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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 35/2018, CM APPL.No.15913/2018
M/S MODI RUBBER LTD

..... Appellant

Through: Mr.Siddarth Dias, Advocate.

versus

ASHOK GUPTA

..... Respondent

Through: Mr.Siddharth Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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23.07.2019

This appeal is against the impugned judgment dated 13.11.2017 passed in RCA No.35/2017. The brief facts of the case are on 24.01.1987 the respondent was appointed as a law officer with the appellant herein. He served the appellant for 17 years but in the year 1997 suddenly he was not allowed to enter into the office premises and his services were terminated. It was alleged the termination was illegal. A writ petition was filed against such illegal termination but the respondent was asked to approach the appropriate authority, hence a civil suit no. 254/2003 was filed with the prayers to declare the termination illegal, damages and for mandatory injunction. The said suit was decreed on 04.01.2012 holding the termination of service being illegal and some amount, including advance salary for a month was also directed to be paid.

On 09.01.2015 appeal - RCA No. 117/2013 was filed by the

appellant and the matter was remanded for determining compensation for wrongful termination of the respondent.

On 12.07.2016 the learned Trial Court yet again held it was the duty of the respondent to mitigate the compensation and hence the appellant was directed to pay only six months' salary to the respondent as compensation.

Once again the matter was challenged before learned ADJ in RCA No.35/2017. The Ld. ADJ noted that at some stage of trial the learned Trial Court had directed the plaintiff to lead evidence qua compensation payable but then abruptly it held there is no need to lead evidence and the matter was disposed of by granting six months' salary to the respondent as compensation. The first appellate Court rather referred to the observations of the learned Trial Court while deciding issue no.5 wherein it observed *DWI* viz. the witness appeared on behalf of the appellant, in his cross-examination has stated an amount of `5,46,737/- has been shown by the appellant in the proceedings before the Board for Industrial and Financial Reconstruction (BIFR) as the contingent liability of the company relating to the claim of the respondent herein, hence in these circumstances it was observed by the learned first appellate Court that the court below erred in holding no evidence qua determination of compensation was required and thus remanded the matter yet again to the Ld. Trial court with a direction to calculate the compensation to which the plaintiff was entitled as per law and give a fresh finding on this relief.

I find no illegality in the impugned order 13.11.2017, especially in view of the admission made by DW1, a witness of the appellant herein when he says a sum of ₹ 5,46,737/- has been shown as contingent liability payable to the respondent. Admittedly one of the prayers in the plaint was for recovery of an amount of ₹ 72,200/- and also for a direction to pay an amount of leave encashment, TA Bills and salary etc. along with interest. Hence the order passed by the Ld. ADJ is fully justified.

At this stage learned counsel for the respondent says an amount of ₹ 2,39,137/- so deposited vide demand draft dated 09.04.2018 in favour of the Registrar General of this Court be released in favour of respondent herein alongwith upto date interest without prejudice to the rights of the respondent. The learned counsel for the appellant has no objection for release of the said amount, calculated and deposited, as per the order dated 12.07.2016 of the learned Trial Court. The amount be released to the respondent.

The appeal stands dismissed. Pending application, if any also disposed of.

Let the parties appear before the learned Trial Court on 30.07.2019 and the learned Trial Court is directed the matter be disposed of within six months from today.

Order *dasti*.

YOGESH KHANNA, J.

JULY 23, 2019

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