

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1037 of 2005

[M/s. Siddiqui Fund Trust v. National Highway Authority and others]

None present for the Parties.

Date of hearing : 07.02.2019Date of Judgment : 07.02.2019**JUDGMENT**

Muhammad Faisal Kamal Alam, J: The Plaintiff (*M/s. Soorty Enterprises (Private) Limited*), has brought this action at law against the Defendant, *inter alia*, for Declaration, Specific Performance, Damages and Compensation for Rs.31,65,833/- (*Rupees Thirty One Lac Sixty Five Thousand Eight Hundred Thirty Three Only*), with the following prayer clauses_

“In view of the facts and grounds stated hereinabove, it is humbly prayed that this Hon’ble Court may be pleased to pass Judgment and Decree against the Defendant:

- (a). **To declare that abandonment of employment is without due process of law in violation of letter of appointment dated 01.01.2004, illegal, unlawful and having no legal effect;**
- (b). **Direct the Defendant for specific performance by way of joining the Plaintiff;**
- (c). **Direct the Defendant to pay to the Plaintiff a sum of Rs.3,165,833/- being loss suffered on account of abandonment of employment to the Plaintiff;**
- (d). **Any such further and or appropriate relief, in the interest of justice under the circumstances of the case as this Hon’ble Court be deemed fit.”**

2. The claim of the Plaintiff-M/s. Soorty Enterprises (Private) Limited is that the Defendant in terms of Letter of Appointment dated 01.01.2004 was engaged as 'Shift Supervisor' in Garment Washing Process Department ("GWP"), the Defendant was responsible for washing of garments with stone chemical known as 'Stone Washing' in order to meet and conform to the Foreign Buyers requirement. It is the case of Plaintiff that Defendant resigned from his service on 17.12.2005 without serving one month prior notice due to which the Plaintiff suffered loss of Rs.3,165,833/-, in this regard, a Legal Notice was also served by the counsel of the Plaintiff to the Defendant.

After service of summons, the Defendant filed his Written Statement wherein he denied all the allegations leveled against him in the Plaint. He contended that he was working as Shift Supervisor and his responsibilities were confined to only one shift and the Plaintiff has employed a Washing Manager, who controlling the whole process (G.W.P.) and the Defendant is not responsible for delay in production or loss. He further contended that he has submitted his resignation to Manager (G.W.P) on 08.12.2005 and he handed over the key of Motor Cycle to Mr. Faisal Admin Officer of G.W.P and gave his complete responsibilities to Mr. Sarfraz Cheema Manager (G.W.P.) and the Manager (G.W.P.) informed the Defendant that his resignation is accepted. He further contended that the Supervisors are not responsible for whole assignment / task but they have to obey the direction of Manager during their Shift. He further submitted that he replied the Legal Notice through his counsel and in his reply he has clarified his position.

From the pleadings of the parties, following Issues were framed by the Court_

- “1). *Whether the defendant abandoned the employment without due process, in violation of the letter of appointment dated 01.01.2004?*
- 2). *Whether due to the abrupt and unlawful abandonment, the Plaintiff suffered financial loss and damages?*
- 3). *Whether the dispute between the Employer and Employee explained in the Industrial Relations Ordinance?*
- 4). *Whether the suit is barred by law?*
- 5). *Whether the Defendant as a Shift Supervisor, was responsible for processing the orders of foreign buyer(s)?*
- 6). *What should the decree be?”*

5. After settlement of Issues, the matter was adjourned for want of evidence. On 07.11.2018, intimation notice to the parties as well as their counsel was issued but no one was come forward to proceed with the matter. On 21.01.2019, despite intimation notice, no one was present on behalf of the parties, therefore, the matter was adjourned to 06.02.2019 with a note of caution that if on the next date of hearing, Plaintiff’s side remains absent then appropriate orders will be passed. Today, in the first round no one was present on behalf of Plaintiff, therefore, the matter was kept aside to be taken up after Tea Break. After Tea Break, the matter was against called but no one is present.

7. The Plaintiff’s side has not pursued the matter diligently nor has come forward to lead the evidence, *inter alia*, at least Plaintiff could have examined himself, but he did not. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as is the present case, in view of the above discussion.

8. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In the present case, despite providing ample opportunities, the Plaintiff has not come forward to testify and prove his claim. The reported decision of Hon'ble Supreme Court handed down in the case of Rana Tanveer Khan v. Naseer Khan-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendants, thus the former (Plaintiff) is not entitled to any relief.

9. Consequently, this suit is dismissed, with no order as to costs.

JUDGE

Dated 06.02.2019

M.Javaid.PA