THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 09.10.2025	Judgment pronounced on :21.11.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.527 of 2024

1.The Chairman,
VCARE SUPER SPECIALITY CLINIC.

2.The Managing Director,
Human Resource Department,
VCARE SUPER SPECIALITY CLINIC

..Appellants

Vs.

Mr.Raj Prakash

..Respondent

Prayer: Appeal Suit filed under Section 96 and Order 41-A of CPC, to allow the appeal and set aside the judgment and decree dated 28.11.2023 passed in O.S. No.540 of 2018 on the file of the learned XIX Additional City Civil Judge at Chennai.

For Appellants : Mr.Soundar Vijay Arulram for
Mr.J.Abdul Hadi

For Respondent : Mrs.V.Vijayalakshmi

JUDGMENT

The defendants, aggrieved by judgment and decree in O.S. No.540 of 2018 dated 28.11.2023 is the appellants in this First Appeal.

I.PLEADINGS

(i) Plaint in brief:

The plaintiff joined the defendants' Super Speciality Clinic as an Aesthetic Surgeon in March, 2016 and a letter of appointment dated 12.03.2016 was also issued. The plaintiff has been working as Hair Transplant Surgeon from 12.03.2016 to 19.12.2016 and during the said period, the plaintiff has been called upon to perform surgeries at various places. According to the plaintiff, the plaintiff is entitled to incentives and despite settling the incentives for the months of April and May, 2016, the defendants did not come forward to pay the incentives from remaining seven months viz., June to December, 2016.

The plaintiff further states that the defendants did not pay the incentives due to the plaintiff, despite requests and demands and in view of his repeatedly insisting upon settlement of the incentive amount, the plaintiff was asked to resign on 19.12.2016. The plaintiff issued a lawyer's notice on 23.05.2017, to which, no reply was sent by the defendants. The suit has been instituted for recovery of Rs.8,03,648/- together with compensation of Rs.2,00,000/- for mental agony.

(ii) Written Statement in brief:

The factum of appointment of the plaintiff as Aesthetic Surgeon is admitted. The plaintiff is entitled only for basic salary, along with house rent and conveyance allowance and the defendants never agreed to pay any incentives, on surgery basis. The allegations that the plaintiff was forced to resign are denied. The defendants requested that the plaintiff to visit their branch to hand over and secure the good will of the defendants. In response, the plaintiff sent a mail assuring to hand over his duties within a week. The plaintiff is not entitled to any incentives in terms of the letter of appointment and the defendants are also not liable to pay any damages or compensate the plaintiff for the alleged mental agony. The suit has not been valued properly and the suit is liable to be dismissed.

(II) Issues framed by the Trial Court:

(i) Whether the valuation of the suit is improper?

(ii) Is it true that there was no agreement between them for payment of any 'incentives' as alleged in the plaint, other than the salary and the allowance agreed to be paid under the appointment order?

(iii) Whether plaintiff is entitled for the suit claim of recovery of money?

(iv) What other reliefs?

Additional Issues framed by the Trial Court:

(i) Whether the plaintiff is entitled for the relief of damages for mental agony?

III. Trial

At trial, the plaintiff himself examined as P.W.1 and marked Ex.A1 to Ex.A8. On the side of the defendants, D.W.1 was examined and Ex.B1 was marked.

IV.Decision of the Trial Court:

The Trial Court held that the defendants were liable to pay the incenive amounts to the plaintiff. However, the Trial Court dismissed the claim towards damages. Answering the issue regarding incentives in favour of the plaintiff, the suit was decreed.

V.ARGUMENTS:

(i) Counsel for the Appellants:

The learned counsel for the appellants would submit that the suit is not maintainable and the Trial Court has wrongly placed the burden of proof on the defendants and proceeded to decree the suit insofar as the alleged claim for incentives. The learned counsel for the appellant would invite my attention to the appointment order in Ex.A1 and state that nowhere in the terms of appointment, the defendants agreed to pay incentives to the plaintiff, based on surgeries performed by the plaintiff. He would also state that the list of cases performed with the plaintiff, based on which the plaintiff claimed incentives and marked as Ex.A4 had no evidentiary value and it was also not supported by Section 65B Certificate and in such circumstances, the Trial Court ought not to have decreed the suit, even in respect of the claim for incentives.

The learned counsel would further state that the Trial Court failed to see that the payments under Ex.A2 and Ex.A3 were only towards salaries and not paid towards incentives and when the plaintiff had miserably failed to prove that he is entitled to payment of incentives based on surgeries performed and when he had consequently failed to even prove the quantum, by producing relevant records and documentary evidence, the plaintiff is not entitled to succeed. The learned counsel for the appellants would also rely on the Dentists (Code of Ethics) Regulations, 1976, a notification of the Dental Council of India, dated 27.06.2024 which prohibits such practice of payment of incentives. The learned counsel for the appellants would pray for the appeal being allowed.

(ii) Counsel for the defendant:

Per contra, the learned counsel for the respondent would submit that the terms of appointment clearly incorporated payment of incentives based on performance and when the appellants had admitted released the incentives due and payable for two months, the appellants are thereafter estopped to contend that the appellants are not liable to pay the incentives in respect of the succeeding months, falsely claiming there is no agreement to pay incentives in the first place.

The learned counsel would also take me through the evidence of the parties and contend that the witness examined on behalf of the defendants has admitted that two cheques have been issued by the appellant's Company and when it is not even the case of the plaintiff that the defendants were in arrears of any salary due and payable to the plaintiff and admittedly, even according to the appellants, the salary was Rs.40,000/-, then there was no necessity for issuing cheques for Rs.57,080/- and Rs.93,981/-, which absolutely had no connection to the salary admittedly payable to the plaintiff.

The Counsel would also state that despite a lawyer's notice calling upon the defendants to pay the incentives, the defendants did not even come forward to reply to the said notice and therefore, the claim for the first time in the written statement that there is no agreement to pay incentives cannot be countenanced. She would therefore state that the Trial Court has rightly decreed the suit and the same does not called for interference in appeal.

VI. POINTS FOR CONSIDERATION:

I have carefully considered the submissions advanced by the learned counsel on either side and framed the following points for consideration:-

(i) Whether the plaintiff is entitled to incentives based on surgery performed?

(ii) if the plaintiff is entitled to any incentives, then how much?

VII.DISCUSSION

The parties admit that the plaintiff was appointed as an Aesthetic Surgeon to the defendants' Super Speciality Clinic and his salary has been capped at Rs.40,000/-. Clause 12 of the appointment order dated 11.03.2016 states that the Companies follows the policy of performance reviews, which are linked to performance incentives on the basis of the plaintiff's gross monthly salary or on the basis of performance, during the previous quarter/six months/year. It is also specifically mentioned that this Clause is applicable to personnel working at branch level sales/marketing/services and herbal concepts sales division and all our group of companies.

Both the learned counsel for the appellants and the respondent have given their own interpretation to the said clause entitling the employee to performance incentives. Be that as it may, examining the evidence on record, I find that Ex.A2 and Ex.A3 are cheques issued on 29.07.2016 and 13.10.2016 for Rs.57,080/- and Rs.93,981/-. According to the respondent/plaintiff, these payments have been made only towards incentives. However, the defence pleaded on behalf of the appellants is that these payments were only towards salary due and payable to the plaintiff. Even assuming if TDS is deducted, there is no possibility that the salary cheques could have been issued for these amounts viz., Rs.57,080/- and Rs.93,981/-. Moreover, it is not the case of the plaintiff that, the salary of the plaintiff was never paid by the defendants. It is his only grievance that the promised incentives based on surgeries were not paid and he has been called upon to travel extensively to perform surgeries and it is only considering the nature of his services rendered, that the incentives were promised to be paid by the defendants. The statements that had been filed as Ex.A4 series, no doubt are computer generated statements giving specific details as to the incentives that are to be paid to the plaintiff. The monthwise statement has been filed by the plaintiff. No doubt, the plaintiff has not been able to corroborate the statements with any other material evidence. However, at the same time, the defendants who were better placed to produce their accounts have failed to establish that the amounts paid under Ex.P2 and Ex.P3 were only towards salaries and not towards incentives.

Even otherwise, the D.W.1 further admitted in cross examination that they have not disputed the veracity of Ex.A4 statement, giving the details of various surgeries performed by the plaintiff with the corresponding incentive amounts payable by the defendants to the plaintiff. D.W.1 further admitted that to rebut the month wise statement in Ex.A4 series, the defendants have not filed any documents. Therefore, the defendants who had the best evidence available with them and failed to produce the same before the Trial Court have run the risk of the Court drawing adverse inference against the defendants. Further when the plaintiff issued a notice and called upon the defendants to settle the incentive amounts which is the suit claim made as well, the defendants did not even bother to send a reply. If really there was no agreement to pay incentives and no amount was payable by the defendants to the plaintiff, then the defendants would have certainly shot out a reply, denying their liability.

In the light of the above, I see no reason why the Trial Court should not have acted upon the statements in Ex.A4 series to decree the suit in favour of the plaintiff.

Though the learned counsel for the appellants also relied on Ex.A4 series, which according to the respondent was taken only from the official website of the defendants' Company, the statements contain even bill numbers and therefore, if the plaintiff had really come with a false or concocted case, the appellant could have easily exposed the falsity in the claims by producing relevant rebuttal evidence, admittedly, which has not been done and as already pointed out there is not even a denial of the written statement regarding the veracity of the entries in Ex.A4 series.

The learned counsel for the appellants would further rely on Ex.A8, to contend that the defendants under Ex.A8 had issued an Experience Certificate to the plaintiff and the said document, clearly mentions that there are no pending dues and therefore, having taken benefit of Ex.A8, according to the learned counsel for the appellants, the respondent/plaintiff is estopped from coming to Court claiming that further amounts were due and payable to the plaintiff.

On a perusal of the Ex.A8, I find that the Experience Certificate does not speak about any dues from the defendants to the plaintiff and on the other hand, it only mentions that the plaintiff is not due any amounts to the defendants' Company. Therefore, I am unable to countenance the arguments of the learned counsel for the appellant in this regard. Further, even in Ex.A7, E.mail dated 20.12.2016, the defendants have admitted receipt of the said E.mail and have extracted a part of the content of the same in their written statement. Even in the said E.mail dated 21.12.2016, the plaintiff has called upon the defendants to settle his pending incentives. There is also an attachment excel file regarding incentives payable to the plaintiff from June to December, 2016. Even after receipt of the E.mail, the defendants have not denied their liability and even when lawyers' notice was issued as well, the defendants did not even choose to reply to the same. In such circumstances, the claim of the plaintiff regarding payment of incentives has been clearly proved and established and the burden certainly shifted to the defendants to establish the contrary, which admittedly, they have failed to do.

VIII.DECISION:

In the light of the above, the Trial Court has rightly considered the oral and documentary evidence and decreed the suit. I do not find any perversity or infirmity in the findings arrived at by the Trial Court warranting interference in this Appeal.

In fine, the Appeal Suit is dismissed with costs and the judgment passed in O.S. No.540 of 2018 by the learned XV Additional Judge (FAC) XIX, Additional Court, dated 28.11.2023, is hereby confirmed.

21.11.2025

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
rkp

To

1. The XIX Additional City Civil Judge at Chennai.

2. Section Officer,
V.R. Section,
Madras High Court,
Madras.

P.B.BALAJI.J,

rkp

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

21.11.2025