

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.806 of 2015 (O&M)

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Date of decision:9.3.2015

Panjab University, Chandigarh and others

.....Appellants

v.

Davinder Kaur

.....Respondent

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Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arun K. Bakshi, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by the appellants-defendants aggrieved against the impugned judgment and decree dated 27.2.2013 passed by the learned Civil Judge (Senior Division), Ludhiana in civil suit which has been partly decreed and the appeal filed by the present appellants has been dismissed by the learned Additional District Judge, Ludhiana, vide judgment and decree dated 11.12.2014.

It is stated in the grounds of appeal that the judgment and decree dated 11.12.2014 passed by the learned Additional District Judge, Ludhiana, upholding the judgment and decree dated 27.2.2013 passed by the learned Civil Judge (Senior Division), Ludhiana (partly decreeing the suit for recovery filed by respondent-plaintiff) is against law and evidence

on record and is liable to be set aside. It is stated in the grounds of appeal that learned lower Courts failed to take notice of the fact that the respondent-plaintiff had earlier filed Civil Writ Petition No.6220 of 2000 in this Court in respect of the same matter which has been decided by this Court.

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

At the time of arguments, learned counsel for the appellants argued that earlier a civil writ petition as stated above had been filed in this Court and damages asked for in that writ petition were not given by this Court. Therefore, counsel argued that the civil suit was not maintainable. Learned counsel for the appellants further argued that the respondent had not suffered any loss.

After going through the record, I find that Davinder Kaur-plaintiff/respondent filed a suit against the defendants/appellants as Forma Pauperis for recovery of ₹5,25,000/- with interest as damages and loss suffered by her due to gross negligence, carelessness by the defendants, their employees in declaring the result of the plaintiff, on the basis of oral and documentary evidence. As per the plaintiff's version, she had passed her Matriculation examination from Punjab School Education Board in the year 1991. She passed her 10+2 examination in the year 1994. Thereafter, she appeared in B.A. Part-I examination held in April 1995 by the Panjab University, Chandigarh, through Mai Bhago College for Women, Ramgarh. She passed the examination in second division. She appeared in B.A. Part-

II examination held in 1996 and passed that examination also. Then she appeared in B.A. Part-III examination held in April 1997 by Panjab University, Chandigarh , i.e. defendant No.1. She appeared as a student of Mai Bhago College for Women, Ramgarh. The result was declared by Panjab University and her result was shown as 'Result Late'. When the result was not declared for a long period nor the University had sent any intimation to her concerning that result, they visited the office of Panjab University number of times personally and requested the authorities for the declaration of the result. When no action was taken, then Civil Writ Petition No.6220 of 2000 was filed in this Court on which the defendants/ appellants appeared through their counsel, who produced her result-cum-detailed marks card showing that the result was declared on 20.9.2000, as such the writ petition filed by her was disposed of having become infructuous. It is also stated that Defendants No.1 to 3 after receiving notice from the High Court in the above civil writ petition, immediately declared the result by manipulation and produced the copy of result-cum-detailed marks card and she was shown as failed in the examination. She applied for re-evaluation and at last she was declared pass on 29.8.2001. It is the case of the plaintiff that she suffered beyond imagination.

A perusal of the judgments passed by the Courts below shows that the findings are recorded by the Courts below on the basis of evidence and the plaintiff had suffered due to the negligence of the present appellants/ defendants as her result was not declared for more than three years and when it was declared it was also incorrect. Later on, on re-

evaluation she was declared pass after more than four years of her sitting in the examination which itself shows that the plaintiff had suffered a lot. If the result would have been declared at that same time without any unnecessary delay, she might have studied further or have got the job etc. In no way, it can be held that the plaintiff had not suffered any loss. Otherwise also, it is a finding of fact. Both the Courts below have given concurrent findings.

Further from the record, I find that the civil writ petition had not been decided on merit. Therefore, in no way, it can be held that the civil suit was not maintainable or was barred by res judicata. Res judicata could be applied, if the civil writ petition would have been decided on merits and damages would have been declined on merits. But the perusal of the order of this Court in the writ petition shows that the merits had not been discussed as the result was declared by the present appellants during the pendency of the writ petition. Therefore, it was dismissed as having become infructuous. Therefore, res judicata will not apply in the present case.

Learned counsel for the appellants has placed reliance on the judgment of the Hon'ble Supreme Court in Pondicherry Khadi & Village Industries Board v. P. Kulothangan and another, 2003 (4) S.C.T. 913. I have gone through this judgment. This judgment having distinguished facts will not apply in the case in hand as in that case the writ petition had been decided on merit, which are not the facts in the present case. For damages, a civil suit is maintainable and there is nothing to show that as to how the

civil suit is not maintainable.

Even in the appeal filed by the defendants, the learned first appellate Court affirmed the findings recorded by the learned trial Court.

Both the Courts below have recorded concurrent findings and no question of law, much less any substantial question of law arises in the present regular second appeal.

Nothing has been shown that the concurrent findings recorded by the learned Courts below suffer from any infirmity or are contrary to the record, which are correct and as per law. These do not require any interference from this Court and the same are upheld.

Finding no merit in the present regular second appeal, the same is dismissed.

March 9, 2015.

(Inderjit Singh)
Judge

hsp