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

\+ CS(OS) 1420/2015

MR. ANIL GUPTA ..... Plaintiff
Through: Ms. Inklee Roy Barooah, Advocate.

Versus

LIGMAN LIGHTING
COMPANY LTD. & ORS. ..... Defendants
Through: None.

% Date of Decision: 09th January, 2019

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>J U D G M E N T</u>

<u>MANMOHAN, J</u>: (Oral)

<u>I.A. 2721/2018</u>

1. Present application has been filed by the plaintiff under Order IX Rule 4, of the Code of Civil Procedure for recall of order dated 05th January, 2018, whereby the present suit was dismissed in default and on account of non-prosecution, and for restoration of the present suit to its original number and position.

2. In the application, it has been averred that the counsel for the plaintiff had wrongly noted the date of hearing as week commencing 22nd January, 2018 instead of week commencing 02nd January, 2018.

3. Keeping in view the averments in the application, order dated 05th January, 2018 is recalled and the present suit restored to its original number and position.

4. Accordingly, present application stands allowed.

CS(OS) 1420/2015

1. Present suit has been filed for declaration and damages of Rs. 2,04,00,000/-.

2. In the plaint, it is averred that the plaintiff, is an electronic engineer who has contributed a lot in the growth of LED Lighting Technology in India.

3. It is averred that the defendant no. 1 is a Thailand based outdoor conventional lighting company. It is further averred that the defendant no. 2 is the Managing Director of defendant no. 1 company and defendant nos.3 and 4 are the directors of the defendant no. 1. It is averred that the defendant nos. 2, 3 and 4 are brothers and sisters.

4. It is averred that the defendant issued an Offer Letter dated 18th March, 2014 to the plaintiff to join as Director – Technology with effect from 01stMay, 2014. It is averred that vide the said letter, the plaintiff was offered Rs. 4,00,000/- extra other than yearly package of Rs. 48,00,000/- as a joining bonus and 3% net profit sharing of "Indoor Division" in the defendant no. 1 company.

5. It is averred that thereafter, vide Appointment cum Agreement Letter dated 01st May, 2014, the plaintiff was appointed as "Director Technology" in the defendant no. 1 and after judging the ability and efficiency of the plaintiff, promised a long term association with the defendant no. 1. It is averred that in accordance with the said promise,

Clause 2 of the Appointment cum Agreement letter enumerated that that the minimum period of appointment of the plaintiff with the defendant no. 1 was three years, during which period neither the defendants could terminate the employment nor could the plaintiff leave the said employment before completion of three years. Clause 2 of the Appointment cum Agreement Letter is reproduced hereinbelow:-

> *"2. Appointment Period: Minimum 3 years from the date of appointment. In this period, neither company can ask to leave or terminate nor can employee leave the job."*

6. It is averred that the plaintiff along with his team joined the defendant no. 1 on 01st May, 2014 and thereafter diligently discharged his duties and responsibilities. It is averred that the plaintiff is a proficient person in his profession, invoking praise and commendations regarding his technical knowledge, hard work, and expertise and presentation skills. It is averred that the same was reflected in emails dated 15th September, 2014, 09th October, 2014 and 30th October, 2014 sent from Mr. C.K. Lam, M.D. of its subsidiary for East Asia Region & China and email dated 06th November, 2011 from Mr. Neil Gillies, Vice President Ligman USA.

7. It is averred that the plaintiff came to know that there were internal disputes amongst the defendant nos. 2 to 4 in respect of management and functions of the defendant no. 1. It is averred that the defendant no. 2 to whom the plaintiff was directly reporting was satisfied with the work performance and to support the plaintiff, the defendant no. 2 wanted to resign.

8. It is further averred that vide email dated 24th November, 2014, it was revealed that the defendant nos. 3 and 4 were no longer interested in continuing with the Indian subsidiary i.e. defendant no. 6 and the plaintiff's team based in India. It is averred that the defendant nos. 3 and 4 were forcing defendant no. 2 to withdraw cooperation with the same.

9. It is averred that vide email dated 25th November, 2014, the defendant no. 2 shared with the plaintiff facts about his broken relations with defendant nos. 3 and 4 and stated that they did not agree or trust the strategy and business plan of the defendant no. 1. It is averred that since the defendant no. 2 was satisfied with the work of the plaintiff, he convinced the defendant nos. 3 and 4 to continue with the plaintiff and his team in Delhi on a new product development FOREVER. It is averred that the same is evident from email dated 27th November, 2014 addressed to the plaintiff. It is further s averred that vide the said email, the plaintiff was to directly report to the defendant no. 3 and work with Mr. Sommai and Mr. Charn. Thereafter the plaintiff continued to deliver his services with sincerity and as per directions began working with defendant no. 3.

10. Learned counsel for the plaintiff states to the surprise of the plaintiff, within less than one month of the email dated 27th November, 2013, the plaintiff suddenly received a termination mail on behalf of defendant no. 3 along with five independent termination letters dated 24th December, 2014 signed by defendant no. 3, terminating the services of the plaintiff along with the team working in India. She states that in view of the personal prejudices and strenuous relationship the defendant

nos. 2 to 4, vented their frustrations on the plaintiff and his team. She states that the plaintiff's termination is without any valid cause.

11. Learned counsel for the plaintiff states that in view of Clause 2 of the Appointment cum Agreement Letter dated 01st May, 2015, the plaintiff's services could not be terminated. Furthermore, no grounds have been made out against the plaintiff for termination as provided under Clause 10 of the Appointment cum Agreement Letter dated 01st May, 2014. She further states that neither during the tenure of the plaintiff's service nor while terminating his services vide email dated 24th December, 2014, the defendants had mentioned any drawback or inefficiency on the part of the plaintiff. She states that the only reason given by the defendant no.4 in the email dated 24th December, 2014 for termination was closure of the R & D operations in India.

12. Learned counsel for the plaintiff states that vide email dated 07th January, 2015, the defendants offered the plaintiff a total amount of Rs. 8,00,000/- which was inclusive of December, 2014 salary, amounting to Rs. 4,00,000/- and one month's severance allowance.

13. She states that vide email dated 07th January, 2015, the plaintiff requested the defendant nos. 1 to 4 to pay a total sum of Rs. 1,12,00,000/-, being the remaining salary for the remaining three years period as provided under Clause 2 (Rs. 16,00,000/- from 30th December, 2014 till 01st May, 2015 and further sum of Rs. 96,00,000/- from 01st May, 2015 till 01st May, 2017). She states that the plaintiff also demanded 3% of the net profits of "Indoor Division" of Ligman Lighting Co. Ltd., Thailand up to 01st May, 2017, as promised to him and as mentioned under Clause 6 of the Appointment Letter dated 01st

May, 2014.

14. Learned counsel for the plaintiff states that vide response dated 08th January, 2015, the defendant nos. 1 to 4 offered another one month severance pay to the plaintiff, as an offer to put all disputes to and end. He states that vide the said letter, the defendants also tried to defame and malign the plaintiff's otherwise promising career in order to evade their liability. She states that in response the plaintiff sent an email dated 16th January, 2015, once again calling upon the defendant nos. 1 to 4 to pay him as per his previous letter dated 07th January, 2015.

15. Learned counsel for the plaintiff states that thereafter, the defendant deposited Rs. 12,00,000/- directly into the plaintiff's bank account, which included the pending December, 2014 salary of the plaintiff. She states that said payment was accepted by the plaintiff as an *ad doc* payment. She states that the plaintiff called upon the defendants to pay the balance amount Rs. 1,04,00,000/- (being Rs. 4,00,000/- adjusted towards December, 2014 salary and remaining Rs.8,00,000/- adjusted towards the amount due and payable as per 07th January, 2015 letter). However, no amount has been paid.

16. Learned counsel for the plaintiff states that consequently, the plaintiff sent a legal notice dated 01st February, 2015 to the defendant nos. 1 to 4. Vide the said notice, the plaintiff claimed Rs. 1,04,00,000/- (i.e. remaining salary for 26 months @ Rs. 4,00,000/- per month., which is the balance salary he had been paid for 10 months out of the stipulated 36 months i.e. 3 years contract) along with 3% of the net profits sharing of "Indoor Division" of the defendant no. 1 upto 01st May, 2017 and interest @ 24% per annum.

17. Learned counsel for the plaintiff states that the termination letter dated 24th December, 2014 is stigmatic and based on false and malicious grounds. She states that the plaintiff's termination is based on the personal prejudices and strenuous relations between the defendant nos. 2 to 4 who have vented their frustration on the plaintiff and his team.

18. Since none appeared on behalf of the defendant nos. 1 to 4, their right to file written statement was closed on 07th February, 2017. Furthermore, vide order dated 20th March, 2017, written statement filed on behalf of defendant no. 5 was ordered to be taken off the record as it was not accompanied by an application for condonation of delay. In view of the aforesaid, and the fact that subsequently, none appeared on behalf of any of the defendants, they were proceeded *ex-parte* on 02nd May, 2017.

19. The plaintiff has filed its *ex-parte* evidence by way of affidavit of Mr. Anil Kumar Gupta (PW1).

20. Mr. Anil Kumar Gupta (PW1) has proved amongst others, the following documents: -

(i) Offer Letter dated 18th March, 2014 as Exhibit P-1.

(ii) Appointment cum Agreement Letter dated 01st May, 2014 as Exhibit P-2.

(iii) True copies of various communications/email dated 15th June, 2014, 24th June, 2014, 25th June, 2014 exchanged between the plaintiff and defendant no. 2 as Exhibit P-3 to P-5.

(iv) True copies of communications/email between 05th June, 2014 and 01st December, 2014 as exhibited Exhibit P-3 to 30.

(v) True copies of the two emails from Mr. Neil Gillies dated 06th November, 2014 are exhibited as Exhibit P-31 (Colly).

(vi) True copies of emails from Mr. Paul Lo dated 15th September, 2014 and true copies of emails from C.K. Lam dated 15th September, 2014, 09th October, 2014 and 30th October, 2014 are exhibited as Exhibit P-32 to 35.

(vii) True copies of the confidential email dated 24th November, 2014 by defendant no. 2 is exhibited as Exhibit P-37.

(viii) True copy of two emails dated 25th November, 2014 between defendant no. 2 and C.K. Lam are exhibited as Exhibit P-38 (Colly).

(ix) True copy of email dated 27t November, 2014 by defendant no. 2 is exhibited as Exhibit P-39.

(x) True copies of emails dated 15th December, 2014 and 16th December, 2014 by PW1 are exhibited as Exhibit P-40 to 41.

(xi) True copies of the termination email along with five termination letters dated 24th December, 2014 by defendant no. 3 are exhibited as Exhibit P-42 (Colly).

(xii) Copy of the email dated 07th November, 2015 by defendant no. 4 is exhibited as Exhibit P-43.

(xiii) True copy of the email dated 07th January, 2015 by PW-1 to defendant no. 1 is exhibited as Exhibited P-44.

(xiv) True copy of email dated 08th January, 2015 by defendants is exhibited as Exhibited P-45.

(xv) True Copy of email dated 15th January, 2015 by defendants is exhibited as Exhibit P-46.

(xvi) True copy of the email dated 05th January, 2015 by defendants is exhibited as Exhibit P-47.

(xvii) True copy of the email dated 17th January, 2015 by PW-1 is exhibited as Exhibit P-48.

(xviii) True copy of the legal notice dated 01st February, 2015 along with postal receipt and tracking report are exhibited as Exhibit P-49.

21. Having perused the paper book, documents on record and plaintiff's evidence, this Court is of the opinion that the defendants have

no real prospect of defending the claim, as they have neither entered appearance nor have they filed their written statements. Consequently, the ground mentioned in the impugned Termination Letter dated 24th December, 2014 is totally unsubstantiated, meritless and not proven.

22. This Court also finds that the plaintiff has proved his case to the extent that the plaintiff is entitled to a sum of Rs. 1,04,00,000/- as remaining salary for the remaining three years period as provided under Clause 2 (Rs. 16,00,000/- from 30th December, 2014 till 01st May, 2015 and Rs. 96,00,000 from 01st May, 2015 till 01st May, 2017), excluding the sum of Rs. 12,00,000/- deposited by the defendant no. 1 in the plaintiff's bank account.

23. Though the plaintiff has claimed 3% net profit sharing of "Indoor Division" of the defendant no. 1 company, yet he has not prayed for any such relief in the prayer clause of the plaint. Consequently, this Court is of the view that the plaintiff is not entitled to any such relief. Also, as the plaintiff has not led any evidence to indicate the damage suffered by him, the plaintiff is held entitled to the balance salary only as mentioned above.

24. Further as there is no privity of contract between the plaintiff and defendant nos. 2 to 6, this Court is of the view that the plaintiff is entitled to relief only against defendant no. 1.

25. Accordingly, the present suit is decreed by declaring Termination Letter dated 24th December, 2014 as void, illegal and ineffective. Furthermore, the present suit is decreed in favour of the plaintiff and against the defendant no. 1 for a sum of Rs.1,04,00,000/- (Rupees One Crore Four Lacs Only) along with interest @ 7% per annum and costs.

The costs shall amongst others include lawyers' fees as well as the amounts spent on purchasing the Court fees. The plaintiff is given liberty to file on record the exact cost incurred by him in adjudication of the present suit, if not already filed.

26. This Court may mention that it is awarding the interest @ 7% per annum as that is the normal rate at which the banks are lending monies now-a-days.

27. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

JAUNARY 09, 2019
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