IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: OCTOBER 13, 2015

1. C.M. NOS.8538 TO 8543 C OF 2014 & R.S.A. NO.3702 OF 2014

Jaswinder Pal Singh

.....Appellant

VERSUS

Punjab and Sind Bank and another

....Respondents

2. C.M. NOS.8644 TO 8649 C OF 2014 & R.S.A. NO.3740 OF 2014

Jaswinder Pal Singh

.....Appellant

VERSUS

Punjab and Sind Bank and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vijay Lath, Advocate,
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.8538 C of 2014 in R.S.A. No.3702 of 2014
C.M. No.8644 C of 2014 in R.S.A. No.3740 of 2014

Present applications under Order 44 Rule 1 of the Code of Civil Procedure have been filed by the applicant-appellant to allow him to file these two appeals as an indigent person.

It has been contended by the counsel for the applicant-appellant that the applicant-appellant is unable to pay the court fee as required on the memorandum of appeal as he has no money. He has been dismissed from service by the respondent-Bank in the year 2000 and, therefore, neither he has received any service benefits nor has he any bank account or source of income. He has only two sets of wearing clothes and shoes etc., the value of which is not more than ₹2,000/-. In addition, he has a residential house at Anandpur Sahib, where he is residing. Except this, he has no other property. On the basis of these assertions, prayer has been made to entertain the both the appeals on his behalf as an indigent person. In support of these submissions, he has filed his affidavit as well.

In view of the above averments, which are duly supported by an affidavit of the applicant-appellant, both the applications are allowed and the applicant-appellant is allowed to file the appeals as an indigent person.

C.M. No.8539 C of 2014 in R.S.A. No.3702 of 2014
C.M. No.8645 C of 2014 in R.S.A. No.3740 of 2014

Both the abovesaid applications have been filed for condonation of delay of 721 days in refiling the appeal.

The reason for delay in refiling the appeal, as mentioned by the counsel, is that on 18.08.2012, after removing all the objections paper books of both the appeals were handed over to the Clerk to file the same in the Registry. However, inadvertently he again put the paper books in the briefs and he remained under the bonafide belief that cases have been refiled. However, when on 28.06.2015, the applicant-appellant approached the office of the counsel to know the status of his cases, the briefs were checked and the paper books were found lying in the same. Only then it came to the notice of the counsel that inadvertently the paper books could not be refiled. Thereafter, immediately the cases were refiled in the Registry. As per the counsel, the said delay in refiling the appeals is unintentional and bonafide. The said averments are duly supported by an affidavit of the counsel.

In view of the above averments, which are duly supported by an affidavit of the applicant-appellant, both the applications are allowed and delay of 721 days in refiling the appeals is condoned.

C.M. No.8540 C of 2014 in R.S.A. No.3702 of 2014
C.M. No.8646 C of 2014 in R.S.A. No.3740 of 2014

In these applications, prayer is for condonation of delay of 39 days in filing the appeals.

For the reasons mentioned in the applications, which are supported by an affidavit of the applicant-appellant, the applications are allowed and delay of 39 days in filing the appeals is condoned.

C.M. No.8542 C of 2014 in R.S.A. No.3702 of 2014
C.M. No.8648 C of 2014 in R.S.A. No.3740 of 2014

Prayer in these applications, which have been moved under Order 41 Rule 27 read with Section 107 of the Code of Civil Procedure, is to produce and prove on record an audit report dated 14.11.2000.

It has been stated in the applications that the cause of action accrued to the respondent-Bank to file the suit for recovery against the applicant-appellant on 14.11.2000, when the audit report was prepared and it is on this date the alleged neglect and misconduct of the applicant-appellant came to the knowledge of the respondent-Bank and, thus, the period of limitation started from the said date. The suit has been filed on 17.12.2003, which is after more than three years. The said document would go into the foundation of the cases of the respondent-Bank and, therefore, is essential to decide the case. It has been stated that the applicant-appellant could not produce this document before the trial Court despite due diligence as he was under strain and stress and the same was not to his knowledge, until he came to know about the same on 10.06.2012, when alongwith other papers, the police challan against the applicant-appellant was filed in the Court. The authenticity of the said document cannot be disputed by the respondents and, therefore, the present applications deserve to be allowed.

I have heard the counsel for the applicant-appellant and have also gone through the records of the case but said contention of the counsel cannot be accepted.

It is clear from the evidence led by the parties that the said fact was in the knowledge of the applicant-appellant as he has admitted in his cross-examination that he had been served with a charge sheet on 26.12.2000, where this aspect was there and, therefore, he could have brought the said document on record before the trial Court at that stage. In any case, the said report would not be required for pronouncement of the judgement and further that this aspect/plea has been duly considered by the lower Appellate Court.

Therefore, in this view of the matter, there is no merit in these applications and the same stand dismissed.

C.M. No.8541 C of 2014 in R.S.A. No.3702 of 2014
C.M. No.8647 C of 2014 in R.S.A. No.3740 of 2014

In the light of dismissal of C.M. No.8542 C of 2014 in R.S.A. No.3702 of 2014 and C.M. No.8648 C of 2014 in R.S.A. No.3740 of 2014, these applications for placing on record the copy of the audit report dated 14.11.2000 and also for exemption from filing certified copies of the documents stand dismissed.

<u>C.M. No.8543 C of 2014 & R.S.A. No.3702 of 2014</u>
<u>C.M. No.8649 C of 2014 & R.S.A. No.3740 of 2014</u>

Counsel for the appellant has stated that these are two connected appeals, where the facts involved are identical, except that two different suits were preferred by the respondent-Punjab and Sind Bank for recovery of different amounts from the appellant. He further states that even issues involved in the cases are also same and, thus, these appeals can be decided by a common order. He has argued Regular Second Appeal No.3702 of 2014 and, therefore, the facts are taken from the said case for disposal of both these appeals.

The sole argument, which has been advanced by learned counsel for the appellant, is that the suit preferred by the respondent-Bank is barred by limitation as the same has not been filed within a period of three years from the date of knowledge of the fraud/embezzlement having been committed by the appellant.

This contention of learned counsel for the appellant cannot be accepted as prior to issuance of the charge sheet, which was duly served upon the appellant on 26.12.2000, it cannot be said that the Bank had the knowledge about the misconduct and misappropriation or embezzlement of the amount by the appellant. As per Article 4 of the Schedule of the Limitation Act, 1963 (for short, "the Act"), period for limitation for filing a suit by principals against agents for neglect or misconduct is three years from the date such neglect or misconduct becomes known to the employer. It is true that the audit report is dated 14.11.2000 wherein it was mentioned that the amounts have been withdrawn on different dates but no entry was incorporated for claiming that the abovesaid amounts are due and as per the pleadings and the evidence, which has come on record, a preliminary enquiry was held in which appellant also participated and after submission of the preliminary enquiry report and the competent authority concurred therewith, issued a charge sheet to the appellant and, thus, it cannot be said for the purpose of Article 4 of the Act that the knowledge of fact constituting fraud, had been acquired prior thereto. Knowledge postulates in itself the words "becomes known" as mentioned in Article 4 of the Act, which means definitive knowledge and not mere suspicion or doubt. It is at the stage after the matter has been thoroughly gone into and the competent authority forms an opinion that in fact the employee had acted in a negligent manner or has misconducted, the said date would be treated as the date when the fact constituting the misconduct or negligence of the employee becomes known to the employer.

Present is a case of fraud and misappropriation, where the knowledge of the same can only be said to be on the date when a definite decision has been reached by the competent authority, forming an opinion that the act constituting fraud, has been committed by the employee and, therefore, a charge sheet is served upon him. The charge sheet was served upon the appellant on 26.12.2000, which factum is not disputed by the appellant, rather admitted by him in his cross-examination. Therefore, the cause of action accrued to the respondent-Bank on 26.12.2000 and the suit had been filed on 17.12.2003, which is within a period of three years from the date misconduct and negligence of the appellant became known to the Bank. The findings, thus, recorded by the Courts below on this aspect cannot be faulted with.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeals, the same stand dismissed.

Since the main appeals stand dismissed, C.M. No.8543 C of 2014 in R.S.A. No.3702 of 2014 and C.M. No.8649 C of 2014 in R.S.A. No.3740 of 2014 for staying the operation of the impugned judgements and decree are also dismissed.

October 13, 2015 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**