

(2014) 04 DEL CK 0144
In the Delhi High Court
Case No : RSA No. 105/2013

Bhuvan Madan

APPELLANT

Vs

Brij Mohan Garg

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 142 DRJ 583

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Kamlesh Mahajan, Advocate for the Appellant; Pankaj Jain, Advocate for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This Second Appeal is filed against the judgment of the first appellate court dated 11.2.2013. The first appellate court by the impugned judgment dated 11.2.2013 allowed the appeal filed by the respondent/defendant and set aside the judgment of the trial court dated 15.3.2012 by which the trial court had dismissed the suit for recovery of Rs. 1,40,317/- filed by the respondent/plaintiff.

2. The facts of the case are that the appellant/defendant gave his bio data to the respondent/plaintiff for getting a job. The respondent/plaintiff runs a placement agency under his sole proprietorship M/s. B.M. Consultancy Services. The appellant/defendant at the time of registering with the respondent/plaintiff signed an agreement dated 27.5.2005, Ex. PW1/1, by which in addition to other amounts, the appellant agreed that he would pay a sum of Rs. 80,000/- to the respondent/plaintiff on his getting the job on forwarding by the respondent/plaintiff of his bio data to a company which gives the appellant/defendant employment. Appellant/defendant got a job through the respondent/plaintiff with M/s. Radico Khaitan Limited and confirmation of this placement is proved by the respondent/plaintiff in terms of the letter dated 5.9.2006 of the appellant/defendant, Ex. PW1/2. Respondent/plaintiff claimed that the appellant/defendant

did not pay this amount and therefore the subject suit for recovery was filed. Appellant/defendant in the written statement, in preliminary objection No. 4, specifically stated that the employer vide its letter dated 21.9.2006 issued to the appellant/defendant clearly stated that the charges of the respondent/plaintiff placement agency will not have to be paid by the appellant/defendant but will be paid by the employer/M/s. Radico Khaitan Limited and which were in fact paid. This letter is relevant and is therefore reproduced as under:-

RA/HR 422/2006

Sept. 21, 2006

Empl ID# 5421

Mr. Bhuvan Madan

S/o Mr. H.R. Madan,

House No. A-103

Ashok Vihar, Phase-3

New Delhi-110 052

Dear Mr. Bhuvan,

We are pleased to inform you that you have been appointed through M/s. BM Consultancy Services, address: BM House, 513/4, Majlis Park, Near Adarsh Nagar, Delhi-110033, and according to the terms of contract, professional fees for services rendered by M/s. BM Consultancy Services would be Paid by us in due course of time. There is no obligation for such payment at your end.

Thanking you

Yours faithfully,

For Radico Khaitan Limited

Kulbir Chaudhry

Head-Human Resources

3. The respondent/plaintiff in the replication filed gave only a general denial with respect to para 4 of the preliminary objection. This para 4 of the replication reads as under:-

4. That the contents of para No. 4 of the preliminary objections are false, frivolous wrong and hence specifically denied. The defendant is just using the tactics to escape from paying the legitimate fees of the plaintiff.

4. Before the trial court, the appellant/defendant in her evidence proved and exhibited this letter dated 21.9.2006 as Ex. DW1/1. Issuing of this letter to the appellant/defendant by M/s. Radico Khaitan Limited was also proved by

summoning the witness from M/s. Radico Khaitan Limited who deposed as DW2/ Sh. Vinay Padro. At this stage I may note that the document dated 21.9.2006 is considered by the courts below as a marked document, but this document has to be treated as an exhibited document not only because this document was got proved by DW2 but also because of the ratio of the judgment of the Supreme Court in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, .

5. The trial court dismissed the suit by deciding the issue of liability of the plaintiff by holding that the liability of the appellant/defendant towards the respondent/plaintiff stood cleared by the employer M/s. Radico Khaitan Limited and which has been sufficiently proved in the evidence and that there is no cross-examination on this aspect of the respondent/plaintiff. The relevant observations of the trial court are contained in para 6 of its judgment and which reads as under:-

6. Issue No. 1 and 2:-Both the issues are inter linked and therefore, are taken up together. The plaintiff in his affidavit has proved on record the registration form filled by the defendant Ex. PW-1/1 as well as the confirmation letter written by the defendant Ex. PW-1/2. These two documents are not disputed. The documents reflect that the defendant enrolled himself with the plaintiff and promised to pay these three amounts and he subsequently was also placed with Radico Khaitan Ltd. through consultancy services of the plaintiff. However, the dispute is whether it was the defendant or his employer who was liable to pay the service charges of the plaintiff. PW-1 in his cross examination has admitted that Radico Khaitan Ltd. has paid the professional fees of the defendant on 21.09.2006 to the plaintiff. However, it is voluntarily stated that both were required to pay to the plaintiff. However, no such agreement has been placed on record by the plaintiff to show that the defendant as well as the employer were required to pay professional service charges to the plaintiff. It is further clarified by PW-1 in his cross examination that it was verbally agreed by the employer. However, the plaintiff has failed to prove any such verbal agreement between him and Radico Khaitan Ltd. As a matter of fact, no suggestion has been given to DW-2, the employer of defendant that the employer was also liable to pay professional fees to the plaintiff. The entire plaint is silent in this regard and not even a whisper has been made that not only the candidate but the employer was also liable to pay the professional service charges to the plaintiff. The plaintiff was required not only to specify this, but also the fact that they have received the professional service charges from the employer of the defendant. Not mentioning of this two facts in the plaint as well as no suggestion to DW-2 in his cross examination establishes the fact that it was the employer of the defendant who paid the service charges which the defendant was required to pay and there is no liability of the defendant to pay the suit amount. Though the defendant has admitted his signatures on Ex. PW-1/1 and Ex. PW-1/2, but that by itself does not prove the liability of the defendant. Once the plaintiff admits that he has received this amount from the employer of the defendant, it was for the plaintiff

to prove that the employer and the defendant both were liable to pay. The plaintiff has miserably failed to prove the same and therefore, the plaintiff has failed to prove the case. Ld. Counsel for the plaintiff has argued that in para 3 and 4 of the WS on merits the defendant has admitted that he duly filled the registration form but never paid a single penny, proves the case of the plaintiff. I do not find any force in his contention since the averment made in the pleadings cannot be read in isolation. A perusal of WS shows that defendant never admitted his liability to pay any money to the plaintiff and categorically stated that same was paid by the employer as per practice in the market. Similar statement has been made by DW-2 in his cross examination that as per trend of the industry, it is the employer who pays to the consultant and not candidate. No suggestion contrary to it has been given to DW-2, therefore, both issues are decided against the plaintiff.

6. The first appellate court set aside the judgment of the trial court by observing that once the appellant/defendant admitted to pay liability to the respondent/plaintiff in terms of the agreement Ex. PW1/1 dated 27.5.2005, and merely because the employer has made payment to the respondent/plaintiff, that will not discharge the appellant/defendant from its liability.

7. For disposal of this appeal, the following substantial question of law is framed:-

Whether the first appellate court has committed a grave illegality and perversity in ignoring the record of the trial court which showed that the respondent/plaintiff did not cross-examine the appellant/defendant or DW2 that no such letter dated 21.9.2006, Ex. DW1/1 was issued by the employer/M/s. Radico Khaitan Ltd. to the appellant/defendant showing discharge of liability of the appellant/defendant to the respondent/plaintiff and which is to be taken with the fact that respondent/plaintiff did not file or prove any agreement/document that the payment made to the respondent/plaintiff by M/s. Radico Khaitan Ltd. was not towards discharge of liability of the appellant/defendant but in discharge of the liability of M/s. Radico Khaitan Ltd. under an independent agreement which M/s. Radico Khaitan Ltd. had with the respondent/plaintiff?

8. In my opinion, the aforesaid question of law needs to be necessarily answered in favour of the appellant/defendant in view of the exhaustive discussion given by the trial court in para 6 of its judgment which has been reproduced above. It is clear from the aforesaid para 6 of the judgment of the trial court, as also the record of the trial court, that not only the respondent/plaintiff did not cross-examine the issuance of the letter dated 21.9.2006, Ex. DW1/1 by M/s. Radico Khaitan Ltd. to the appellant/defendant but the respondent/plaintiff did not file any document to show that the employer M/s. Radico Khaitan Ltd. had an additional liability to the respondent/plaintiff for the placement of appellant/defendant with M/s. Radico Khaitan Ltd. The liability of appellant/defendant to the respondent/plaintiff was cleared by the payment which was made by the M/s. Radico Khaitan Ltd. to the respondent/plaintiff. I may note that in the trial court the witness DW2 who appeared on behalf of the defendant, and was an

employee of M/s. Radico Khaitan Ltd. had brought certified copy of the cheque by which payment was made of Rs. 97,852/- by Ms. Radico Khaitan Ltd. to the respondent/plaintiff. Once there is no evidence that why should M/s. Radico Khaitan Ltd. make any payment to the respondent/plaintiff, the trial court had rightly concluded that this payment was for discharge of liability of the appellant/defendant to the respondent/plaintiff. The appellant/defendant has besides not filing any document/contract/agreement in order to show that any charges were payable by M/s. Radico Khaitan Ltd. to the respondent/plaintiff because the respondent/plaintiff gave bio data of an employee (i.e. appellant/defendant) for employment with M/s. Radico Khaitan Ltd. Even no witness was summoned from M/s. Radico Khaitan Ltd. by the respondent/plaintiff to show existence of an alleged oral agreement of any liability for payment of placement charges by M/s. Radico Khaitan Ltd. to the respondent/plaintiff.

9. Therefore, the first appellate court is wholly unjustified in arriving at a finding of liability of appellant/defendant existing towards respondent/plaintiff, and which finding is completely illegal and perverse because the liability of appellant/defendant to the respondent/plaintiff was cleared by the employer-M/s. Radico Khaitan Ltd. by making payment of cheque of an amount of Rs. 97,852/-, and this payment was towards the liability of the appellant/defendant to the respondent/plaintiff and not towards an alleged independent liability of employer-M/s. Radico Khaitan Ltd. to the respondent/plaintiff.

10. In view of the above, the substantial question of law is answered in favour of the appellant/defendant and this appeal is allowed by setting aside the impugned judgment of the first appellate court dated 11.2.2013. The judgment of the trial court dated 15.3.2012 will stand revived and the suit of the respondent/plaintiff will stand dismissed.