IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO.9 OF 2025
IN
SUMMONS FOR JUDGMENT NO.80 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.61 OF 2023

Shirish Satish Chandra Gupta … Appellant

Versus

M/s. Carcrew Technology Private Limited …. Respondent

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Mr Ramakant Yadav i/b. RHY Juris Law Associates, for the Appellant.

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CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.

DATE : 27th MARCH, 2025

ORDER (Per M. S. Karnik, J.) :

1. This Appeal is filed against the order passed by the Bombay City Civil Court, Borivali in Summons For Judgment in Commercial Summary Suit. In the Commercial Summary Suit filed under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908, the Appellant is the original plaintiff. The Respondent is the original defendant. The suit is filed for recovery of Rs.32,16,340 (Rupees Thirty Two Lakhs Sixteen Thousand Three Hundred and Forty Only) towards salary,

performance linked incentive and other benefits as per the terms of offer letter dated 16th April 2018 and for other consequential reliefs. The Respondent is a Company carrying on business of sales and service of automobile parts of cars etc. The Appellant was appointed as Business Head vide offer letter dated 16th April 2018 with effect from 4th April 2018. In terms of the offer letter an annual package was fixed at Rs.50,00,000/- (Rupees Fifty Lakhs Only) per annum upon certain terms and conditions mentioned in such letter.

2. It is the Appellant's case that he was entitled for fixed take home salary of Rs.29,54,300/- (Rupees Twenty Nine Lakhs Fifty Four Thousand and Three Hundred Only) per annum which includes basic salary, house rent allowance, conveyance allowance, medical allowance, leave travel allowance, special allowance with deductions and further was also entitled for variable allowances of Rs.20,00,000/- (Rupees Twenty Lakhs Only) i.e. performance linked incentive as per the said offer letter dated 16th April 2018, which is based on the performance of the employee as well as turnover of the Company during the financial year. The Company was a new startup venture.

3. The Appellant as Business Head was required to promote the product of the Company as well as it was his responsibility to create business for the Company throughout the Country. It is the Appellant's case that he put in his best possible efforts in promoting the business of the Company and worked towards strengthening the business relationships and trust with its buyers.

4. The Company paid monthly salary and other perks as mentioned in the offer letter dated 16th April 2018 to the Appellant regularly from his joining period in April 2018 till his resignation in October 2020. The Company paid performance linked incentive of Rs.14,00,000/- (Rupees Fourteen Lakhs Only) to the Appellant out of Rs.20,00,000/- (Rupees Twenty Lakhs Only) as per the terms of the offer letter dated 16th April 2018, as Respondent Company's turnover during the Financial Year 2018-2019 was Rs.7,50,00,000/- (Rupees Seven Crore Fifty Lakhs Only) but the Company suffered loss as per their balance sheet. The Appellant put forth his best efforts to increase the turnover of the Company for which he has been paid Rs.14,00,000/- (Rupees Fourteen Lakhs Only) as performance linked incentive. It is the Appellant's case that

during the Financial Year April 2019 to March 2020 the Company's turnover was raised upto Rs.13,50,00,000/- (Rupees Thirteen Crore Fifty Lakhs Only) by the efforts and under leadership of Appellant and therefore, the Appellant is entitled for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) towards performance linked incentive during the Financial Year 2019-2020.

5. By the end of February 2020, the said Company was acquired by TVS Group of Company and due to the said acquisition, the Board of Directors of the Company changed which was then taken over by the Board of Directors of TVS Group. There was no change in the name of the Company and employment policy. The Appellant was assured that he would continue on the same terms and conditions as with the previous Company.

6. Though the Appellant availed of all salary and perks as per letter dated 16th April 2018, due to the lockdown there were certain deductions because of the disastrous pandemic situation of Covid-2019. The Appellant tendered his resignation on 19th October 2020. He was issued with a relieving letter.

7. Learned counsel for the Appellant submitted that the Company was liable to pay the Appellant the total outstanding dues of Rs.32,16,340/- (Rupees Thirty Two Lakhs Sixteen Thousand Three Hundred and Forty Only) towards salary, performance linked incentive and other benefits as per terms of offer letter dated 16th April 2018. Despite several representations through email, his outstanding dues were not released. The Appellant was shocked to be informed by the Company that the variable pay (performance linked incentives) is paid to the employees based on the profit of respective businesses. This according to learned counsel is completely contrary to the terms of the offer letter dated 16th April 2018.

8. Vide letter dated 26th April 2021, in response to the claim set up by the Appellant towards the outstanding dues, the Company has taken a stand that the variable pay/allowance was always subject to profitability/performance of the Company for the Financial Year in question. The Company had initially paid performance linked incentive to the Appellant as a gesture of goodwill and purely on humanitarian ground. The Company did release part payment towards salary and leave

encashment totaling Rs.5,30,024/- after deduction of statutory dues which was calculated to Rs.9,48,787/- instead of Rs.32,16,340/-. The Appellant claims that he should have been paid the entire claim of Rs.32,16,340/- which denial is without giving any justifiable explanation and which was not proper deduction in spite of submission of relevant papers to avoid those statutory deductions. Thus, a balance amount of Rs.22,67,553/-, according to the Appellant is outstanding and hence the claim in the suit.

9. Learned counsel fo the Appellant submitted that the Commercial Court committed grave error in dismissing the Summons for Judgment and allowing leave to defend unconditionally without considering the materials on record in proper perspective. Learned counsel submitted that the plaintiff prima facie established his case towards pending outstanding dues as contained in the offer letter dated 16th April 2018. It is further contended that the unconditional leave to defend is erroneous as the plaintiff is deprived of his legitimate dues since October 2020. Learned counsel was at pains to point out that there is enough materials on record to prove the plaintiff's legitimate claim towards performance

linked incentive and other benefits. Learned counsel submitted that the Company has not placed on record any document to show that performance linked incentive is to be paid either on the basis of the performance of the Appellant or on the basis of the profitability of the Respondent Company. It is further submitted that the contention of issuing new appointment letter dated 16th March 2020 is not supported by any evidence as to its service on the Appellant. Learned counsel submits that assuming without admitting that the Court was inclined to grant the leave to defend, it should have been conditional on payment of a reasonable sum.

10. We have gone through the affidavit in reply of the Respondents to the Summons for Judgment under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 for leave to defend the suit. In reply it is stated that upon acquisition of the Company by the TVS Group in 2020, the employment policy changed and a new appointment letter dated 16th March 2020 was issued to the Appellant which took effect from 4th April 2018 *inter alia* removing the clause of variable allowances. The payment of variable allowances of Rs.20,00,000/- was subject to the profitability/performance of

the Company for the Financial Year in question. For the Financial Year 2018-2019, the Company suffered losses to the tune of Rs.4.17 Crores. Though not legally obligated to pay the variable allowance to the Appellant as the performance of the Company was poor, as a gesture of goodwill and on humanitarian basis, the Appellant was paid the variable allowance of Rs.14,00,000/-. The Company suffered loss in the Financial Year 2019-2020 to the tune of Rs.6.51 Crores under the Appellant's leadership. It is under these circumstances that the Company says that the Appellant cannot make a claim for "variable allowances" for the Financial Year 2019-2020 as he has no legal right to claim that allowance.

11. The Respondents have filed their leave to defend. The learned Judge by the impugned order rejected the Summons for Judgment and allowed the leave to defend unconditionally vide its order dated 29th July 2023. We have gone through the impugned order carefully. To test the impugned order we have gone through the offer letter dated 16th April 2018 and the salary structure which is provided in Annexure-1. The annual variable allowances are stipulated at

Rs.20,00,000/- (Rupees Twenty Lakhs Only) apart from the other heads prescribed towards the salary structure.

12. From the materials on record we do not find anything which demonstrates that the Company had admitted its liability to pay the amount claimed in the suit. Though the appointment order makes a mention of the variable allowances as Rs.20,00,000/-, even according to the plaintiff, he was paid Rs.14,00,000/- as a variable allowance for the period 2018 to 2020. We do not find any error in the approach of the Trial Court in observing that whether this amount was paid on the basis of performance of plaintiff or on account of profitability of the Company is a triable issue. Even after the Appellant was relieved from the services of the Company, payments were made by the Company which according to them were the outstanding dues. The materials on record as they stand are not of such a nature to form an opinion at this stage of granting leave to defend that such leave has to be conditional one. The Company has taken a stand that pursuant to the issuance of a fresh appointment order dated 16th March 2020, the clause regarding payment of variable allowances has been removed. The Appellant has denied

receiving this new appointment order. The new offer letter in on record. These are all triable issues.

13. We do not see any reason to take a view different from that of the Commercial Court. Consequently, we do not find any merit in the submissions of learned counsel for the Appellant to warrant interference with the impugned order.

14. The Appeal from Order is dismissed.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**