the service of the plaintiff and accordingly I hold issue No.1 against the plaintiff. The plaintiff has claimed that he has resigned his position as Independent Consultant prior to the alleged termination. However, contractual obligations between the parties would come to a finality only when the plaintiff also returns the properties of the defendant or the defendant client. It is to be seen that the plaintiff had delayed in returning the said properties and consequently even though he claimed that he had resigned, I hold that is of no consequence, since

only when he had returned the properties, the resignation or termination would have not come into effect. I hold issue No.2 also against the plaintiff.

15. Issue No.3

The agreement between the plaintiff and the defendant which is marked as Ex.P.6 and the terms relating to payment of salary is as follows:-

"5. PAYMENT MODE:-

Payment will be made on monthly basis by cash. such amount payable for the month shall be disbursed between 16th and 20th of every subsequent month. consultant will have to take approval of his time sheet and submit on the last date of the month. failing which, it might have cascading effect in making the monthly payment".

16. According to the above, salary amount shall be payable between 16th and 20th of every subsequent month. For the month of May 2010, the defendant made the payment on 22.06.2010. There has been a delay of two days. This has been taken advantage by the plaintiff. He has complained that he had been put to extreme loss and

he has further complained that he was made to suffer hardship during the said period of two days. It is not the case of the plaintiff that he was dependent on his monthly pay for survival for a period of two days. He is not a daily wager. The payment was made after a period of one month and the payment is quite substantial. The learned counsel informed that the payment in Saudi Arabia was to an extent of 3 ½ lakhs per month. The plaintiff was staying alone at Saudi Arabia. He did not have any family commitments. He could have exercised reasonableness and accepted the delay as of no consequence. It is not an issue which should have led the plaintiff to complain to business partners or the clients. The plaintiff should not have taken to social media on this aspect. Even though there is delay of two days, I hold that the defendant should not be penalised on that aspect. They had made the payment. But within 24 hours on 21.06.2010, the plaintiff issued his resignation letter. This exposes the lack of suitability of the plaintiff and his extreme hostility to the defendant company. In fact it gives an impression that the plaintiff was waiting for an opportunity to leave the defendant company and had taken advantage of the delay in payment of salary of two days. I therefore hold that respect to these issues that though there was a

delay, that with delay did not warrant the reactions exhibited by the plaintiff.

17. Issue No.4

The plaintiff claimed one month salary and one month salary in lieu of notice period. In effect he has claimed salary for two months. However during the said period he actually worked for one month and four days. I therefore hold that the plaintiff is entitled only for a salary of one month and four days which has to be calculated by the parties in accordance with the last drawn salary at the Kingdom of Saudi Arabia and relieving letter by defendant.

18. Issue No.5

The plaintiff has claimed a sum of Rs.20 lakhs as damages from the defendant towards mental loss and agony as stated above. The salary of the plaintiff was not so low as to put him under extreme penury in a matter of two days. He was drawing a substantial salary at Saudi Arabia. All these aspect shows that his claim for damages is superfluous and I hold that the plaintiff is not entitled for any damages.

19. Issue No.6, 7 and 8

These issues arise out of the counter claim made by the defendant. According to the defendant, the plaintiff had contacted their business partner Albilad and complained about the client Aramco. This was drawn to the attention of the defendant by their business partner. The plaintiff also started to send e-mails and blogs about the working of the defendant company. There were also replies. This had certainly caused much damage to the defendant company. A solitary instance cannot be blown out of proportion. Exercising the power under order Rule 7 CPC, instead of mulcting the plaintiff with payment of damages to the defendant, I hold that the plaintiff should on the other hand issue a letter withdrawing the posts made by him. A letter of withdrawal would suffice. The payment of salary as determined under issue No.4 should be deposited by the defendant on the plaintiff issuing necessary letter withdrawing the comments made by him, as pointed out by the defendant in Ex.D.11. I determine issue no.6,7 and 8 as above.

20. In view of the above discussion, I hold that the termination of the service of the plaintiff was in accordance with the terms of agreement dated 01.04.2010 which was signed by the plaintiff and the defendant. Moreover the business of the defendant was in a competitive field of software services. Consequently the defendant had every right to terminate the services of the plaintiff with immediate effect. However, I hold that the plaintiff is entitled to one month salary and also for four days salary in August 2010 both to be calculated according to the last drawn salary in Saudi Arabi. This salary is payable by the defendant only when the plaintiff issues a letter withdrawing the posts and blogs made by him in www.mouthshut.com during the periods alleged by the defendant. I further hold that the plaintiff is not entitled for any damages. I further hold that instead of granting the relief of counter claim to the defendant, the plaintiff must issue a letter as stated above withdrawing his posts in www.mouthshut.com. Time for issuing letter by the plaintiff to the defendant is three months. Time for payment and issue of relieving letter by the defendant is three months from the date of receipt of letter issued by the plaintiff.

C.V.KARTHIKEYAN.J,

dpq

21. Plaintiff is not entitled to any costs.

22. In the result the suit is partly decreed. No costs.

24.02.2017

dpq

To
The Sub Assistant Registrar, Original Side,
High Court, Madras.

C.S.No.1009 of 2010

PRE-DELIVERY JUDGMENT IN

C.S.No.1009 of 2010

THE HONOURABLE Mr. JUSTICE C.V.KARTHIKEYAN
Respectfully Submitted.

dpq -P.A.

<http://www.judis.nic.in>