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

\+ RSA 32/2019

BIR SINGH ..... Appellant

Through: Mr.Roop Ram Sarwal, Advocate.

versus

THE GENERAL MANAGER,
MTNL TRANS YAMUNA ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **03.07.2019**

CM APPL.No.7690/2019

In view of the reasons so explained in the application the delay of 12 days in refilling of this petition stands condoned.

The application stands disposed of.

CM APPL.No.7689/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA 32/2019

1. This second appeal is against the judgment dated 14.08.2018 passed by the learned Additional District Judge-03, East District, Karkardooma Courts, Delhi in RCA-DJ 83/2018 vide which the order and final decree dated 06.03.2018 passed by the learned JSCC/ASCJ/ GJ- East, Karkardooma Courts, Delhi was upheld.

2. The brief facts as narrated by the appellant are:-

a) appellant had filed the Civil Suit bearing No.CS 171/2018 against the respondent herein stating *inter alia* the appellant was an employee of the respondent as a phone mechanic vide PM No.3575 and lastly posted at office of SDOP, Vishwas Nagar, CBD Exchange and he retired on 30.11.2014 from the said office; and

b) while giving the retirement amount in January 2015 an amount of Rs.1,29,000/- was illegally deducted from his leave encashment without any reasoning and the appellant was forced to give in writing to the department and that one increment was deducted from his basic pay and the salary was reduced from Rs.24,350/- to Rs.23,710/-. The written complaint was given to the department qua this unlawful deduction from the total retirement amount and on 02.12.2015 written reminder was sent to the department, but they did not pay any heed and his request was ultimately rejected;

c) on 19.05.2016 a legal notice under Section *80* CPC was also sent to the respondent regarding this grievance and it was only after January 2018 when his request was finally refused by the respondent, the abovesaid Civil Suit No.171/2018 was filed on 21.02.2018 for issuance of the mandatory injunctions to the respondent directing it to make payment of Rs.1,29,000/- and also to add one increment of Rs.640/- per month, as deducted earlier; and

d) on 06.03.2018, Civil Suit No.171/2018 was dismissed with the following order of the learned Trial Court:-

> *"3. In my view, the first mandatory injunction, sought by the plaintiff cannot be granted because the plaintiff's right to receive the said money from MTNL had accrued in January 2015 and the present suit has been filed by the plaintiff after the expiry of three years from January 2015 viz. on 21.02.2018, because the existing defendant, the General Manager, MTNL has no obligation to release the said amount to the plaintiff and because the said mandatory injunction, sought by the plaintiff, is squarely hit by Section 41(h) of the Specific Relief Act, 1963. In regard to the latter reason, it is observed that instead of filing a suit for mandatory injunction, the plaintiff should have filed a suit for recovery of*

Rs.1,29,000/-.
4. Further, in my view, the second mandatory injunction, sought by the plaintiff cannot be granted because the plaintiff is estopped from seeking the said mandatory injunction on account of the letter dated 22.02.2014, admittedly written by the plaintiff to the Accounts Officer of MTNL because the plaintiff has not sought any declaration to the effect that the said letter was/is vitiated by 'coercion' or 'fraud' and because the existing defendant, the General Manager. MTNL has no obligation to add the increment of Rs.640/- in the basic pay of the plaintiff, as desired by the plaintiff."

3. The same view was taken by the learned Additional District Judge in RCA-DJ No.*83/2018*.

4. Before me today, the learned counsel for the appellant has argued the legal notice issued on 19.05.2016 should be considered for increase in limitation for filing of suit No.*171/2018* and it be held the Civil Suit, filed on 21.01.2018, was within three years of the issuance of the legal notice under Section 80 CPC, hence within limitation and thus the mandatory reliefs ought to have been allowed.

5. I disagree with the above contention of the learned counsel for the appellant since issuance of the legal notice would never raise limitation for filing of any suit. The appellant has not been able to show any acknowledgment of debt by the respondents within three years of his retirement/receipt of retirement amount and hence no infirmity or irregularity is seen in the orders passed by the learned Courts below. No substantial question of law arises in the present appeal, which is accordingly dismissed. No order as to costs.

YOGESH KHANNA, J.

JULY 03, 2019/*M*