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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 06.08.2025+ **RFA(COMM) 44/2022 & CM APPL. 28204/2022**

M/S SHIRDI INDUSTRIES LTD & ORS.

.....APPELLANTS

Through: Mr. Amit Kumar Srivastava, Adv.

versus

MANOJ VIJ

.....RESPONDENT

Through: Ms. Pallovi Vashisht, Adv.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)**

1. This appeal is filed under Section 13 of the Commercial Courts Act, 2015 challenging the impugned judgment and decree dated 15.12.2021 passed in C.S.(COMM) No. 61/2019 by the learned District Judge, Commercial Court-01, West District, Tis Hazari Courts (**Trial Court**), whereby, he has decreed the suit filed by the respondent herein for an amount of ₹4,48,749/- together with interest @ 10% per annum from the date of filing of the suit.

2. The facts to be noted for the record are as follows: the respondent was appointed as a General Manager-Laminates *vide* appointment letter dated 23.10.2017 with the appellant company and his monthly salary was ₹1,45,583/- w.e.f., June, 2018. Due to personal difficulties i.e., illness of his



father, he had gone to Kolkata and was on leave. The appellant illegally terminated his services on 12.09.2018 without giving any prior notice or intimation. He has claimed salary for the month of July, 2018 upto September, 2018 together with compensation for three months' salary in lieu of waiving off the notice period of termination.

3. The case of the appellant/defendant was that the respondent/plaintiff had not turned up for duty and remained absent and therefore, his services were terminated. The appellant had relied upon the appointment letter to contend that the respondent was on probation and during the probation period, his services could have been terminated without any notice or payment in lieu thereof.

4. The Trial Court held that the termination of the respondent was illegal as no show cause notice was issued by the appellant to explain his unauthorized absence before terminating him and accordingly granted him ₹4,48,789/- with interest, i.e., the salary for three months in lieu of waiving off the period of notice.

5. The submission of the learned counsel for the appellant is that the Trial Court has erred in granting the said amount to the respondent in view of the stipulations in the appointment letter which was filed by the respondent himself.

6. In this regard, he drew our attention to clauses 13 and 14 of the appointment letter which deals with termination of service by the company without notice and termination of employment by either party which we reproduce as under:-

“13) TERMJNATION OF SERVICE BY THR COMPANY WITHOUT NOTICE:

Without prejudice to any of the rights and remedies which the Company



may have against you or other mode of termination of your services the Company shall be entitled to terminate your employment forthwith without giving any notice in writing or payment in lieu of such notice in case of any act of non-compliance with respect to the Code of Conduct, disobedience of any guidelines issued from time to time, indiscipline, insubordination, incivility, insobriety, dishonesty, irregular attendance or other serious misconduct or negligence on your part or incompetence in the discharge of your duty, or poor or unsatisfactory performance or the breach by you of any of the terms of your employment or it is found at any time that the information given by you while taking up employment with us is incorrect or false. The Company's opinion as to whether any of the events mentioned therein has occurred shall be final and binding on you and the same cannot be questioned by you on any ground whatsoever.

14) TERMINATION OF EMPLOYMENT BY EITHER PARTY:

Without prejudice to the Company's right to other modes of termination of your services provided elsewhere in this letter of appointment, your services can be terminated by either of the party by giving to the other 90 (Ninety) days' notice in writing or payment of an amount equivalent to your 90 (Ninety) days' salary in lieu of such notice. For the purpose of this clause salary means and includes (Basic salary and all allowances as Well.) During the period of notice of termination of employment you shall not be entitled to avail any leave even if there is balance leave available and you shall discharge your duties diligently and sincerely during such notice period. In the event of termination by you, you will also be required to disclose truly and honestly your future plan to the Company as a recognition and acknowledgement of experience and knowledge gained during the period you served as employee of the Company."

7. It is a conceded case that the respondent went to Kolkata in July, 2018 and continued to remain absent from his services with the appellant organization. The termination was effected from 12.09.2018 as the respondent did not join back his duties. It is also conceded that the respondent had not written a single communication specifying the reasons for his absence from July, 2018 to September, 2018. Clause 13 is very clear in as much as, the appellant company can terminate the services of the employee without issuing any notice in the eventuality of a misconduct.

8. As the unauthorized absence amounts to misconduct and no



communication was sent by the respondent to the appellant, specifying the reasons for his absence, it was not for the Trial Court to say that show cause notice was required to be issued before terminating him.

9. Though the issue whether the termination could be effected by the appellant company without issuing a show cause notice was considered by the Trial Court, it has answered the same in favour of the respondent. We do not agree with the conclusion, in view of the specific terms of the employment.

10. Accordingly, we are of the view that the present appeal requires to be allowed. We set aside the impugned judgment/decreed dated 15.12.2021 passed in C.S.(COMM) No. 61/2019 by the Trial Court.

11. Pending application(s) is dismissed as infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 06, 2025

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