112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2392 of 2015 (O&M)
Decided on: 28.5.2015.

State of Haryana and another

... Appellants

Versus

Ranbir Singh @ Ranvir Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Gaurav Bansal, AAG, Haryana,
for the appellant-State of Haryana.

K.C.PURI.J.

CM No. 6286-C of 2015

There is delay of 19 days in filing the appeal. The same stands condoned on the grounds mentioned in the application. The application stands allowed.

Main case

This appeal has been directed by the State of Haryana against the judgment and decree dated 28.1.2015 passed by Sh. Sukrm Pal, Additional District Judge, Sonepat vide which the appeal filed by the defendant appellant against the judgment and decree dated 29.10.2011 passed by Sh. Pawan Kumar, Additional Civil Judge (Senior Division), Sonepat was dismissed.

The brief facts of the case of the plaintiff are that he had been a registered owner of J.C.B. machine bearing registration No.

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HR- 46 A-5860. It was averred that the said machine was hired by the office of District Town Planner, Sonipat i.e. defendant No.2 for the purpose of demolition work of unauthorized construction at Murthal Road, Sonipat. The said machine was engaged in the work of demolition of the unauthorized construction at Murthal road, Sonipat on 1.7.2001 under the control and guidance of the office of the District Town Planner, Sonipat. At 12.15 p.m. the said machine was set at fire by the mob comprised of the defendants No.3 to 22. As a result of fire, the said machine was burnt out totally. The said machine was purchased for a value of Rs. 14 lacs one and half year prior to the incident. The plaintiff suffered a loss of Rs.10 lacs as a result of burning of the JCB machine No. HR-46A-5860. The loss was certified by the Company having expertise status. The office of the District Town Planner, Sonipat is a department of State of Haryana, so the State of Haryana is responsible for making good the loss and payment of Rs.10 lacs to the plaintiff and defendants No.3 to 22 who had been members of the mob are responsible for setting on fire the JCB machine and are also liable to compensate the loss to the State of Haryana. It was averred that the defendants have been asked to make good the loss of Rs.10 lacs but the defendants are avoiding the plaintiff on one pretext or the other and have refused to oblige the plaintiff. Hence the suit.

Upon notice defendants No. 1 and 2 appeared and filed their written statement taking preliminary objections that the

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plaintiff has not come to the court with clean hands and no legal notice under Section 80 CPC has been served upon the defendants. The suit is not maintainable and the plaintiff has no cause of action to file the present suit. On merits, it was submitted that an oral agreement to the effect that demolition work of unauthorized construction will be performed and the plaintiff will be paid per hour charges for the said work. No risk or liability was covered by the defendants. According to the provisions of Motor Vehicles Act, the plaintiff was under obligation to insure the vehicle in question. He himself contravened the provisions of law. The answering defendants are not liable to make good the alleged loss by fire. Plaintiff has agreed to charge Rs.600/- per hour for the said work, as such the plaintiff himself was in-charge of the said JCB machine at the time of demolition of work. The driver of the said JCB machine was working as per instructions of the plaintiff. The defendant No.2 has paid higher charges to the plaintiff to the tune of Rs. 4000/-. Plaintiff has no legal right to ask the defendants to make good the alleged loss of JCB machine. It was further pleaded that the suit filed by the plaintiff was false and frivolous and liable to be dismissed.

Defendants No. 3 and 22 upon notice put in appearance and filed their written statement taking preliminary objections of maintainability, cause of action, the suit being bad for non-joinder and mis-joinder of necessary parties and was time barred. It was pleaded that the answering defendants have no knowledge of any

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demolition work of the unauthorized construction at Murthal Road, Sonipat on 1.7.2001 under the control and guidance of the office of District Town Planner, Sonipat. The answering defendants have also no knowledge that at 12.45 p.m., the machine was set on fire by the mob. The answering defendants have no concern regarding loss of machine and occurrence. The defendants No. 3 and 22 are not responsible for the said fire to the JCB. The police of Police Station Sadar, Sonipat falsely implicated the answering defendants and others in case FIR No. 173 dated 1.7.2011 under sections 147, 148, 149, 186, 332, 353, 427, 435, 307 and 506 IPC but the Additional Sessions Judge, Sonipat acquitted all the answering defendants and others on 5.10.2004. No cause of action arose in favour of the plaintiff to file the present suit against the defendants. Remaining allegations were denied.

A separate written statement was filed on behalf of defendants No.13 to 15 taking various preliminary objections. It was submitted that the answering defendants have no knowledge of any demolition work of the unauthorized construction at Murthal Road, Sonipat on 1.7.2001 under the control and guidance of the office of District Town Planner, Sonipat. The answering defendants have also no knowledge that at 12.45 p.m., the machine was set on fire by the mob as the answering defendants were not party. The answering defendants have no concern of any loss and occurrence as alleged by the plaintiff. It is incorrect that defendants No. 3 to 22 who had been the members of the mob were responsible for setting up fire to the JCB machine. The

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police of police station Sadar Sonipat falsely implicated the defendants and other in FIR No.173. The ld. Addl. Sessions Judge acquitted the answering defendants and others on 5.10.2004. It was pleaded that the question of asking to make the good loss of Rs. 10 lacs to the answering defendants does not arise. No cause of action arose in favour of the plaintiff to file the present suit against the answering defendants.

Defendants No.19 and 21 filed joint written statement taking preliminary objections that the suit is not maintainable, the plaintiff has no cause of action and locus standi to file the present suit and plaintiff is estopped by his act and conduct to file the present suit and no equity lies in favour of the plaintiff as he has concealed the material facts from the court and plaintiff has not come to the court with clean hands, and thus is not entitled to get any relief from the Court. It was pleaded that the answering defendants were not part of any mob as alleged. There is no occasion by the plaintiff to ask the answering defendants to make good the loss of Rs. 10 lacs. The answering defendants have no role to play with the alleged loss, if any. It was further pleaded that the suit is false and frivolous and is liable to be dismissed.

From the pleadings of the parties, following issues were framed:-

(1) Whether the plaintiff is entitled for recovery of an amount of Rs.10,00,000/- from the defendants ?OPP

(2) Whether the plaintiff has not come to the Court

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with clean hands ?OPD

(3) Whether the suit is not maintainable ?OPD

(4) Whether the plaintiff has no cause of action ?OPD

(5) Whether the suit is bad for non-joinder of necessary parties ?OPD

(6) Whether the suit is time barred ?OPD

(7) Relief.

In order to prove his case, the plaintiff stepped into the witness box as PW-1 and examined PW-2 Smt. Seema Clerk, District Town Planning, Sonipat, PW-3 Ajmer Singh, PW-4 Sushil Kumar, PW-5 Ramesh Saroha, Development Officer and closed the the evidence.

In rebuttal, the defendants examined DW-1 Bhuvnesh Kumar, DW-2 Satya Parkash and closed the evidence.

After appraisal of the evidence, the trial Court decided issue No.1 in favour of the plaintiff and against the defendant. Issues No.2 to 6 were not pressed. The same were decided against the defendants. Consequently, suit of the plaintiff was decreed vide judgment and decree dated 29.10.2011 passed by Sh. Pawan Kumar, Additional Civil Judge (Senior Division), Sonipat.

Feeling dis-satisfied with the aforesaid judgment and decree dated 29.10.2011, the defendant appellant filed first appeal before the lower appellate Court. Vide judgment and decree dated 28.1.2015 passed by Sh. Sukrm Pal, Additional District Judge, Sonepat

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the appeal was dismissed.

Still feeling dis-satisfied with the aforesaid judgments and decrees dated 29.10.2011 and 28.1.2015, the defendant appellant has filed the present regular second appeal.

The appellants in para No.18 of grounds of appeal has mentioned that following substantial questions of law are involved:-

(i) Whether the appeal of the appellant is maintainable ?

(ii) Whether the plaintiff/respondent is entitled for recovery of an amount of Rs.10,00,000/- from the appellants ?

(iii) Whether the suit of the plaintiff/respondent was bad for non-joinder of necessary parties ?

(iv) Whether the suit of the plaintiff/respondent was time barred?

I have heard learned counsel for the appellants and have gone through the record.

Learned counsel for the appellants has submitted that suit is bad for non-joinder of necessary parties, the suit was time barred.

During the course of arguments, the factual position in the present case has not been disputed by the learned State counsel. The plaintiff is the owner of JCB machine bearing registration No. HR-46-A-5860. The said machine was hired by the office of District Town

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Planner, Sonepat for the purpose of demolition of unauthorized construction at Murthal road, Sonepat. It is also not disputed that on 1.7.2001 the said machine was set at fire by the mob comprising of the defendants No.3 to 22. So, it was the duty of the State to protect the machine when it was under the control of State. Both the Courts below have rightly held that the State should have saved the machinery from the mob. Otherwise also, recovery right has been given to the State. The State can recover the amount from the wrong doers. The suit is not time barred. Counsel for the appellants could not point out how the suit is bad for non-joinder and mis-joinder of parties. The second appeal lies only if any substantial question of law has arisen. However, from the facts on the file, the only factual position, which is not disputed even by the appellants, is involved and as such, no substantial question of law has arisen.

Consequently, the appeal is without any merit and the same stands dismissed.

28.5.2015. **(K.C.PURI)**
SN **JUDGE**

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