

RSA-1813 of 2024 (O&M)

2024:PHHC:102105



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

RSA-1813 of 2024 (O&M)
Date of decision: 05.08.2024

Ashish Khullar

.....Appellant

Versus

Epic Datamax

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Karan Kaushal, Advocate,
for the appellant.

NAMIT KUMAR, J.

CM-7166-C of 2024

1. This application has been filed by the applicant-appellant under Section 151 CPC for condonation of delay of three days in re-filing the appeal.

2. In view of the averments made in the application, which is supported by an affidavit, same is allowed. Delay of three days in re-filing the appeal is condoned.

RSA-1813 of 2024

1. This Regular Second Appeal is directed against the judgment and decree dated 20.12.2022, passed by the Court of learned Additional Civil Judge (Senior Division), Panchkula, whereby suit of the respondent-plaintiff for recovery of Rs.2,50,000/- was partly decreed as well as against the judgment and decree dated 11.03.2024,



passed by the Court of learned District Judge, Panchkula, vide which the appeal filed by the appellant-defendant against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, defendant joined the plaintiff as Accounts Officer on 08.11.2018. He was on probation till 07.01.2019 and was confirmed on 08.01.2019. It has been further averred that on 05.04.2021, the defendant remained absent from the work and informed the plaintiff through telephonic call that due to bad health of his uncle, he would not be able to attend the office as he has to leave for Delhi, however medical certificates/documents of his uncle were not submitted by the defendant. It has been further averred that on 06.04.2021, plaintiff tried to contact the defendant in the morning, however the defendant did not respond. On the evening of 06.04.2021, through telephonic conversation, the defendant assured to assume the work from afternoon on 08.04.2021, however he neither joined on 08.04.2021 nor informed the plaintiff regarding the same. It has been further averred that email was sent from the official email ID of the plaintiff i.e. epicdatamatix@gmail.com to the defendant on email ID akhullarca@gmail.com on 09.04.2021 intimating that the defendant was supposed to inform the date and time of the joining and was supposed to join by 10.04.2021, however despite the same defendant did not update the plaintiff nor resumed the work. As per the contract, the defendant had to serve two months prior notice before terminating the contract, however the defendant did not honour the same. It has



been further averred that the defendant has absented himself from the work without intimation or approval from the plaintiff and without handing over the sensitive data of international clients, as a result the plaintiff suffered heavy financial losses and had also damaged the reputation of the plaintiff. Due to the absence of the defendant without intimation, the plaintiff could not impart proper training to the employee who joined against the defendant due to which the plaintiff suffered financial losses besides hampering the projects of the clients. Defendant has violated the terms and conditions of the employment contract by showing gross negligence and unprofessionalism. Plaintiff served legal notice dated 15.04.2021, however no reply was given by the defendant. The trial Court vide judgment and decree dated 20.12.2022, after hearing the learned counsel for the parties and appreciating the evidence on record, partly decreed the suit and defendant was directed to pay Rs.1,00,000/- (two months salary i.e. Rs.80,000/- plus Rs.20,000/- for breach of condition in Clause “other interest”) within two months from the date of decree @ 6% interest per annum from the date of filing of suit till the actual realization. Aggrieved against the judgment and decree of the trial Court, defendant preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 11.03.2024. Hence, this appeal.

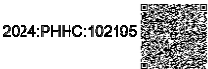
3. Learned counsel for the appellant contended that findings of both the Courts below are erroneous in the eyes of law and the suit filed by the plaintiff-respondent was not maintainable. He further



contended that the Courts below have failed to appreciate the cogent and trustworthy evidence led by the appellant. He further contended that the Courts below also failed to appreciate that appellant informed the respondent about the medical exigency on the very same day i.e. 05.04.2021 as such the absence of the appellant was duly informed to the respondent. He further contended that respondent could not prove that any loss was caused to it due to absence of the appellant. He further contended that the Courts below ought to have appreciated the fact that after the service of legal notice Ex.P4 by the respondent upon the appellant, the question of joining the respondent again for work did not arise.

4. I have heard learned counsel for the appellant and perused the record.

5. Undisputedly, the appellant completed the probation period on 08.01.2019. Perusal of the record shows that as per letter of appointment Ex.P1, after successful completion of the probation period, either party may terminate the contract by giving other party 2 months' notice period in writing. If the employee fails to serve the complete notice period, he shall pay to the Company the balance of notice period. Company reserves the right to terminate this contract with immediate effect without compensation, if employee continuously fails to perform his duties as per the contract, carry an act of misconduct or is involved in any illegal or criminal activities. Appellant continuously absented himself from his job w.e.f. 05.04.2021. He never replied to legal/demand notice served upon him by the respondent dated



15.04.2021. Moreover, the appellant has also not submitted any medical record of his uncle. The appellant has rightly been held liable to compensate the respondent-plaintiff-firm for the loss caused to it by him.

6. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or based on misreading or mis-appreciation of the material evidence on record.

7. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

8. In view of the above, present appeal is dismissed.

9. Pending application(s), if any, stand disposed of accordingly.

05.08.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No