

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2624 of 2018 (O&M)

Date of Decision.03.05.2018

Amit Pushpakar

...Appellant

Vs

M/s Kiran Foreign Trade Private Limited

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Punchhi, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

The present regular second appeal is directed against the judgment and decree dated 27.07.2015 rendered by the trial Court whereby the suit filed under Order 37 CPC for recovery of ₹1 lac has been decreed and upheld by the lower Appellate Court.

The respondent-plaintiff instituted the suit for recovery of ₹1 lac along with future interest @18% per annum till its realization under Order 37 CPC on the premise that the appellant-defendant was appointed as Account Executive w.e.f. 4.7.2011 and an employment contract was signed between the company and the appellant containing terms and conditions. Within the bond period, the appellant-defendant absented, on 26.03.2013, without assigning any information or reasonable cause, therefore, there was a violation of Clause 8 of the contract of employment. A legal notice dated 11.06.2012 claiming aforementioned amount was also served but no reply was filed, necessitating the respondent-plaintiff to institute the suit. Summons of suit were received upon the appellant-defendant and he moved application for leave to defend but the same was subsequently dismissed

vide order dated 01.05.2015. Thereafter, the appellant-defendant did not

appear, resulting into passing of the judgment and decree dated 27.07.2015. The aforementioned ex parte judgment and decree was assailed by the appellant-defendant on various grounds in the appeal preferred before the lower Appellate Court but the same has also been dismissed.

Mr. Sandeep Punchhi, learned counsel appearing on behalf of the appellant-defendant has drawn attention of this Court to Clause 6.1 of the contract of employment to submit that if the aforementioned clause is read as a whole, the employer was to increase the salary w.e.f. 01.02.2012 from ₹14,000/- to ₹16,000/- and thereafter to ₹18,000/- w.e.f. 01.08.2012. Since the aforementioned clause was not adhered to by the employer, there was no occasion for the appellant to continue with the same and therefore, the respondent-plaintiff could not be permitted to invoke Clause 8.1 as the appellant completed his CA on 09.01.2012. This fact has not been noticed by both the Courts below, therefore, there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and as well as the contract of employment supplied to this Court during the course of hearing and of the view that there is no force and merit in the submissions of Mr. Punchhi. Clause 6.1 and 8.1 of the Contract of Employment are reproduced as under:-

“6.1 As an employee of the company you will receive a gross salary of ₹14,000/- (rupees Fourteen Thousand only) per month. The salary may be increased to ₹16000/- (Rupees Sixteen Thousand only) per month from 1st February, 2012 and may be further increased to ₹18,000/- (Rupees Eighteen Thousand only) per month from 1st August, 2012. This will be disbursed to you in accordance with the prevailing standard

plans of the company's information on which will be provided to you upon joining the company. Salary may be reviewed after three (3) months on the recommendation of Team leader. In case you are able to produce the evidence that you have cleared the CA; your salary may be negotiable further at that point.

8.1 This contract shall remain in force until:-

- a) determined in writing with consent of the employer;*
- b) The employer/company becoming insolvent;*
- c) The employer being declared bankrupt or of insolvent mind;*
- d) Either one party giving to other in writing notice of termination provided in Employee must give 2 months written notice of termination to the company, provided always that in the event of employee leaving the employment of the company for any reason whatsoever prior to 3rd July, 2013 he/she shall there upon liable to pay to the company the sum of Rupees "One Lakh" plus damages and by the signature appended to this contract consent of judgment there for being granted against him by the Court in India."*

On conjoint reading of the aforementioned clauses, it is evident that there is no expression 'shall' to give a right to the appellant-defendant for claiming increase in the salary with effect from the period prescribed therein i.e. from ₹14,000/- to ₹16,000/- and then ₹18,000/-. Concededly, the defendant had left the service on 26.03.2013 whereas as per the clause 8.1 of the contract *ibid*, the employee was to give two months notice of termination to the company, provided in case of leaving the employment for

any reason whatsoever prior to 3rd July, 2013, he/she shall be liable to pay to the company a sum of ₹1 lac. It is on that premise, the suit aforementioned was filed. No explanation has come forward for leaving the employment. Even the legal notice remained unanswered.

All these factors were taken into consideration by both the Courts below and I am of the view that the findings of fact arrived at do not call for interference as the argument of Mr. Punchhi has not been able to cut ice for bringing the case within the realm of illegality and perversity. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No