

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(233)

RSA-265-2017 (O&M)

Date of Decision : March 15, 2023

Rakesh Raina

.. Appellant

Versus

M/s Alkem Laboratories Ltd. and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rai Singh Chauhan, Advocate, with
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate, for the appellant.

Mr. N.P.S. Mann, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present Regular Second Appeal, the challenge is to the modification relief granted by the lower Appellate Court despite dismissing the appeal filed by the respondents-defendants vide order dated 13.07.2016, upholding the judgment and decree of the trial Court dated 29.10.2010.

Learned counsel for the appellant argues that the suit filed by the plaintiff was partly decreed wherein, a direction was given to the defendants to pay the service emoluments to the plaintiff as Area Manager w.e.f. 29.01.2001 with the salary package which constitute his salary but without the expenses and the defendants were also directed to pass a speaking order qua the remaining emoluments and the appellant-plaintiff

was found entitled for interest on the arrears of salary @ 9% per annum

upto the date of decree and after the said date, the interest rate was 6% per annum.

Learned counsel for the appellant-plaintiff argues that despite feeling dis-satisfied with the said relief, no appeal was preferred by the appellant but the respondents preferred an appeal being aggrieved against the said judgment and decree of the trial Court dated 29.10.2010. Learned counsel for the appellant submits that though the appeal was dismissed by the lower Appellate Court vide order dated 13.07.2016 but while dismissing the said appeal, relief granted by the trial Court was modified to the extent that the appellant-plaintiff was held entitled for salary at the rate of Rs.1700/- per month and house rent allowance @ Rs.150/- per month along with the vehicle maintenance of Rs.100/- per month and medical allowance of Rs.600/- per month upto 18.02.2002.

Learned counsel for the appellant further argues that once the appeal was dismissed, the modification of the relief by the lower Appellate Court was without any valid justification. Hence, the said modification of the relief by the lower Appellate Court while dismissing the appeal of the respondents is liable to be set aside and the judgment and decree of the trial Court is liable to be upheld.

Learned counsel for the respondents has not been able to show that under what circumstances, the lower Appellate Court modified the relief granted by the trial Court, once the appeal was dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Certain facts have been recorded by the trial Court, which has been accepted by the lower Appellate Court as well. One of the conceded

fact is that the appellant was promoted as Area Business Manager w.e.f. 29.01.2001. It is also further conceded that the salary package of the Area Business Manager was Rs.1,40,000/- per annum all inclusive. It has also come on record that the salary of the appellant-plaintiff as the Area Business Manager was not paid.

The only question which arises is as upto which date, the appellant-plaintiff was entitled for the salary as Area Business Manager. It has come on record, which has gone un-rebutted that the respondents-defendants vide Ex.D-4 dated 09.07.2001 directed the appellant-plaintiff to stop working in field and report to Delhi office. Thereafter, the appellant-plaintiff was transferred from Pathankot to Jalandhar, which directions were not complied with by the appellant-plaintiff and ultimately, on 31.01.2002 (Ex.D-6), the appellant-plaintiff was transferred from Jalandhar to Mumbai which transfer was also not complied with. Hence, keeping in view the conceded facts and evidence, which has come on record, it can be safely held that the appellant-plaintiff was entitled for the salary as Area Business Manager from 29.01.2001 i.e. the date on which the said offer was accepted by the appellant-plaintiff till 09.07.2001 when he was directed to stop working and report to Delhi office, which direction was not complied with by the appellant-plaintiff.

Once the appeal was being dismissed, the judgment and decree of the trial Court could not have been modified. It is only on a valid ground, if the appeal was to be partly allowed than the relief could have been modified by the lower Appellate Court.

The direction given by the lower Appellate Court in the impugned judgment dated 13.07.2016 with regard to the grant of salary at

the rate mentioned and upto the date mentioned therein is set aside and the judgment of the trial Court is upheld with the modification that the salary of the Area Business Manager will be admissible to the appellant-plaintiff from 29.01.2001 upto 09.07.2001 on the terms and conditions on which the said post was offered to him.

No other point was argued.

The appeal is allowed in above terms.

CM-579-C-2017

As the main appeal has been allowed, present application stands disposed of.

March 15, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No