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C.M.P.No.16010 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2024

PRONOUNCED ON: 13.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.M.P.No.16010 of 2024

in

A.S.No.527 of 2024

1. The Chairman
V CARE SUPER SPECIALITY CLINIC,
2. The Managing Director,
V CARE SUPER SPECIALITY CLINIC,
3. The Manager,
Human Resource Department,
V CARE SUPER SPECIALITY CLINIC

... Appellants / Defendants

-Vs-

M/s. Raj Prakash, MDS.,
Oral & Maxillofacial Surgeon,
Door No.1, Plot No.3,
1st Street, V.V.Nagar, Teachers Colony,
Lakshmipuram, Kolathur,
Chennai – 600 099.

... Respondent / Plaintiff



C.M.P.No.16010 of 2024

Prayer:- Civil Miscellaneous Petition filed under Section 151 of the Civil Procedure Code, to stay all the operation of Decree and Judgment passed in O.S.No.540 of 2018 dated 28.11.2023 on the file of the learned XIX Additional City Civil Judge, Chennai, pending disposal of the main Appeal.

For Appellants : Mr.Krishna Ravindran
For Mr.J.Abdul Hadi

For Respondent : Mr.P.V.S.Giridhar, Senior Counsel
For Mrs.V.Vijayalakshmi

ORDER

The appellants have filed the present Civil Miscellaneous Petition for stay of operation of the Judgment and decree in O.S.No.540 of 2018, dated 28.11.2023.

2. The respondent/plaintiff filed a suit for recovery of money due from the appellants/defendants on the ground that he is a Oral Maxillofacial Surgeon and worked with the defendants V Care Super Specialty Clinic as a Hair Transplant Surgeon between 12.03.2016 to 19.12.2016 (9 months and 7 days) and he has performed the surgeries. As per the agreement between the parties, case-based incentives has been paid by the appellants only for

2/8



two months however, not paid for remaining seven months. The calculation

Memo has been filed and claimed a sum of Rs.8,03,648/- only.

3. The defendants V Care Super Specialty Clinic filed written statement stating that as per the appointment order, the defendants have not agreed for any incentives apart from the salary. At para Nos.9 & 10 of the written statement is extracted hereunder:

“9.Now, it is very pertinent to point out that admittedly the plaintiff was appointed as “Aesthetic Surgeon” who is not eligible to get any incentives even according to the averments in paragraph 12 of the Letter of appointment dated 11.03.2016, since his designation has not come under the category of branch level sales/marketing services and herbal concept sales divisions etc., to make himself eligible to get incentives as defined in paragraph 12 of the said letter of appointment. There is no necessity for the defendants to pay any incentives to the plaintiff under any circumstances and thereby the question of reducing percentage of incentives and deliberate delay and denial of



WEB COPY



C.M.P.No.16010 of 2024

incentives do not arise at all.

10. On 19.12.2016 unfortunately the plaintiff had sent his resignation letter to the department of HR of the defendants company only for the reasons best known to him.”

4. After trial, the suit was decreed holding that the defendants are entitled to recover the amount. Aggrieved against the judgment and decree granted in O.S.No.540 of 2018, dated 28.11.2023, they defeat the defendants are the appellants herein. Pending appeal, they seek for stay of the operation of the decree.

5. Heard Mr.Krishna Ravindran for Mr.J.Abdul Hadi, learned counsel appearing for the appellants and Mr.P.V.S.Giridharan, Senior Advocate for Mrs.V.Vijayalakshmi, learned counsel appearing for the respondent.

6. The learned counsel appearing for the appellants would contend that the claim of incentives by the Doctor as against the provisions of Dentist



C.M.P.No.16010 of 2024

Act and draw my attention to Dental Council of India, Section 20 and Section 17(a) of the Dentist Act.

7. The learned counsel appearing for the respondent draw my attention to Ex.A1-Letter of appointment, dated 11.03.2016 and stated that the surgeon is not entitled for the “performance incentives” and would contend that as per the Evidence Act admitted facts need not be proved. While the plaintiff, P.W.1 during the cross examination admitted that Ex.A4-List of cases performed by the plaintiff along with percentage for 7 months, consists only his signature and does not contain the signature of the defendants and also admitted that, incentive or concession only. The plaintiff also admitted that he does not belong to marketing and sale division of the defendant's company and further admitted in the cross examination that Ex.A7-Copy of email sent by the plaintiff, dated 21.12.2016 does not carry necessary certification. Further the plaintiff also admitted in the cross examination that Ex.A8-Experience Certificate, dated 26.01.2017 denotes that no pending dues with the defendants.

8. Mr.P.V.S.Giridhar, Senior Advocate appearing for the respondent



draw my attention to Order 41 Rule 5 of Civil Procedure Code would state that he has to deposit the entire decree amount.

9. Per Contra, Mr.Krishna Ravindran, learned counsel for the appellants would state that under Rule 5 of the Order 41 of Civil Procedure Code what was stated is the Appellate Court may, for sufficient cause ordered stay of execution of such decree.

10. After perusal of Ex.A1, Ex.A7 and Ex.A8 counter endorsements wherein, the plaintiff has signed that no dues are pending with the defendants. Ex.A8 is the Experience Certificate issued by the appellants/defendants. The said document is a reciprocal information that they are no pending dues with the company neither the defendants nor the plaintiff has pending dues, so also, the e-mail, dated 21.12.2006.

11. After hearing both the parties, the burden of the proof as contemplated under Section 101 of the Indian Evidence Act was considered and Ex.A4, Ex.A7 and Ex.A8 are also considered. Taking note of the fact that a money decree has been granted, there is an argument point in the



C.M.P.No.16010 of 2024

appeal. Hence there shall be an order of stay of this Court of Clause 2 of the decree on condition of payment of Rs.2 lakhs/- [Rupees Two Lakhs only] within a period of six weeks from the date of receipt of a copy of this order. After deposit of such amount, as I find element of settlement, the parties are hereby referred to Mediation and Conciliation Centre attached to this Court. Before Mediation commences, the Director of Madras High Court Mediation and Conciliation Centre shall ensure that the condition order has been complied with and time for completion of mediation one month from the commencement of the mediation.

12. Accordingly, the Civil Miscellaneous Petition is allowed with cost of Rs.2 lakhs [Rupees Two Lakhs only] to be paid by the appellants to the respondent within a period of six weeks from the date of receipt of a copy of this order.

13.08.2024

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Index:Yes/No

Internet:Yes/No

Neutral Citation Case:Yes/No

7/8



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C.M.P.No.16010 of 2024

RMT.TEEKARAMAN,J.,

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**Pre-delivery Order made in
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A.S.No.527 of 2024**

13.08.2024