

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4070 of 2011(O&M)
Date of Decision: August 11, 2015

Baldev Singh

..... Appellant

Versus

Malwa Gramin Bank and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manish Kumar Singla, Advocate
for the appellant.

Mr. Harish Goyal, Advocate
for respondent No.1.

Amit Rawal, J (Oral)

During the pendency of the appeal the controversy which has reached up to this Court arisen from the suit filed by Malwa Gramin Bank against the original borrower Baldev Singh and Baljeet Kaur.

It is submitted that the plaintiff-Bank had extended a loan to Tota Singh for purchase of Tractor and in lieu of that he mortgaged the land with defendant No.2 and sold the same to defendant No.3-Baldev Singh as a result of that Bank had obtained a decree of ₹4,03,515/- which contained element of interest @ 13% and lis pendence.

During the pendency of the appeal a miscellaneous application bearing No. 11736 of 2002 at the behest of the appellant, for restraining the Bank from selling the property in view of the fact that they were ready to settled the matter with the Bank, had been filed.

On the basis of aforementioned application an order dated 9.9.2014 was passed which reads thus:-

Learned counsel for the appellant submits that the appellant is prepared to deposit the outstanding amount in respect of the loan borrowed by respondent no. 2-Tota Singh. It is contended that some amount was deposited by the appellant but upto date payment inclusive of the interest has not been paid.

Respondents no. 2 and 3 were served in this appeal but they have not appeared. Subsequently, on 05.10.2012, this Court directed Chief Judicial Magistrate to ensure presence of respondents no. 2 in this Court. The report was received from the Chief Judicial Magistrate that respondent no. 2 has left the village.

Learned counsel for respondent no. 1-Bank submits that the statement of outstanding amount due on the account of respondent no. 2 would be supplied to the appellant within one week and learned counsel for the appellant undertakes that the appellant would deposit the same in installments of ₹ 1 lac each after every two months and clear the dues before the next date.

Ordered accordingly.

List on 20.02.2015. “

Mr. Harish Goyal, learned counsel appearing on behalf of respondent No.1-Bank submits that in pursuance to the aforementioned order the appellant has discharged the liability of loan of Tota Singh and paid the entire outstanding amount and the execution has been consigned, therefore, no cause of action survives

viz-a-viz-appellant Bank.

Learned counsel for the appellant submits that he may be permitted to recover the amount which has been paid to the Bank in discharging the liability of Tota Singh.

I have heard learned counsel for the parties and appraised the paper book.

Shorn of the fact explained, it is a matter of record that the entire liability of the Bank has been discharged which is reflected in the order dated 6.12.2014 which reads thus:-

“File taken up in the National Lok Adalat today on an application moved by the JD No.3 Baldev Singh.

Compromise has been effected between the parties. Matter is finally settled for the amount of Rs. 4,08,000/-, payable by the JD No.3 Baldev Singh to the Decree holder Bank up till 20.12.2014, out of which, amount of Rs. 1 lakh has been handed over to the above named Branch Manager in the court today.

Separate statement of the parties have been recorded.

In his statement by Mr. Mahesh Kumar Bansal, Branch Manager, along with counsel, a prayer for dismissal of the present execution application as withdrawn has been made.

Accordingly, the present execution application stands dismissed as withdrawn.

Parties shall remain bound by their statements made in the court.

Ahlmad is directed to consign the file to the record room.”

In view of the fact that execution application has

been dismissed, no cause of action qua respondent No.1 survives,the appeal is therefore rendered infructuous. However the appellant shall be at liberty to recover the money in accordance with law from Tota Singh.

Accordingly, the appeal is dismissed as having been rendered infructuous.

(AMIT RAWAL)
JUDGE

August 11, 2015
archana