

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3369 of 2018 (O&M)

Date of decision : August 01, 2018

Ms. Sarita Singh

.....Appellant

Versus

M/s Shree Infosoft Private Limited

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

LISA GILL, J.

The appellant (defendant) is aggrieved of concurrent findings rendered by the learned Civil Judge (Junior Division), Gurugram vide judgment and decree dated 09.08.2016 and learned Additional District Judge, Gurugram vide judgment and decree dated 29.11.2017. Suit for recovery filed by the respondent (plaintiff) has been decreed.

Brief facts necessary for adjudication of the case are that the respondent-plaintiff filed a suit for recovery of ₹5,70,753/- plus interest at the rate of 24% per annum for the expenses incurred by the company as well on account of salary in lieu of notice. It was pleaded by the respondent – plaintiff that it was a company duly incorporated and registered under Companies Act, 1956. The company was engaged in the business of software development. The appellant – defendant was appointed as Software Developer on 15.11.2012. Terms and conditions of the appointment were duly accepted by her. Appellant – defendant was sent for overseas deputation for a project in United States of America from 22.08.2013 till 20.09.2013. The expenses of the trip were borne by the plaintiff- company including air tickets, visa fee, foreign exchange,

boarding and lodging besides 800 US dollar. However, after returning the defendant – appellant, it was pleaded, abruptly started abstaining from her work. She resigned from the company on 12.12.2013 without clearing dues as per stipulations contained in the appointment letter. Legal notice dated 22.05.2014 was served upon her to clear the outstanding amount alongwith interest.

It was pleaded that as per clause 5 of the contract/appointment letter, it was incumbent upon the employee to serve for a period of three months after returning from overseas deputation whereas the appellant had worked only for a period of 82 days when she submitted her resignation on 12.12.2013. When dues were not deposited, suit in question was filed. Appellant – defendant resisted the suit. While admitting that she was sent to USA from 22.08.2013 to 20.09.2013 by the company and the expenses, as mentioned above, were indeed borne by the company, it was pleaded that once the company had accepted her resignation unconditionally, it had no right to institute the present suit. Several complaints were in fact made against unsatisfactory, irregular cab service provided by the company besides misbehaviour of certain seniors in the company. However, when no action was being taken, the appellant was constrained to submit her resignation. Her access to the premises was immediately blocked w.e.f. 12.12.2013. It was further pleaded that it was not a case of abandonment of service. It was, thus, prayed that the suit be dismissed. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to decree for recovery of ₹5,70,753/- alongwith the interest at the rate of 24% per

annum from the date of suit till realization?OPP

2. Whether the suit of the plaintiff is not maintainable?OPD

3. Relief.

Learned trial Court decided issue No. 1 partly in favour of the plaintiff – respondent. Claim of the company to a sum of ₹2,46,674/- on account of salary in lieu of notice was declined and decreed to the extent of ₹3,14,159/- i.e. on account of the expenditure incurred by the company on the USA trip. Appeal filed by the appellant was dismissed by the learned Additional District Judge, Gurgaon vide judgment dated 29.11.2017. Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellant vehemently argues that after acceptance of the resignation in an unconditional manner, respondent – company is not entitled to file the present suit for recovery of the amount in question. In case, the respondent – company had any kind of grievance, resignation submitted by the appellant should not have been accepted at all. Moreover, sending of the appellant for an assignment to USA does not amount to deputation. Learned counsel refers to clause 5 of the terms and conditions of the appointment as reproduced in para 23 of the grounds of appeal. It is contended that the appellant was sent to one M/s BCD Travel, Atlanta in USA to work on behalf of the company. Said M/s BCD Travel, Atlanta is not a sub division of the respondent – company, neither its subsidiary/affiliate/associates or sister concern. Therefore, the appellant is not liable to pay for the said expenses.

I have heard learned counsel for the appellant and have gone through the file as well as the written statement filed by the appellant before the learned trial Court (which was furnished in Court today).

It is not in dispute that the appellant was appointed with the

respondent – company on 15.11.2012. She was sent to USA by the company from 22.08.2013 to 20.09.2013. Expenses, as mentioned in the foregoing paras, were admittedly borne by the respondent – company.

It is relevant to note that resignation was admittedly submitted by the appellant through E-mail as reproduced in para 12 of the grounds of appeal. It is further to be noticed that the appellant did not even step in the witness box to depose before the learned trial Court. Her husband Rahul Khurana holding her power of attorney (Ex. D1) appeared before the learned trial Court. Though it is stated in the grounds of appeal that the appellant could not depose due to certain circumstances, however, no such circumstance is forthcoming even before this Court.

There is no evidence on record that the appellant was in fact compelled to resign under the circumstances as projected i.e. harassment by senior officials of the changed management or certain irregularities in cab services provided by the respondent – company. It is further not in dispute that the appellant after leaving the service with the respondent – company joined another establishment, though this fact by itself cannot be taken against her. Argument raised by the learned counsel for the appellant that she was not sent on deputation is noticed only to be rejected. A perusal of the written statement produced in Court today reveals that such a ground has not been taken by the appellant before the learned trial Court. It is not open to the appellant to raise such a plea at this stage in second appeal and neither is the same tenable. Claim of the respondent- company in respect to deposit of ₹2,46,674/- on account of salary in lieu of notice has been declined.

Both the learned courts below have rendered concurrent findings to fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 09.08.2016 passed by learned Civil Judge (Junior Division), Gurugram vide as well as judgment and decree dated 29.11.2017 passed by the learned Additional District Judge, Gurugram, which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 01, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No