

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.2044 of 2011 (O&M)

Date of decision: 5.5.2015

Gurmail Singh

... Appellant

Versus

The Registrar, Co-Operative Societies, Punjab Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Binderjit Singh, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The respondent has not been appearing on the previous dates and is, therefore, proceeded *ex parte*.

The plaintiff served in the army. While he was away from his native place, his brother Darshan Singh took a loan of ₹ 3752.45 from Hakam Singh Wala Cooperative Agriculture Service Society Limited defendant 3. Darshan Singh died unmarried and issueless before he could repay the loan. The loan stood. In order to recover the money, the Society appointed the Inspector, Cooperative Societies, Bathinda to arbitrate the dispute. An *ex parte* award was passed in a sum of ₹ 8950/- as principal amount plus interest against the plaintiff, brother of Darshan Singh, without hearing him or allowing him to produce evidence in defence.

2. Aggrieved by the award, the plaintiff challenged the same by filing a appeal before the Assistant Registrar Cooperative Societies,

Bathinda. The appeal was dismissed. It was the plaintiff's case that he was not responsible for the debt of Darshan Singh since he had not inherited any property from Darshan Singh or had inherited the estate left behind by his brother. Faced with the grim situation, the plaintiff filed a civil suit challenging the award dated 8th June, 1998 passed by the arbitrator as well as the appellate order. The suit was decreed on 21st March, 2002 and the award was set aside.

3. Having got the illegal arbitration award set aside by civil decree after great exertion, inconvenience and trouble spent in pursuing the litigation, the plaintiff brought the present suit for damages against the three official defendants and Hakam Singh Wala Cooperative Agricultural Service Society Limited, the Society which extended the loan to Darshan Singh. He prayed that he should be awarded damages for the time, effort and money spent in trying to undo the wrong done to him by an illegal arbitration award. The plaintiff quantified the damages at ₹ 1 lac along with future and *pendente lite* interest @ 18% per annum from the date of filing of the suit till realization of the decretal amount together with costs of the suit on account of harassment, both physical and psychological and the financial loss caused to the plaintiff by the defendants whereby he was forced to enter into litigation thrust upon him. Learned Civil Judge (Junior Division), Bathinda partially decreed the suit and awarded damages of ₹ 50,000/- along with interest @ 9% per annum from the date of filing of the suit till realization. The defendants were made liable jointly and severally vide judgment and decree dated 16th February, 2010.

4. The defendants went in appeal to the court of the learned Additional District Judge, Bathinda. The question in appeal was that could

plaintiff-Gurmail Singh be saddled on account of debts outstanding against his brother Darshan Singh when he neither inherited any property of his brother nor stood guarantor for the loan. The court of first appeal culled out the principles on which a claim for compensation can be made and what are the ingredients which required proof. These were : -

- a) That he was prosecuted by the defendants;
- b) That those proceedings terminated in his favour;
- c) That the prosecution was without any reasonable and probable cause;
- d) That it was due to malicious intention and not with a mere intention of carrying the law into effect”

5. While applying those principles to the facts of the case the lower court of appeal held as follows:-

“ In para. 13 where the core complaint on which the suit for damages was based was affirmed. The Court *a quo* observed that no doubt, neither the plaintiff inherited the property of the deceased brother Darshan Singh nor was he guarantor for the loan availed by his brother from the Society. The illegal arbitration award was set aside by the Civil Court by an earlier decree. The court of first appeal allowed the appeal and set aside the order of the learned trial Court pegging her reasoning on the slender point that initiation of the arbitration proceedings was without malicious intention . The Court recorded, “There is nothing on the record showing that arbitration proceedings were initiated by the defendants against the plaintiff with malicious intention. Perusal of the documentary evidence on the file produced by the plaintiff reveals that plaintiff was nominee in the documents executed by his deceased brother Darshan Singh, while becoming member of Hakam Singh Wala Co-operative Society. Only on account of this fact, defendants initiated arbitration proceedings against the plaintiff being nominee of Darshan Singh after his death. Therefore, these arbitration proceedings cannot be considered to be without any reasonable and probable

cause. In such circumstances, when the arbitration proceedings were initiated due to the fact that plaintiff was nominee in the documents, malicious intention cannot be attributed to the defendants in any manner. All these facts were not considered by the trial court while passing the impugned judgment and decree. Learned Trial Court failed to properly appreciate the facts and evidence on the file to find out, if there was reasonable and probable cause with the arbitrator for initiating proceedings against the plaintiff and further, malicious intention of the defendants for initiating such proceedings. Therefore, judgment of the learned Trial Court is not sustainable and same is liable to be set aside, especially when evidence on the file proves that proceedings were initiated by defendants/arbitrator for reasonable and sufficient cause and there was no malicious intention on their behalf.”

6. It is true that the trial court did not examine the case from the angle of the plaintiff being the nominee of Darshan Singh in papers submitted while his brother applied to become a member of the Society. To that extent, there is a patent deficiency in the work of the learned trial Court but then the question is, could this one single fact turn the case against the plaintiff.

7. The substantial question of law arises in this appeal as to whether the plaintiff could be held liable to repay the loan of his dead brother when he neither inherited his estate nor was a guarantor of the loan and was only his nominee in the membership documents submitted to defendant 3-Society and in the circumstances, can it be said that the arbitration proceedings instituted by the defendants against the plaintiff was a wanton exercise without reasonable or probable cause so as to justify a claim for damages for malicious prosecution or simply for damages for

wrongful prosecution. Then what relief is grantable?

8. There is a clear distinction between a nomination made while entering into membership of a cooperative society and passing off onerous burden caused on the death of Darshan Singh to his brother, the plaintiff. So long as the plaintiff had nothing to do with the taking of loan by his brother, he could not be burdened with liability to repay the loan of his dead brother. This would not be a pious duty, as a son might owe towards the debts of his father to be repaid from the estate inherited. Gurmail Singh was not his brother's keeper.

9. The rights of the lender are restricted to the estate of the deceased borrower devolving on his heirs and legal representatives. The defendants could not have blindly proceeded against the plaintiff-appellant without establishing *prima facie* that Gurmail Singh had inherited the property of Darshan Singh and, therefore, he was liable to the extent of his inheritance towards the loan and adjudication could not be foisted on the plaintiff without ascertaining the basic facts upon which recovery of money could stand.

10. The documentary evidence on record revealed that the plaintiff was a nominee in the documents executed by deceased brother-Darshan Singh while becoming a member of Hakam Singh Wala Cooperative Agriculture Service Society Limited. It is well embodied in law that a nominee does not become owner of moveable property by virtue of nomination. He has only the right to receive money whose claimants may be others including the nominee but he does not automatically inherit civil liability which has adverse and evil civil consequences on his personal

rights. A nominee can receive money but cannot be compelled to shell it out from his pocket unless what he signed as a nominee, was acceptance of liability likely to be incurred in the future. The nominee should be made aware of a likelihood of incurring a financial liability for defaults of the borrower as then he would become a guarantor which Gurmail Singh was not to start with. This aspect has been affirmed by the court of first appeal in favour of the plaintiff that he was not the guarantor of the loan amount. There is a great deal of distance between a “nominee” and “guarantor”. Lower appeal court clearly over-read the documentary evidence and imagined rights and liabilities flowing from papers executed at a time when late Darshan Singh become a member of the Society. No rule or law has been relied upon by defendants from where liabilities would flow from Darshan Singh to Gurmail Singh. What is the nature of documentary evidence which misdirected the court of first appeal to fasten liability on a nominee is not known. Nothing has been discussed on the face of the lower court judgment/decreed dated 25th November, 2010 either. Therefore, finding that there was no malicious intention attributable to the defendants, is not a sound finding, either in law or on facts. The civil court decree dated 21st March, 2002 and its effect has not been examined by the Court *a quo* in appeal. The appellant was put to serious trouble and expense by a blind litigation instituted against him through an illegal arbitration process where an award was made without hearing him by breaching principles of natural justice. The defendants cannot go behind an earlier civil decree which confirms that the appellant was wronged when the award was set aside and the decree has gained finality. The expression, “malicious intention” is not a

combination of words of arts since there is still intention which has to be gathered and understood arising from a bundle of facts and circumstances.

11. In short; There can be no doubt that the plaintiff was prosecuted by the defendants; those proceedings terminated in his favour by a decree; the prosecution was without any reasonable and probable cause being based on a mere intention of nomination expressed in membership forms and papers; neither were the defendants, the prosecutors in the arbitration proceedings, carrying the liability into effect of recovery in accordance with law and to the contrary in abuse of it without due authority to proceed against a nominee who was not the guarantor of the loan. The court of first appeal thought that the ingredients were not satisfied and there was no reasonable and probable cause for the loaner to proceed through the process of the machinery under The Haryana Co-Operative Societies Act, 1984. However, this Court is inclined to think otherwise atleast from a reading of the extracted portion of the judgment and decree of the learned Additional District Judge, Bathinda as reproduced above, where the court failed to appreciate the legal significance of the term, "intention" after returning a finding that the plaintiff neither inherited the property of the deceased-Darshan Singh nor stood guarantor for the loan.

12. Still further, the moot issue can be examined from quite another point of view. Where was the need to introduce 'malicious intention' and to misdirect the suit in that direction. It is writ large ex facie that the plaintiff must have had to spend money on lawyers who he was compelled to engage to defend himself, the financial loss suffered, time and energy wasted, inconvenience caused, trouble taken and mental and physical harassment

suffered on account of litigation thrust on him. The plaintiff asked for compensation for all that. It is time that the Courts become more realistic when dealing with cases of the present kind. Legal principles are not meant to be shackles against relief based on what appears fair and just. We would need to apply the maxim *ex aequo et bono* which principle is well accepted in the law to decide on the principles of fairness and justness, in the given circumstances, including in this case to apply also the principle *res ipso loquitur* when facts speak for themselves, then the proceedings should not have been initiated against the plaintiff on the sole ground that he was a nominee. When proceedings were launched they were to the peril of defendants.

13. For the foregoing reasons, the judgment and decree passed by learned Additional District Judge, Bathinda is found suffering from error of reasoning. I am unable to sustain the judgment and decree of the learned Additional District Judge, Bathinda dated 25th November, 2010 which is set aside by setting aside the reasoning in para. 13 of the judgment. Consequently, the judgment and decree dated 16th February, 2010 passed by learned Civil Judge (Junior Division), Bathinda is restored and the appeal is allowed.

(RAJIV NARAIN RAINA)
JUDGE

May 5, 2015
Paritosh Kumar