

M/S. Lucky Impex vs Mr. Vinod Kumar Chawla on 5 April, 2019

IN THE COURT OF SH. BIMLA KUMARI
ADJ - 3 (Central), TIS HAZARI COURTS: DELHI

- (1) CS No. 135/16
New CS No. DJ/ 614566/16
In the matter of :-

M/s. Lucky Impex
A-40, Naryana Industrial Area,
New Delhi
Through its Partner
Mr. Sarvjeet Singh Chawla Plaintiff

VS.

Mr. Vinod Kumar Chawla
S/o Late Sh. Gopal Dass
R/o 47-A, Shivam Apartments,
Vikas Puri, New Delhi. . . . Defendant

Date of Institution : 29.09.2008

And

- (2) CS No. 136/16
New CS No. DJ/ 612126/2016
In the matter of :-

Mr. Vinod Kumar Chawla . . . Plaintiff
S/o Late Sh. Gopal Dass
R/o 47-A, Shivam Apartments,
Vikas Puri, New Delhi.

VS.

M/s. Lucky Impex
A-40, Naryana Industrial Area,
New Delhi
Through its Partner
Mr. Sarvjeet Singh Chawla . . . Defendant

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Date of Institution : 04.01.2011
Arguments heard on : 29.03.2019
Judgment Announced on : 05.04.2019

SUIT FOR RECOVERY

JUDGMENT

1. By this common judgment, I shall dispose of the suit filed by the plaintiff as well as counter claim filed by the defendant on 04.01.2011 which has registered separately as CS NO. 136/16.

2. Initially, the suit filed by the plaintiff was treated by Ld. Predecessor as a suit under Order 37 CPC.

3. It is the case of the plaintiff that it is a partnership firm duly registered with the Registrar of Firms and is engaged in the business of manufacture and export of readymade garments. Sh. Sarvjeet Singh Chawla is the registered partner of the plaintiff firm and is duly authorised to file and institute the suit against the defendant on behalf of the plaintiff firm; that the defendant entered into an employment agreement with the plaintiff on 13.12.2005 and agreed to work for the plaintiff and to perform the duties, as were mentioned in the agreement dated 13.12.2005; that the defendant at the time of joining the plaintiff firm requested for an advance of Rs. 10 lacs, for which a separate agreement dated 13.12.2005 was executed between the plaintiff and the defendant; that the plaintiff gave a sum of Rs. 10 lacs to the defendant, as advance, by way of cheque bearing No. 437816 dated 13.12.2005 drawn on State Bank of India; that the said cheque was duly encashed by the defendant; that the amount of advance was to be recovered by the plaintiff by deducting Rs. 35,000/□per month from the salary of defendant, as an adjustment, towards above mentioned advance of Rs. 10 lacs; that the defendant was sent to USA, as per the terms of agreement but the performance of the defendant was not up to the mark and the plaintiff started suffering heavy losses because of the negligent and callous attitude of the defendant; that the plaintiff requested the defendant, on number of occasions, to concentrate and work with full devotion towards the business of plaintiff firm, but the defendant did not pay any heed to the request of the plaintiff; that the plaintiff wrote a letter dated 01.01.2007 to the defendant, who pleaded the plaintiff to grant him some more time and assured the plaintiff that desired results would be achieved by him by 15.02.2007 and in case, he failed to achieve the desired results, he agreed to voluntarily step down.

4. It is further case of plaintiff that the defendant worked with the plaintiff till November 2006 and plaintiff had been deducting a sum of Rs. 35,000/□per month as agreed by the defendant; that till the defendant left the job of the plaintiff, a sum of Rs. 6,58,610/□was due and outstanding towards the defendant; that the plaintiff asked the defendant to clear the advance amount, but the defendant did not pay the due amount on the pretext that TDS certificates be handed over to him and only then he would clear the amount; that the plaintiff issued all the TDS certificates to the defendant but he did not pay the due amount to the plaintiff; that the plaintiff requested the defendant on number of occasions, orally, as well as by e□mail, to clear the due amount and made it clear that if the amount was not paid within seven days, the plaintiff would be forced to initiate legal action against the defendant but the defendant did not pay any heed and did not pay the due amount, despite several requests and reminders sent by the plaintiff; that the amount of advance was given to the defendant by the plaintiff in a commercial transaction and therefore, the plaintiff is entitled for the interest @ 18% per annum from December 2006 till 31.08.2008; that the defendant is liable to pay a sum of Rs. 6,58,610/□as principal amount and a sum of Rs. 1,97,583/□as interest and as such is liable to pay a total sum of Rs. 8,56,193/□to the plaintiff.

5. In pursuance of summons, the defendant put an appearance.

6. Thereafter, the plaintiff got issued the summons for judgment and defendant also filed an application on 06.03.2009 for leave to defend, which was allowed by Ld. Predecessor on 13.12.2010.

The defendant was granted leave to defend the suit, unconditionally.

7. Thereafter, the defendant filed the written statement and counter claim along with documents on 04.01.2011.

8. The counter claim was ordered to be registered separately.

9. In the written statement, it was submitted by the defendant that the suit of the plaintiff was an abuse of the process of law and was without any cause of action. The suit was filed only to illegally extort money from the defendant and the suit was liable to be dismissed with compensatory costs; that the suit of the plaintiff was full of misstatements and untrue facts and was liable to be dismissed; that the plaint of the plaintiff was bad for non-joinder of necessary party to the proceedings; that the services of the defendant were to be utilized and were, in fact, utilized by M/s. Pioneer Import Inc., but the said company was not made party to the present proceedings; that the claim of the plaintiff was not supported by account statement and books of accounts, which were maintained in the usual course of business; that the statements of account, annexed with the plaint, was not valid and reliable; that the salary and other emoluments due and payable to the defendant were not reflected in the statements of account; that the suit was not signed, verified and instituted properly as Sh. Sarvjeet Singh Chawla was not duly authorised to institute the suit on behalf of the plaintiff firm; that in the partnership deed, dated 21.04.2005, annexed with the plaint, it was stated that Sh. Hardeep Singh Chawla was sole proprietor of the firm, prior to the said deed and Sh. Sarvjeet Singh Chawla was inducted as a partner in the said deed; that the appointment letter dated 24.12.2004, issued to the defendant was signed by Sh. Sarvjeet Singh Chawla as CEO and partner of the plaintiff firm; that the amount of Rs. 10 lacs was given towards job security and was not an advance simplicitor and therefore, the deduction could not have continued, in case the employment ceased to exist.

10. It was further submitted by the defendant that initially he was appointed by the plaintiff vide appointment letter dated 24.12.2004 as Vice President Marketing and was to be paid an amount of Rs. 15,000/- per month w.e.f. 01.01.2005 and Rs. 20,000/- w.e.f. 01.04.2005; that considering the excellent services of defendant, he was promoted to better positions and responsibilities and subsequently, the compensation payable to the defendant, was enhanced to Rs. 70,000/- per month and also an amount of \$4000 per month; that however, in June 2006, it was agreed that he was to be paid an amount of \$ 60000 per year i.e. \$ 5000 per month instead of \$ 4000 per month; that the plaintiff also obtained L-1 visa for the defendant and also increased the US salary from June 2006 to \$ 5000 per month; that the plaintiff also agreed to send the entire family of the defendant, including his wife and daughter to USA and agreed to bear their entire tour expenses, as per the communication dated 03.07.2006 issued by the plaintiff to Visa Office, US Embassy; that the plaintiff wrongly tried to put the blame on the defendant for the poor performance because the defendant was merely managing and administrating the affairs of the plaintiff at US; that the plaintiff itself was responsible for sending the material to the US, which was lacking in requisite quality, owing to which there was decline in the export, due to non-renewal of order by clients from USA, which is apparent from the mails dated 07.11.2006, sent by Mr. Craig Hodges, of M/s. Pioneer Imports; that the son of the defendant Mr. Nipun Chawla was appointed by the plaintiff as Assistant

Quality Control Manager vide appointment letter dated 22.03.2006 and plaintiff wrote a communication dated 16.11.2006 to US Embassy seeking visa for Mr. Nipun Chawla; that the defendant has not been paid the amount, as per the agreed terms and condition.

11. It was further submitted by the defendant that the plaintiff relied upon a communication dated 01.01.2007, which itself stated that defendant was to work till 15.02.2007; that as per clause (j) of the appointment letter dated 24.12.2004, the defendant was entitled for one month's notice or salary in lieu thereof but he was not given such notice and thus he is entitled for one month salary; that the defendant rendered his services to the plaintiff firm, at USA, till the month of January 2007; that even thereafter, the plaintiff continued to use his name for its business and thus he is entitled to be remunerated for the said period as well; that as per the mail dated 08.09.2008, he specifically demanded his dues, towards salary, till the time, his name was used by the plaintiff company but the plaintiff failed to respond or act on the said mail; that the defendant repeatedly called upon the plaintiff to provide him the statement of account, but the plaintiff never provided the same; that the plaintiff has not paid the amount, as agreed upon, at any point of time, to which the defendant is lawfully entitled to; that the salary and other emoluments were directly credited to his account at various points of time, and he is not aware of the amount, which is due by the plaintiff towards him and the said fact can only be ascertained, when the plaintiff is directed to provide the accounts to the defendant. The defendant has sought the relief of rendition of account and consequent recovery from the plaintiff.

12. On merits, the defendant has denied the contents of the plaint as wrong.

13. Defendant has narrated the same facts in his counter claim, which are not discussed here, to avoid repetition.

14. Plaintiff filed the replication to the written statement of defendant, wherein he denied the allegations of the defendant and reiterated and reaffirmed the contents of his plaint.

15. The plaintiff has also filed separate reply to the counter claim of the defendant, wherein it was submitted that counter claim of the defendant was barred by limitation; that counter claim filed by defendant was an abuse of the process of law and was filed in order to delay the proceeding and thus liable to be dismissed. On merits, the plaintiff denied the contents of the counter claim and reiterated and reaffirmed the contents of his replication.

16. The defendant also filed replication to the reply of plaintiff and submitted that the counter claim was maintainable and was within limitation and was preferred under Order VIII Rule 6A of CPC. On merits, he denied the contents of reply of plaintiff and reiterated and reaffirmed the content of his counter claim.

17. From the pleadings of the parties, the following issues were framed by Ld. Predecessor on 02.11.2011: □

1. Whether the suit on behalf of the plaintiff has been filed by duly authorised person? (OPP)

2. Whether the plaintiff is entitled for recovery of the suit amount? (OPP)
3. Whether the counter claim filed by the defendant is within the period of limitation? (OPD)
4. Whether the defendant is entitled for relief as claimed in counter claim, if so, for what amount? (OPD)
5. Relief.

18. Thereafter, an application under Order 14 Rule 5 read with section 151, CPC was moved by defendant which was allowed by Ld. Predecessor on 31.07.2012 and the following additional issue was framed : ☐ (6) Whether the suit of the plaintiff is bad for non ☐ joinder of necessary party i.e. M/s. Pioneer Import INC? (OPD)

19. To prove its case, the plaintiff has examined Sh. Sarvjeet Singh Chawla as PW ☐ by way of affidavit of evidence, which is Ex.PW1/A.

20. The defendant has also examined himself as DW ☐ by way of affidavit of evidence which is Ex.DW1/X.

21. I have heard arguments from of Ld. Counsel for the plaintiff and Ld. Counsel for the defendant.

22. I have also gone through the written submission filed by Ld. Counsel for the parties.

23. My findings on the issues are as under: ☐

25. In the present case, PW ☐ Sh. Saravjeet Singh Chawla has categorically deposed in his affidavit of evidence Ex. PW1/A that he is partner of the plaintiff firm and is well conversant of the facts and circumstances of the case. He has further deposed that plaintiff is a partnership firm, duly registered with the Registrar of Firms. He is duly authorised to file and institute the present case against the defendant on behalf plaintiff firm. He has relied upon the partnership deed Ex.PW1/1 in this regard.

26. Now, a perusal of this partnership deed Ex.PW1/1 shows that the said deed was made between Hardeep Singh Chawla and PW ☐ Saravjeet Singh Chawla on 21.04.2005.

27. It is worth noting that the said partnership firm was duly registered with Registrar of Firms on 05.05.2005 vide registration No. 1092 as is clear from Forms 'A' and 'B' which are Ex. PW1/2 and Ex.PW1/3 respectively.

28. In cross examination by Ld. Counsel for defendant nothing to the contrary has come on record to show that PW ☐ was not partner of the plaintiff firm as on 21.04.2005 and therefore was not competent to file the present suit against the defendant.

29. Further, the case of the plaintiff will not be adversely effected if PW□ has deposed in his cross examination that he was partner of the plaintiff firm since 1997 and signed the appointment letter dated 24.12.2004 Ex.PW1/D1 in the capacity of CEO and partner of the firm. It is worth noting that if the plaintiff firm was registered in the year 2005, it cannot be said that prior to 2005, the firm was not in existence or that PW□ was not its partner. It is also noteworthy that PW□ has denied that he misused his position and issued a false document (appointment letter Ex.PW1/D1) because he was not partner in the firm in the year 2004, when the appointment letter was issued to defendant. He has further denied that he is not entitled to recover the amount from the defendant.

30. Further, it is noteworthy that the authority to sign and institute the plaint need not be restricted to mean authorised by proper written authority or power of attorney (All India Reporter Ltd. v. Ram Chandra Dhonda Datar AIR 1961 Bom, 291).

In Bengal Jute Mills vs. Jewray Heeralal AIR 1943 Cal 13, it has been held that under the proviso to Order VI Rule 14 CPC, the person duly authorised can even be a person under oral authorisation.

31. It is further worth noting that present suit has been filed by the plaintiff on 27.09.2008. Since, PW□ was the partner of the plaintiff firm which was duly registered with Registrar of Firms, I am of the considered view that the suit of the plaintiff was filed by a duly authorised person.

32. Accordingly, issue no. 1 is decided in favour of the plaintiff and against the defendant.

33. Now, I am taking ISSUE No. 6 first as finding on issue No. 6 will be helpful in the decision on issue no. 3 & 4.

34. DW□ Sh. Vinod Kumar Chawla has deposed in his affidavit of evidence Ex.DW1/X that his services were to be realized and were in fact utilised by M/s. Pioneer Import Inc. having its work at 1407 Broadway Suite No. 1411 New York. He has further deposed that initially he was appointed by the plaintiff vide appointment letter dated 24.12.2014 which is Ex.PW1/D1 and the said appointment letter continued to operate. He rendered his services to the plaintiff firm at USA till the month of January 2007. Even thereafter, the plaintiff continued to use his name for the services.

35. In cross□examination by Ld. Counsel for the plaintiff, he has deposed that as per document Mark□C his services were to be utilised by M/s. Pioneer Import Inc. but has categorically admitted that Mark C was not issued by the plaintiff firm and was not original one. DW□ has further admitted that he was appointed by the plaintiff firm and was working for the plaintiff firm but has volunteered that US company name of plaintiff was M/s. Pioneer Import Inc. He has further admitted that he did not raise any objection, (while doing the work for M/s. Pioneer Imports Inc.) that he was appointed by the plaintiff firm and will do the work for the plaintiff firm. DW□ has further categorically admitted that he was appointed by Sarvjeet Singh Chawla in December 2005 vide Ex.PW1/4 and Ex.PW1/4 was signed by Sarvjeet Singh Chawla and was also counter signed by his father as a witness. He has further admitted that there was no other document containing the terms and conditions of the employment between him and the plaintiff except Ex.PW1/4 but has volunteered that said appointment letter Ex.PW1/4 was in continuation of his earlier appointment

letter dated December 2004, Ex.PW/D1.

36. Now, a perusal of appointment letter Ex.PW1/D1, upon which the defendant has heavily relied upon, shows that the said appointment letter was not issued by M/s. Pioneer Import Inc. Further, the Employment Agreement Ex.PW1/4 relied upon by the plaintiff is not containing any clause which shows that the Employment Agreement Ex.PW1/4 was in continuation of the appointment letter Ex.PW1/D1.

37. Further, the defendant did not move any application under Order 1 Rule 10 CPC for substitution / addition of the name of M/s. Pioneer Import Inc. in the array of plaintiffs, if the same was a necessary party to the suit.

38. Since, DW2 has categorically admitted that document MarkC was not issued by the plaintiff firm and there was no other document except Ex.PW1/4 containing the terms and conditions of his employment between him and the plaintiff, coupled with the fact that there is nothing on record to show that the employment of defendant with plaintiff was in continuation of Appointment letter Ex.PW1/D1. I am of the considered view that suit of the plaintiff was not bad for nonJoinder of the necessary party i.e. M/s. Pioneer Import Inc.

39. Accordingly, issue no. 6 is also decided in favour of the plaintiff and against the defendant.

40. ISSUE NO. 3 and 4:

41. I am taking up the issue nos. 3 and 4 together as both issues can be decided conveniently.

42. As discussed above, it is the case of the defendant that his services were, in fact, utilised by M/s. Pioneer Import Inc. He also deposed that as per the appointment letter dated 24.12.2004, he was to be paid the amount of Rs. 15,000/- per month w.e.f 01.01.2005 and Rs. 20,000/- w.e.f. 01.04.2005. He has further deposed that later on the amount was enhanced to Rs.70,000/- per month plus an amount of \$ 4000. He has further deposed that in June 2006, he was to be paid an amount of \$ 60,000/- per year i.e. \$ 5000 per month instead of \$ 4000 per month and his last drawn compensation was Rs. 70,000/- per month plus \$ 5000 per month. He has further deposed that plaintiff also agreed to bear the entire tour expenses of USA of his family including his wife and daughter. He has also deposed that his son Nipun Chawla was also appointed by the plaintiff as Assistant Quality Control Manager vide appointment letter dated 22.03.2006. He has further deposed that he was not paid the amount as per agreed terms and conditions. He was to work with plaintiff firm till 15.02.2007 and accounts of the plaintiff firm were to be settled on 28.11.2006, as per the communication Ex.PW1/6 dated 01.01.2007. He has further deposed that the appointment letter Ex.PW1/D1 continued to operate and was containing clause (j) which provided for one month notice or salary in lieu of the notice but he was not given any such notice and therefore, he was entitled to one month salary from the plaintiff. He has further deposed that he rendered his services to the plaintiff firm in USA, till January 2007. Thereafter, the plaintiff continued to use its name for its business and therefore he was entitled to be remunerated for the said period as well. He specifically demanded his dues towards salary till the time, his name was used by the plaintiff but

the plaintiff failed to respond or act on his demand. He has also deposed that the plaintiff issued salary to his son Nipun Chawla from April 2006 to October 2006 and failed to settle his account till date as per the terms and conditions of his appointment.

43. In cross examination by Ld. Counsel for plaintiff, PW□ has deposed that there was no agreement with the plaintiff that the plaintiff would bear the expenses of his wife and daughter for their tour to America. He has further admitted that Visa of his son Nipun Chawla was rejected, when he applied for the first time but denied that thereafter he requested the plaintiff to issue such document so that his son Nipun Chawla could go to America. He has admitted that he was responsible to enhance the performance of plaintiff firm but denied that the performance of the plaintiff firm dropped in America, when he was employed by the plaintiff firm. However, he admitted that he signed the letter Ex.PW1/6 but has volunteered that the said letter Ex.PW1/6 was signed by him as he was directed to do so by the plaintiff. DW□ has further deposed that he did not write any protest letter, when he was directed by the plaintiff to sign the said letter. DW□ has further deposed that he wrote numerous mails asking for his outstanding salary and TDS certificates and Ex.DW1/F is one of such document. He has further admitted that there is no other document except Ex.DW1/F in respect of demand of his outstanding salary.

44. However, perusal of Ex.DW1/F shows that it deals with the TDS certificates of defendants only.

45. Now, a perusal of Ex.PW1/6 also shows that the plaintiff company wrote a letter to defendant Vinod Kumar Chawla on 01.01.2007 whereby he (defendant) was given 45 days to run the plaintiff firm in a profitable and smooth manner as growth of the plaintiff company had fallen sharply. A perusal of this letter further shows that defendant had put a proposal to the plaintiff company and agreed that he would not take any remuneration or compensation against the service to be rendered by him during those 45 days. It was also communicated by the plaintiff to the defendant, by this letter that if his performance was found satisfactory he would be paid remuneration/ compensation as per normal course and would work with the plaintiff firm as per the Employment Agreement Ex.PW1/4, but if the desired results were not achieved by defendant till 15.02.2007, the defendant would voluntarily step down or plaintiff firm would advise him to step down from his position with the account settled on 28.12.2006.

46. It is worth noting that DW□ has categorically admitted in his cross examination, conducted on 05.06.2018, that there was no financial transaction between him and the plaintiff in any manner after November 2006 but has volunteered that he did not get the US salary for the period of November and December 2006 and the statement of account for US salary was not placed on record by the plaintiff. It is also worth noting that DW□ has further categorically admitted that he did not write any letter or mail to the plaintiff demanding the statement of account of US Company or Indian Company of plaintiff. Further, DW□1 has further admitted that nothing was due to his son Nipun Chawla from the plaintiff. He has further admitted that he received all his TDS certificates.

47. Further, Part□I of Limitation Act 1963 provides the limitation for suits, Appeals and Applications.

48. Section 3 of the Limitation Act 1963 is reproduced here for ready reference:□(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. (2) For the purpose of this Act□□□

(a) a suit is instituted □□□

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted□□□

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the property officer of that court.

49. Further, as per Article 7 of the Schedule to the Limitation Act, the period of limitation in a suit for wages in the case of any other person, is three years and the said period begins to run when the wages accrue due.

50. In the present case, the defendant has filed the counter claim on 04.01.2011 alongwith written statement. Since, the defendant has clearly admitted that there was no financial transaction between him and the plaintiff company after November 2006, and nothing was due to his son Nipun Chawla from the plaintiff, in these facts and circumstances of case, I am of the considered view that the counter claim filed by the defendant is not within the period of limitation and defendant is not entitled to any relief as claimed by him in the counter claim.

51. Accordingly, issue no. 3 and 4 are also decided in favour of the plaintiff and against the defendant.

52. Now, I am dealing with ISSUE NO. 2.

53. PW□ has categorically deposed in his affidavit of evidence Ex.PW□/A that defendant entered into an Employment Agreement with the plaintiff on 13.12.2005 and agreed to work for the plaintiff. He has further deposed that at the time of joining the plaintiff firm, the defendant has requested for an advance of Rs.10 lacs and the separate agreement dated 13.12.2005 was executed between

plaintiff and defendant in that regard. He has further deposed that plaintiff gave a sum of Rs. 10 lacs to the defendant as advance by way of cheque No. 437816 dated 13.12.2005 which is Mark X, which was duly encashed by the defendant. He has further deposed that the said amount of advance of Rs. 10 lacs was to be recovered by the plaintiff from the salary of defendant by deducting a sum of Rs. 35,000/- per month. He has further deposed that the performance of the defendant in USA was not up to the mark and plaintiff started suffering heavy losses because of the negligent and callous attitude of the defendant. The plaintiff requested the defendant, on number of occasions, to concentrate and work with full devotion but the defendant did not pay any heed to the request of plaintiff. Therefore, the plaintiff wrote a letter dated 01.01.2007, Ex.PW1/6 and defendant pleaded with the plaintiff to grant him some more time and assured that the desired results would be achieved by him by 15.02.2007 and in case he failed to achieve the desired results he would voluntarily step down.

54. PW1 has further deposed that defendant worked with the plaintiff till November 2006 and after deducting a sum of Rs. 35,000/- per month from the Advance Amount of Rs. 10 lacs a sum of Rs. 6,58,610/- was due and outstanding towards the defendant. The plaintiff asked the defendant to clear the advance amount but defendant did not pay the same on the pretext that his TDS certificate be handed over to him only then he would clear account. The plaintiff issued all the TDS certificates to the defendant but defendant did not pay the due amount to the plaintiff. The plaintiff requested the defendant, on number of occasions, orally as well as by e-mail to clear the due amount and made it clear that if the amount was not paid within seven days the plaintiff would be forced to take legal action against the defendant but the defendant did not pay any heed to the request of the plaintiff and did not pay the due amount despite several requests and reminders sent by the plaintiff.

55. He has further deposed that the advance amount of Rs. 10 lacs was given to the defendant in commercial transaction and therefore plaintiff was entitled for interest @ 18% per annum and defendant was liable to pay a sum of Rs. 1,97,583/- as interest @ 18 % per annum from December 2006 till 31.08.2008 and as such defendant was liable to pay a sum of Rs. 8,56,193/- to the plaintiff.

56. In cross examination by Ld. Counsel for the defendant, nothing to the contrary has come on record. PW1 has categorically denied that he is not entitled to recover any amount from the defendant.

57. On the other hand, the defendant, in his cross examination by Ld. Counsel for plaintiff, has admitted that he had taken advance of Rs. 10 lacs at the time, when he was appointed by the plaintiff firm in December 2005 but has volunteered that the said amount was given to him as job security and a sum of Rs. 35,000/- per month was to be deducted from his Indian salary. He has further admitted that no other document containing the terms and conditions of the advance was executed between him and the plaintiff except Ex.PW1/4.

58. It is worth noting that defendant has also admitted in his cross examination that he was responsible to enhance the performance of the company and signed the letter Ex.PW1/6. It is

further worth noting that defendant has also categorically admitted that there was no financial transaction between him and the plaintiff after November 2006 and nothing was due from the plaintiff to his son Nipun Chawla. He has further admitted that deduction of Rs. 35,000/□ from the advance amount of Rs. 10 lacs was done till November 2006. He has further admitted that he had not returned the entire amount of Rs. 10 lacs to the plaintiff company. He has further admitted that he has received all his TDS certificates.

59. Now, a perusal of "Terms of Advance" Ex.PW1/4 also shows that plaintiff had paid a sum of Rs. 10 lacs to the defendant towards job security and plaintiff was entitled to deduct a sum of Rs. 35,000/□ per month from the salary of the defendant. It is significant to note that there is no clause in the Terms of Advance, Ex.PW1/4 which shows that the plaintiff was not entitled for the deduction of amount of Rs. 35,000/□ per month from the said advance amount of Rs. 10,00,000/□ in case the employment of defendant ceased to exist. A perusal of Employment Agreement Ex.PW1/4 shows that the employment of defendant was to commence on 10 th January 2006. Further, Ex.PW1/6 clearly shows that performance of the defendant was not up to the mark as growth of the company had fallen sharply and defendant had agreed to run the plaintiff firm in a profitable manner and sought a period of 45 days to obtain the desired results and also agreed to work for the plaintiff company, without obtaining any remuneration during those 45 days.

60. Since, it is an admitted case of defendant that there was no financial transaction between him and plaintiff after November 2006 and deduction of Rs. 35,000/□ from the advance amount of Rs. 10,00,000/□ was done till November 2006 and he did not return the amount of Rs. 10,00,000/□ to plaintiff, in these circumstances, I am of the considered view that plaintiff is entitled to recover a sum of Rs. 6,15,000/□ (Rs. 10,00,000 - Rs. 35,000 X 11 months) from the defendant.

61. Further, plaintiff has also claimed interest @ 18% per annum w.e.f. December 2006 to 31 August 2008 and from the date of filing the suit till its realisation.

62. However, I am of the considered view that interest @ 18% per annum is on higher side. I am of the considered view that interest @9% per annum is reasonable rate of interest.

63. Section 34 of Code of Civil Procedure 1908 which deals with interest is reproduce here for ready reference:

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent

per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transaction.

64. Accordingly, it is ordered that plaintiff will be entitled to interest @ 9% Per annum on the principal amount of Rs. 6,15,000/- w.e.f. December 2006 to 31 August 2008 and from the date of filing of the suit i.e. 27.09.2008 till the date of decree. Thereafter, the plaintiff will be entitled to future interest @ 6% per annum from the date of decree till its realisation.

65. Further, plaintiff has also prayed for award of the costs of the suit.

66. Section 35 of the Code of Civil Procedure 1908 deals with costs and is also reproduced here for ready reference.

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

67. In the present case the defendant has not paid the amount to the plaintiff and plaintiff firm was forced to file the suit. In these circumstances, I am of the considered view that plaintiff is also entitled for costs of suit.

68 With these observations, issue No. 2 is also decided in favour of plaintiff and against the defendant.

69. RELIEF The suit of the plaintiff is hereby decreed with costs. Plaintiff is entitled to recover a sum of Rs. 6,15,000/- from the defendant with interest @ 9 % per annum from December 2006 till 31 August 2008 and from the date of filing of the suit i.e. 27.09.2008 till the date of decree and thereafter the plaintiff will be entitled to future interest @ 6% per annum from the date of decree till its realisation.

However, counter claim filed by the defendant is hereby dismissed. However, there is no order as to costs.

Decree sheet be prepared accordingly.

File be consigned to record room, after due compliance.

ANNOUNCED IN THE OPEN COURT ON 05.04.2019 (BIMLA KUMARI) ADJ-3 (CENTRAL) TIS HAZARI COURTS DELHI