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

Judgment pronounced on : 7th August, 2018

+ **LPA 729/2017**

K. K. CHAKRABORTYAppellant

Through : Ms. Deepali Gupta, Advocate.

Versus

ALANKIT ASSIGNMENTS LTD.Respondent

Through : Mr. Siddharth Sharma, Advocate with
Ms. Shruti Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

CM APPLN. NO. 41296/2017 (Delay)

This is an application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC seeking condonation of 02 days delay in filing the present appeal.

Heard. For the reasons stated in the application, the delay in filing the present appeal is condoned.

Application stands disposed of.

LPA 729/2017

1. The appellant has preferred the present appeal assailing the order dated 18.09.2017 passed by the learned Single Judge whereby the writ petition filed by the appellant herein against the Award dated 28.01.2017 passed by the Pilot Court/POLC-XVII, Karkardooma Courts, Delhi, was dismissed.

2. Briefly stated, the facts which are relevant for the disposal of this appeal as per the appellant are that in the year 1999, the appellant/ K. K. Chakraborty was appointed by the respondent company/ Alankit Assignments Ltd, at a monthly salary of Rs.3,500/- along with Rs. 1000/- as conveyance charge. The appellant was promoted on regular basis with an increment in the salary. He alleged that he was assigned the work of depositing electricity bills, telephone bills and other miscellaneous bank work. It is the case of the appellant that the management of the respondent company stopped paying him salary w.e.f. January, 2013 and despite which he continued to work in the respondent company till 26.07.2013. He approached the management of the company on several occasions for payment of the amounts due but the same was denied to him on one ground or the other. On 26.7.2013, he was forced to render his resignation under force and detention by the Managing Director and staff of the respondent company. The appellant served a Demand Notice dated 18.09.2013 to the respondent company which remained unanswered. Thereafter, appellant initiated conciliation proceedings against the respondent company which was further referred to the Labour Court for adjudication of the Industrial Dispute. Vide order dated 28.11.2017, the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi dismissed the claim of the appellant. Aggrieved by the said decision, the appellant preferred a writ petition, which was dismissed vide order dated 18.09.2017 by the learned Single Judge.

3. The learned counsel appearing on behalf of the appellant, has strenuously contended before us that the basis of the impugned order dated 18.09.2017 passed by the learned Single Judge was, on the face of it, erroneous and unjustified. She has further contended that the appellant had never tendered his resignation voluntarily rather he was forced to write his resignation under threat, coercion and duress; that the services of the appellant was illegally terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947; that the evidence relied upon by the learned Single Judge is inadmissible in law. In order to substantiate her case, the counsel relied upon judgements in the case of *Harjinder Singh v Punjab State Warehousing Corporation* reported in (2010) 3 SCC 192, *Prakash Rattan Lal v. Mankey Ram* in C.M.(Main) No. 976/2007, *Harihar Prasad Singh & Ors. v. Balmiki Prasad Singh* reported in AIR (1987) 2 SCC 555, *G.T. LAD & Ors. v. Chemicals & Fibres of India Ltd.* reported in (1976) 1 SCC 590 and *Syed Yakoob v. K.S. Radhakrishnan & Ors.* reported in AIR 1964 SCC 477. Hence, it is prayed that the order dated 18.09.2017 passed by the Single Judge and the Award dated 28.01.2017 are liable to set aside.
4. Per contra, learned counsel appearing for the respondent company contended that the appellant was designated as a Liaison officer in a supervisory cadre in the administrative department of the company till the date of his resignation on 26.07.2017; that the work of the appellant was to collect amounts from the accounts department for incurring expenses for the liaisoning work and for

the year 2012-2013, appellant withdrew a sum of Rs. 1,60,000/- from the accounts department for the liasioning work but failed to furnish the details of expenses amounting to Rs. 1,23,297/- incurred by him during the financial year; that despite repeated reminders when the respondent failed to tender the statement of expenses incurred, the said amount was adjusted by the respondent company out of his salary from January, 2013 till July, 2013; that the amount of Rs.5,290/- was still to be recovered from him but the same was waived of by the company. Hence, the present petition is liable to be dismissed.

5. We have heard the learned Counsels for the parties and considered their rival submissions.
6. In the present case, the main issue which requires adjudication is whether the respondent company was justified, in not paying salary to the appellant from January, 2013 till July, 2013 and whether the appellant had himself abandoned his job on 26.07.2013 in the respondent company. It is an admitted position that the appellant was employed in the respondent company as a liasioning Officer and he used to collect the amount from the accounts department of the respondent company for meeting the expenses for the liasioning work. The appellant claims that his resignation was procured illegally by the management of the respondent company under threat and coercion when he demanded his due salary from January, 2013 till July, 2013. The respondent company contended that the claim of the appellant that his resignation was procured under threat is totally baseless and that the appellant had himself

stopped attending to his duties in the said company from 26.07.2013. It has been submitted on behalf of the appellant company that the appellant had drawn a sum of Rs. 1,23,297/- from the account department of the management company in the year 2012-2013 as an advance for the purpose of the liasioning and the same was never returned or accounted for by him even after several reminders served upon him by the respondent company. In order to compensate the loss suffered by the company, the amount equivalent to the amount taken by the appellant was deducted by the respondent company from the salary of the appellant from January, 2013 onwards.

7. It is perused from the record that the appellant has not adduced any evidence to prove his stand taken in the appeal. It is also relevant to take note of the fact that no criminal complaint was ever lodged by the appellant when he was forced by the respondent company to render his resignation under threat, coercion and detention. There is nothing placed on record or any witness was examined by the appellant which can be relied upon to support his claim. In order to substantiate its case, the respondent company examined MW1/Authorised Representative of the respondent company/ Sh. Shantilal Chaplot and it has been deposed by him that the appellant used to collect money from the Accounts Department of the respondent company for incurring expenses on liason work but stopped submitting the details of accounts of expenses incurred during the year 2012-2013. He has also placed on record the reminder letter dated 28.12.2012, which was sent by the respondent

company to the appellant wherein it has been categorically stated that *“You have been reminded many a time by our concerned Account Executive about the same, but after some time inspite of verbal assurance you did not submit any evidence of expenses in this regard and we have left with no option but to recover the same from your salary payable. In view of above, you are hereby advised to submit the said details to accounts department under copy to HR within 20 days of this letter. In case you fail to provide the necessary details within the given timeline, the same will be adjusted towards salary payable to you for the month of January 2013 onwards.”* The stated deposition shows that it was informed to the appellant that if the details of the expenses incurred by him for liasion work was not submitted to the company within 20 days, then the amount of Rs. 1,23,297/- will be adjusted out of salary payable from the month of January,2013 onwards. The respondent company has also placed on record the accounts statement of the appellant thereby indicating the amount which was monthly deducted by the said company in order to recover the due amount payable by the appellant.

8. It is seen that the respondent company had stopped payment of salary to the appellant from January,2013 onwards but still the appellant continued to work till 26.07.2013. The appellant has not place on record any documentary evidence to prove as to whether any stand was taken by him to recover his amount from the respondent company when the salary was not paid to him despite him continuing with his work for seven months. It is a well settled

proposition of law that the oral evidence is only hearsay with no evidentiary value unless supported by any valid proof.

9. The perusal of the entire facts and circumstances of the present case, it is apparent that the appellant had failed to substantiate its case and evidence on record establishes that the appellant had himself rendered his resignation voluntarily on 26.07.2013 from the respondent company and the amount so due from the appellant was rightly deducted by the respondent company from the salary of the appellant from January, 2013 till July, 2013.
10. Accordingly, for the foregoing reasons, we do not find any cogent reason for interference with the order impugned by this appeal. The present appeal lacks merit and is thus dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

AUGUST 7 , 2018
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