

Mudhoo v Spec Universe Ltd

2022 IND 13

CN487/2020

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Miss Charishma MUDHOO

Plaintiff

v/s

Spec Universe Ltd

Defendant

JUDGMENT

The Plaintiff is claiming from the Defendant Company, by way of Plaint dated 25-11-2020, **the total sum of Rs77 207. 20/-, representing Wages As Indemnity In Lieu Of Notice, Severance Allowance, Arrears In Wages, Wages, and Refund of Outstanding Annual Leave, together with Interest and such amount by way of Compensation for Wages lost or expenses incurred in attending Court.**

The Defendant Company denied the Claim in its Oral Plea, but subsequently left default.

The Plaintiff was assisted by the Labour Officer.

The Defendant Company elected not to retain the services of Learned Counsel.

The Proceedings were held in Creole.

S. 7(1) of the Industrial Court Act 1973 provides as follows:

Subject to this Act, and to any specific procedural provisions in any enactment specified in the First Schedule, all proceedings before the Court shall be instituted and conducted in the same manner as proceedings in a civil or criminal matter, as the case may be, before a District Magistrate.

The present matter being of a Civil nature, the Court refers to the provisions of the Law as to Default Judgments pursuant to **s. 16(1) of the District And Intermediate Courts (Civil Jurisdiction) Act (hereinafter referred to as DICCJ)**:

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 Defendant Company was duly represented and gave its Oral Plea at the Sitting of 24-06-21, and was warned in Court for Trial for 27-10-21. However, at the Sitting of 27-10-21, the Defendant Company left default, and did not sufficiently excuse its absence in Court, and the matter was fixed for Make Out to 23-02-22, upon the Motion of the Labour Office to have the case fixed for Make Out being granted.

At the Sitting of 23-02-22, the Defendant Company was still absent, and the Plaintiff was allowed to make out her case against the Defendant Company.

The Case For The Plaintiff

The Plaintiff's version under solemn Affirmation was in the following terms.

The Plaintiff started working for the Defendant Company on 09-08-17, as Salesgirl, on a 06-day week basis, earning a basic salary of Rs9360/-, and she was posted at Triolet.

The Plaintiff had no written Contract of Employment, and her terms and conditions of work were governed by the **Distributive Trades (Remuneration Order) Regulations [G.N. 172 of 2004]** (hereinafter referred to as the Regulations), and she rarely obtained any payslip. The Plaintiff produced one of her payslips (Doc. P1).

The Defendant Company only paid her Rs9360/- per month instead of Rs9394/- per month, as per the Law, as from August 2019, and failed to pay her 05 days on which she worked between 01-10-19 and 05-10-19.

The Plaintiff also worked on Sundays, and the Defendant Company failed to pay her for the 04 hours she worked on 06-10-19.

The Plaintiff explained that on 06-10-19, she went to work in Goodlands, as her Boss, Mr Deepak Burrut had transferred her to the Goodlands Showroom, when her Boss called her and swore at her, the Plaintiff explicitly stating in Court the words.

On 07-10-19, the Plaintiff went to work at the Triolet Showroom, as she had the key, and to ask the reasons, when her Boss swore at her again.

The Plaintiff thus considered that her employment had been terminated without Notice and without justification on 06-10-19.

The Plaintiff had 19 Local Leaves outstanding, which the Defendant Company failed to reimburse to her.

The Plaintiff was praying for a Judgment in terms of the Plaint, and added that she had attended Court twice, and had incurred Rs62/- for each day, as travelling expenses.

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 limited. The Court is however of the considered view that this does not necessarily adversely affect the Plaintiff's case.

The Court has watched the demeanour of the Plaintiff with the utmost care, and the Court is of the considered view that the Plaintiff deposed in a cogent manner, and that it can safely act on the Plaintiff's testimony.

Although the Plaintiff's case was undefended, the Defendant having left default, it is still incumbent on the Court to apply the principles set out in the case of **Sheeny Worldwide Limited v Aerospace Finance (Asia) Limited** [\[2020 SCJ 171\]](#):

It is apt to remind legal advisers that when a case is undefended, it does not mean that the plaintiff is dispensed from establishing its case on the balance of probabilities in accordance with the law and the facts required to prove the plaintiff's case. An undefended case should not be conducted in an amateurish manner. Making out a case does not mean that one has to turn a blind eye to all the principles of evidence and all the matters required to be proved.

A Court of law is under a positive obligation to ensure that any judgment given is soundly grounded both in law and on the facts of the case before it. This obligation is not in any manner reduced by the fact that the judgment is a judgment by default, vide **Hurnam D v Bholah K B & Anor** [\[2009 SCJ 265\]](#).

A flimsy outline of the plaintiff's case will not be sufficient to establish the claim and the Court would not give judgment in favour of the plaintiff unless it is satisfied that all the legal elements have been established.

As per the Oral Plea of the Defendant Company, paragraphs 1(a) and (b) of the Plaint were admitted.

In light of the above, the Court is of the considered that it has been established that:

1) The Plaintiff was in the continuous employment of the Defendant Company as Shop Assistant since 09-08-17 at its Triolet shop; and

2) That the Plaintiff's terms and conditions of employment were governed by the Regulations. In the present matter, although the Plaintiff's case remained unchallenged, the Court is of the considered view that the Plaintiff has failed to establish her Claim for the reasons given below.

The Plaintiff deponed to the effect that the said Mr Deepak Burrut was her Boss, but as per paragraph 1(g) of the Plaint, the said persons is mentioned as the "Defendant's preposé". Now, no evidence was forthcoming from the Plaintiff as to the capacity in which the said person was acting. There is therefore no way for the Court to ascertain whether the said person was involved in the management of the Defendant Company, and therefore was in a position to bind the Defendant Company by his acts and doings.

Further, as per paragraph 1(h) of the Plaint, the Plaintiff called on 07-09-10 to enquire as to the exact reasons for her termination of employment from her Boss, but in Court, the Plaintiff deponed to the effect that she went to work at the Triolet Showroom on 07-10-19, as she had the keys in her possession and to ask her Boss for the reasons.

Now, although the difference in the dates is likely due to a typing error, the Court is of the considered view that this only adds uncertainty to the Plaintiff's case, the moreso as the dates are of the essence. As per the Plaint and her testimony, the Plaintiff considered that her employment had been terminated on 06-10-19. This does not however sit well with the Plaintiff's testimony to the effect that she went to work at the Triolet Showroom on 07-10-19.

Had the Plaintiff in fact considered that her employment had been terminated on 06-10-19, there would have been no reason for the Plaintiff to go to work at the Triolet Showroom on 07-10-19, regardless of the fact that the keys were in her possession.

Also, the Court is alive to the fact that the Plaintiff produced a payslip (Doc. P1), but the Court also notes that the said document is on the name of one "Mudhoo Charisma" whereas the Plaintiff's name is spelt in the Plaint as "Charishma Mudhoo".

Further, the said document bears no stamp or signature, whether from the Plaintiff and/or the Defendant Company.

The Court is therefore of the considered view that the Plaintiff has not proven a direct link between the said document and herself and/or the Defendant Company, and has thus failed to establish that she was earning Rs9360/- per month.

Even if the Court were to act on the basis of the said document (Doc. P1), the Court notes that the Plaintiff deponed to the effect she was working as Salesgirl, whereas the said document mentions the occupation of “Shop Assistant”.

And although the Defendant Company admitted that the Plaintiff’s terms and conditions of employment were governed by the said Regulations, the Court notes that in the said Regulations, there are different monthly basic salaries mentioned in relation to Salespersons and Shop Assistants.

The Court notes that the said document (Doc. P1) relates to the month of April 2019, whereas as per the Plaintiff, her employment was terminated on 06-10-19. However, no evidence was adduced on behalf of the Plaintiff to establish that at the time of the termination of her employment, she was working as Salesperson and not Shop Assistant.

The Court is also of the considered view that the Plaintiff has failed to establish that she ought to have been earning Rs9394/- per month “in accordance with the aforesaid Regulations”, given the said figure does not appear in the said Regulations.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, although the Plaintiff’s evidence under solemn Affirmation remained unchallenged and unrebutted, and although it has been established that the Plaintiff was in the continuous employment of the Defendant Company as Shop Assistant since 09-08-17 at its Triolet shop and that her terms and conditions of employment were governed by the Regulations, the Court is of the considered view that the Plaintiff has failed to establish that she was earning Rs9360/- per month instead of Rs9394/- per month in accordance with the said Regulations, that

she was working 06 days a week, and also worked on Sundays, and that by the acts and doings of her Boss, the said Deepak Burrut, her employment was terminated by the Defendant Company on 06-10-19 without Notice and without justification.

In view however of the Defendant Company's admissions as highlighted above, the Court is further of the considered view that the present matter is a fit and proper case for the Court to exercise its discretion to non-suit the Plaintiff, in order not to "foreclose the unvindicated rights of the plaintiff", applying the principles set out in the Authority of **Daby v The State of Mauritius** [\[2007 PRV 41\]](#) and **Bhogun & Ors v Surroop & Ors** [\[2021 SCJ 209\]](#).

The Court is also of the considered view that a "proper administration of justice" (**Daby (supra)**) justifies the non-suiting of the Plaintiff, who would thereby be "given the opportunity (subject to statutes of limitation) to start afresh" by entering a fresh Claim (**Daby (supra)**), in particular considering that the present matter concerns Industrial Relations.

For all the reasons given above, the Plaintiff is hereby non-suited.

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

[Industrial Court]

[Date: 28 February 2022]