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

DECIDED ON : DECEMBER 06, 2017

\+ **RSA 52/2015**

LUCKNOW MEDICAL AGENCIES ..... Appellant

Through : Mr.V.K.Mishra, Advocate.

versus

RAJ KUMAR (Second) ..... Respondent

Through : Mr.R.P.Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J. (ORAL)

1. Lucknow Medical Agencies (hereinafter 'the appellant') has preferred the present appeal under Section 100 of the Civil Procedure Code to challenge the legality and correctness of a Judgment dated 21.10.2014 of learned Additional District Judge in RCA No.2/2013 tilted *M/S Lucknow Medical Agencies vs.Raj Kumar (Second)* whereby findings of the Trial Court in the judgment and decree dated 21.01.2013 in Suit No.247/2006 were confirmed. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. It is relevant to note that the appellant had filed a suit against the respondent for the recovery of ₹1,56,020.54 claiming that the respondent did not pay the said amount after he left the job with

the appellant on 12.12.1995. It was averred that the respondent was employed with the appellant since 1980 and was working as a Billing Assistant. Apart from the said employment, the respondent used to supply medicines to various chemists on his own from the appellant's firm to get commission. The medicines were supplied to the respondent on credit basis and the respondent used to deposit the proceeds with the appellant firm. It was further averred that the respondent used to maintain two types of accounts; one in his own name and the other in the name of M/S Eureka Chemists. A sum of ₹86,240.31 was due and recoverable from the respondent as on 31.03.1996 which he failed to pay and left the services on 12.12.1995 without any information.

3. The said suit was contested by the respondent and he denied his liability to pay any such amount. He further denied to have supplied medicines to the chemists to earn commission. Both the appellant and the respondent adduced their evidence. Finally, by the judgment dated 21.01.2013, the said suit was dismissed. The appeal which challenged the legality of the said judgment also resulted in its dismissal. Aggrieved by the said orders, the instant Regular Second Appeal has been filed before this Court.

4. Contention of the learned counsel for the appellant primarily is that the findings of the Trial Court that the suit was barred by limitation cannot be sustained as the suit was filed on 10.12.1998. It was erroneously observed by the courts below that it was filed on 14.12.1998. Counsel further urged that the Trial Court did not appreciate the evidence properly. The respondent in his deposition before the Labour Court had categorically admitted that he used to get

medicines from the appellant to supply it to various chemists. Due to certain difficulties, the said statement could not be produced before the court at the relevant time. Apparently, the respondent has taken inconsistent and contradictory stands and the burden was heavily upon him to prove that the payment of the medicines received from the appellant was duly accounted for.

5. Learned counsel for the respondent urged that the appeal does not disclose any substantial question of law to be entertained by this Court. It was further urged that the said statement before the Labour Court was not put to the respondent in the cross-examination to confront.

6. So far as the limitation is concerned, this Court is of the view that the suit filed by the appellant was within limitation. Perusal of the record reveals that the suit was filed by the appellant on 10.12.1998 (first page of the plaint contains stamp of the learned District Judge, Delhi, dated 10.12.1998 whereby the suit was transferred to the court of Sh.S.N.Dhingra, the then learned Additional District Judge). Erroneously, it was noticed by the courts below that the suit was filed on 12.12.1998. Since the suit was filed within three years on 10.12.1998, the findings of the courts below regarding limitation cannot be sustained.

7. Regarding the appellant's claim to recover the amount of ₹1,56,020.54, from the respondents, this Court is of the view that there was no sufficient and credible evidence to substantiate it. The respondent was appellant's employee and he worked there as a Billing Assistant. In the written statement, the respondent claimed that he was employed as a Counter Salesman on 1.4.1980. He denied to have ever

received medicines from the appellant to supply it to various chemists to get commission. It was heavily upon the appellant to prove if the medicines were given on credit to the respondent to supply it to various chemists. No such evidence has come on record except the bald statement of PW-1 (Sunit Kumar). No chemist has been examined to corroborate if any time the respondent had supplied any medicine to him on his own. It was also not been clarified as to how much commission was earned by the respondent in those transactions. It is highly unbelievable that the appellant would permit his employ to carry on his 'private' business while working full time as his employee. It is highly unbelievable that the appellant would permit the respondent to maintain two different accounts one in his own name and the other in the name of M/S Eureka Chemists whose identify is not known. The appellant's letter of appointment has not been proved to ascertain the scope of the work to be done by the respondent during his employment with the plaintiff. The courts below have given categorical findings that the appellant was unable to establish if the respondent was liable to pay any amount on account of receipt of any medicines to be supplied to the chemist. The concurrent findings on fact recorded by the courts below need not to be re-appreciated in the present proceedings.

8. I have examined the statement of the respondent recorded before the Labour Court on 15.02.2002. In the cross-examination, the respondent categorically stated that the appellant used to get his signatures on blank papers. He admitted that he used to obtain advance from the management and they used to deduct it from his salary. He fairly admitted that he used to take medicines from the management for

supplying it to the parties including Eureka Chemist. However, he denied if he was entitled to commission thereon. He volunteered to add that he used to be paid 'wages'. He further denied that even on his level, he used to supply medicines. He further denied that he used to maintain an account in the name of M/s Eureka Chemists. The statement of the respondent before the Labour Court is to be read in its entirety to ascertain its real purpose. Mere supply of medicines after getting it from the appellant to the chemists or M/S Eureka Chemists did not establish that it was the respondent who used to supply it on his own level and was permitted to earn commission over it. The respondent categorically stated that whatever work was assigned to him during his employment by the management, he used to perform it. Supplying the medicines to the various customers by the respondent can be a part of his employment with the appellant and this possibility cannot be ruled out. Moreover, the said statement, though, was in the specific knowledge of the appellant, was never put to the respondent in the cross-examination at the relevant time.

9. In view of the above discussion, this Court is of the opinion that the findings of the courts below based upon fair appreciation of evidence warrants no intervention. For a petty amount of 1,56,000/- or so, the respondent has been dragged to litigation before Labour Court for the last about 18 years and has been forced to incur expenses to contest the litigation. Apparently, the appellant's motive seems to harass the respondent for involving him in litigation before the various Courts.

10. The appeal being unmerited is dismissed with costs of ₹20,000/- to be paid to the respondent by the appellant within four weeks.

11. Trial Court record be sent back forthwith.

S.P.GARG
(JUDGE)

DECEMBER 06, 2017/sa