

Chinapen v Trinny Security Services Ltd

2022 IND 6

CN695/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Sevalingum CHINAPEN

Plaintiff

v/s

Trinny Security Services

Defendant

JUDGMENT

The Plaintiff is claiming a total amount of **Rs49 538.46/- as Balance Due On Wages, Extra Wages, and Wages As Indemnity In Lieu of Notice** for termination of his employment by **the Defendant Company without Notice and without Justification**, by way of Plaintiff dated 05-09-19.

The Plaintiff was assisted by the Labour Officer, and the Proceedings were held in Creole.

As per the Sitting of 29-07-21, the Defendant Company, which was duly represented by its Manager, stated that the Defendant Company was not agreeable to the Claim, and that it would retain the services of Learned Counsel.

The matter was therefore fixed to 16-09-21 for Pro Forma (Letter), and on the said day, the Defendant Company leaving default, the matter was therefore fixed for Make Out to 14-01-22, and a Notice Of Make Out dated 16-09-21 was sent to the Defendant Company.

At the Sitting of 14-01-22, the Defendant Company left default anew, and the Plaintiff was allowed to make out his case against the Defendant Company, pursuant to **s. 16(1) of the District And Intermediate Courts (Civil Jurisdiction) Act:**

Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon the proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as valid as if both parties had attended.

The Plaintiff's Case

The Plaintiff's version under Solemn Affirmation was to the following effect.

The Plaintiff was working as Watchman for the Defendant Company since 15-11-15, on a 06-day week basis, from 06h00 to 18h00, and was working regularly on Sundays, with a monthly salary of Rs11000/-, his being remunerated from 16th of one month to the 15th of the following month.

The Plaintiff was getting no payslip, and although he did sign a Contract, he was never given a copy thereof.

The Plaintiff last worked on 11-05-16 and finished working at 06h00 on 12-05-16, on which date, at about 14h00, he notified his Employer that he would not be able to go to work, as one of his close Relatives had passed away.

The Director of the Defendant Company informed the Plaintiff by phone at about 21h00 on the said day that he did not need to go to work, and that he was to go and meet him in the Office when he had the time.

The Plaintiff thus considered that the Defendant Company had terminated his employment on 12-05-16 without Notice and without Justification.

The Plaintiff last worked on 27 days between 16-04-16 and 12-05-16, and was only paid Rs8000/- instead of Rs14 423.08/-.

The Plaintiff also averred that he had not been paid for his extra work that he performed on 22 Saturdays and 25 Sundays between 06h00 and 18h00 for the period 11-11-15 to 12-05-16.

The Plaintiff was therefore claiming from the Defendant Company the sum of Rs49 538.46, representing the balance of his salary, his extra work, and his Notice, and was praying for a Judgment condemning the Defendant Company to pay to him the said sum.

The Plaintiff did not insist on the Prayer at paragraph 4(a) and (b) of the Plaintiff.

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter.

At the outset, the Court notes that the present matter is before the Industrial Court, and that in many instances, such as the present one, the documentary evidence is nonexistent. The Court is however of the considered opinion that this does not necessarily adversely affect the case for the Plaintiff.

The Court has noted that the Plaintiff deponed that he was employed by the Defendant Company as from 15-11-15, whereas as per the Plaintiff, it was averred that the Plaintiff was employed by the Defendant Company as from 11-11-15.

The Court has also noted that the Plaintiff deponed that ought to have been paid Rs14 423. 08/- for the work performed for the period 16-04-16 to 12-05-16, and this is also what is averred in the Plaintiff at paragraph 1(i).

However, Rs8000/- + Rs3423. 08/- = Rs11 423. 08/-, and not Rs14 423. 08/- as averred by the Plaintiff in Court and in the Plaintiff at paragraph 1(i).

The Court is however of the considered view that these discrepancies in the Plaintiff's case are not sufficient to significantly undermine the Plaintiff's case, the more so in light of the calculations set out at paragraph 2(a) of the Plaintiff.

In the present matter, the Plaintiff's evidence under solemn Affirmation remained unchallenged and rebutted, given the Defendant Company left default.

The Court has watched the demeanour of the Plaintiff with the utmost care, and the Court is satisfied that the Plaintiff, who deponed in a clear and coherent manner, was a Witness of Truth, and that the Court can safely act on his testimony.

The Court is alive to the principles set out in the Authority of **Sheeny Worldwide Limited v Aerospace Finance (Asia) Limited** [\[2020 SCJ 171\]](#), and is of the considered view that **s. 16(1) of the District And Intermediate Courts (Civil Jurisdiction) Act** applies to the present matter, and that the Court can give judgment in terms of the Proeclipe, given the Defendant Company was present in Court and denied the Claim, but did not appear at the subsequent Sitting, as highlighted above, and given the present matter does not "include [...] a claim for substantial damages"¹.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court finds the case for the Plaintiff proven on the Balance of Probabilities, and the Court therefore orders **the Defendant Company to pay to the Plaintiff the sum of Rs49 538.46/- as Balance Due On Wages, Extra Wages, and Wages As Indemnity In Lieu of Notice for termination of his employment without Notice and without Justification.**

The Plaintiff not having insisted on the Prayer at paragraph 4(a) and (b) of the Plaintiff, the Court makes no Order in relation thereto.

¹ s. 16(1) of the District And Intermediate Courts (Civil Jurisdiction) Act

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 26 January 2022]