* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No.532/2018**

% **16th July, 2018**

AIRWIDE CAR RENT PVT. LTD. ..... Appellant
Through: Mr. K.K. Sinha, Advocate.

versus

SURENDER SINGH ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. No.27474/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.532/2018

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 24.4.2018 by which trial court has dismissed the counter-claim filed by the

appellant/defendant/counter claimant for a sum of Rs.7,79,900/- along with interest.

3. The subject suit is a suit filed by the respondent/plaintiff/employee for recovery of moneys on account of his employment with the appellant/defendant/employer. The respondent/plaintiff prayed for recovery of Rs.5.30 lacs along with interest. In essence the claim of the respondent/plaintiff was towards unpaid salary. In this suit of the respondent/plaintiff/employee, the appellant/defendant/employer filed the subject counter-claim pleading that this amount of Rs.7,79,900/- as claimed in the counter claim had become due on account of the respondent/plaintiff not giving the correct details of the expenditure incurred and having therefore misappropriated an amount of Rs.7,79,900/- which was claimed through the counter-claim. The relevant paras of the counter-claim as to how the amount claimed by the appellant/defendant/counter-claimant was due from the respondent/plaintiff are paras 3 to 6 of the counter-claim, and these paras 3 to 6 read as under:-

> "3. <u>That the respondent/plaintiff/respondent himself voluntarily resigned from the service of the claimant when he was found guilty of misappropriation of money of the claimant on 30.11.2011. The</u>

plaintiff/respondent himself submitted his resignation effective from **30.11.2011**. Copy of the resignation is Annexure C-2.

4. That it is relevant to mention here that respondent/plaintiff himself admitted in his resignation letter that as the plaintiff/respondent was holding one laptop of the claimant was to be returned by 30.12.2011 as well as 17 registration certificates of the vehicles, but the plaintiff/respondent only returned the laptop in non-working condition which was got repaired by the claimant after spending Rs.5000/-. It is also relevant to mention here that the plaintiff/respondent failed return the RCs of 17 vehicles and therefore the claimant again paid the charges of registration and got the registration certificates from the authority.

5. That the plaintiff/respondent is guilty of misappropriation of valuable money of the claimant and committed breach of trust. It is relevant to mention here that in the tenure of his services withdrawn total Rs.13,71,000/- against vouchers nos. of which are mentioned in the ledger book of the claimant, duly signed by the plaintiff/respondent. Photocopies of the Ledger Book and the vouchers are ANNEXURE C-3 (colly).

6. That after withdrawal of huge money of the tune of Rs.13,71,000/- on different dates, plaintiff/respondent did not file any receipt of expenditure till 09.10.2011, the claimant became suspicious about the working and conduct of the plaintiff/respondent and directed him to file the details of expenses. On 10.10.2011 the plaintiff/respondent filed the details as voucher nos. 223 to 226 for a total amount of Rs.64,000/- and voucher No. 227 (Expanses of registration of 43 vehicles) amounting to Rs.5,46,100/- and voucher No. 228 (Expanses of registration of 57 vehicles) amounting to Rs.6,66,900/- all dated 10.10.2011. It is evident from the comparison of voucher Nos. 227 and 228. That plaintiff/respondent has fabricated the amount of charges i.e. 11700/- and 12700/- for the same work on the same date. It is also relevant to mention here that these two vouchers are in the handwriting of the plaintiff/respondent. None of the vouchers were accompanied with the receipts. As per the Govt. the charges to be deposited for registration of the one vehicle are as under:-

i) Registration Charges	Rs.300/-
ii) Hypothecation charges	Rs.100/-
iii) Smart Card charges	Rs.416/-
iv)Permit Charges	Rs.2000/-
v) Fitness Charges	Rs.300/-
vi) Road Tax (9 Months)	Rs.1415/-

vii) Temp. Regn. Charges. Rs.740/-

Total Rs. 5271/-

The total charges of registration etc. of 100 vehicle got done by the plaintiff/respondent comes to Rs.5,27,100/- and the plaintiff/respondent submitted forged and fabricated voucher Nos.227 and 228 dated 10.10.2011 to claimant showing the expanses of registration of (43+57=100) vehicles total amounting to Rs.12,13,000/- besides Rs.64,000/- of other expanses, hence the plaintiff/respondent misappropriated the amount of Rs.7,79,900/- of the defendant by submitting false, forged and fabricated voucher Nos.227 and 228 both dated 10.10.2011 and committed cheating hence the plaintiff/respondent himself is liable to pay Rs.7,79,900/- along with interest @ 24% per annum besides pendente-lite and future interest. The copies of the voucher Nos.227 & 228 are ANNEXURE C-4 (Colly)."

(underlining added)

4. A reading of the aforesaid paras of the counter-claim shows that the respondent/plaintiff/employee resigned on 30.11.2011. The laptop and the registration certificates were to be returned by 30.12.2011. The factum with respect to misappropriation was known to the appellant/employer on or around 10.10.2011 when the vouchers were filed by the respondent/plaintiff. Accordingly in para 6 of the counter claim the appellant/defendant/counter claimant has claimed a sum of Rs.7,79,900/- being the subject matter of the counter-claim. The counter-claim however has been filed admittedly on 6.5.2015. The counter-claim has status of an independent suit and like a suit has to be filed within limitation period as if the counter-claim filed is a

suit which is filed ie the counter claim also like a suit has to be filed within the limitation period of filing of a suit. This is provided in Section 3(2)(b) of the Limitation Act, 1963 and this entire Section 3 for the sake of convenience is reproduced below:-

> "**Section 3. Bar of Limitation.**(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.
>
> (2) For the purposes of this Act-
>
> (i) in an ordinary case, when the plaint is presented to the proper officer;
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> (ii) in the case of a pauper, when his application for leave to suit as a pauper is made; and
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> (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;
>
> (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-
>
> (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
>
> (ii) in the case of a counter claim, on the date on which the counter claim is made in court;
>
> (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."
>
> (underlining added)

5. It is therefore clear that in law a counter-claim is like a suit and will have to be filed as per the limitation for filing of the suit. If the appellant/defendant/counter-claimant would have filed the suit

for recovery of moneys with respect to the amounts said to have been misappropriated by the respondent/plaintiff, the cause of action would have been definitely accrued in around December, 2011, in view of the averments made in paras 3 to 6 of the counter-claim which are reproduced above. Since the counter-claim was filed in May, 2015 i.e beyond the period of three years, trial court has committed no illegality in rejecting the counter-claim as time barred under Order VII Rule 11 CPC.

6. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

JULY 16, 2018 **VALMIKI J. MEHTA, J**

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