IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO. 3888 OF 2014 (O & M)
DECIDED ON : 27.03.2015

Shayama Mehta
...Appellant

versus

Punjab National Bank
...Respondent

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

Present : Mr. Daman Dhir, Advocate and
Mr. Suvir Sehgal, Advocate.

K. C. PURI, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 20.12.2013 passed by Shri K. K. Goyal, Additional District Judge, Amritsar, vide which the appeal preferred by the plaintiff/appellant against the judgment and decree dated 23.09.2010 passed by Shri Rajesh Bhagat, Civil Judge (Junior Division), Amritsar, dismissing the suit of plaintiff for recovery was dismissed.

Briefly stated the plaintiff/appellant filed a suit for recovery of ₹27,000/- along with interest.

In brief, the case of plaintiff is that plaintiff is the sole proprietor of M/s Mehta Construction Company. During the year 1982, two FDRs of ₹17,000/- and ₹10,000/- were formed by the plaintiff from the defendant Bank and the same were deposited with the defendant Bank as 50% margin money for the purpose of furnishing two bank guarantees drawn in favour of Executive Engineer, Amritsar, Central Division, CPWD, Ram Tirath Road, Amritsar. Originally these bank guarantees were for six months and have been extending from time to time. The same were not extended by the Bank after 21.12.1989. The sale deeds were also deposited with the Bank for furnishing equilateral guarantees in favour of Executive Engineer, Amritsar. After the expiry of period of bank guarantee, the defendant Bank was bound to release the FDRs. In the year 1999, the defendant Bank made part payment by sending a bank draft of ₹10,860/- A sum of ₹88,300/- is payable by the defendant Bank and the Bank is liable to pay the said amount.

Upon put to notice, the defendant filed written statement taking objection that the suit is time barred and the principles of resjudicata is applicable.

No replication was filed. From the pleadings of parties, following issues were framed :-

1) Whether the plaintiff deposited FDRs of ₹17,000/- and ₹10,000/- with defendant Bank as 50% margin money for the purpose of furnishing two bank guarantees ? OPP

2) Whether the original sale deed was also deposited by the plaintiff with the defendant Bank ? OPP

3) Whether the plaintiff is entitled to recover the amount of FDRs with interest ? OPP

4) Whether the present suit is barred by principles of resjudicata ? OPD

5) Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

6) Whether the suit is barred by limitation ? OPD

7) Relief.

The learned trial court, after appreciating the evidence, dismissed the suit of plaintiff being time barred.

Feeling dissatisfied with the above said judgment and decree dated 23.09.2010, the plaintiff preferred first appeal. The said appeal was dismissed vide judgment and decree dated 20.12.2013 passed by Additional District Judge, Amritsar.

The plaintiff/appellant has challenged both the above said judgments and decrees dated 23.09.2010 and 20.12.2013 respectively, in the instant regular second appeal.

The appellant in para no. 15 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal :-

1) Whether both the courts below have erred in coming to the conclusion that the suit for recovery of money was barred by limitation despite the fact that the bank had illegally retained the balance amount due to the appellant ?

2) Whether the courts below have failed to appreciate the ocular and documentary evidence and erred in coming to the conclusion that the respondent-Bank had illegal withheld the balance maturity amount of the FDRs deposited by the appellant ?

3) Whether both the courts below have erred in holding that the appellant had failed to establish that she had deposited the original sale deed dated 25.11.1981 with the respondent-Bank for meeting the balance 50% margin money towards Bank Guarantees ?

I have heard learned counsel for the appellant and have gone through the case file carefully.

Learned counsel for the appellant has submitted that both the courts below have dismissed the suit of the plaintiff on the ground of limitation. It is further submitted that the amount lying with the bank is a trust money and there is no limitation and on maturity, the amount has to be re-invested.

I have carefully considered the said submission but do not find any force in the same.

It is proved on the file that the plaintiff deposited ₹17,000/- and ₹10,000/- with the Bank as bank guarantees. The case of defendant Bank is that the decree was satisfied amounting to ₹51,683/- and ₹33,000/- was paid to CPWD and a sum of ₹10,860.95 was paid to the plaintiff on 02.07.1999 and the present suit has been filed in the year 2005. So, the suit is hopelessly time barred.

The question of limitation is a mixed question of facts and law. The limitation according to defendant Bank starts from 02.07.1999 when the payment of ₹10,860.95 was made to the plaintiff. It is mentioned in the covering letter of the Bank that the amount has been paid as full and final settlement. So, in these circumstances, now it is the question of fact that limitation starts from 02.07.1999 and the suit for recovery can be filed within three years. The plaintiff remained quite for six years. So, the suit is hopelessly time barred. So, I have no hesitation in holding that no question of law has arisen in the instant appeal. The question of limitation stands decided against the plaintiff/ appellant and in favour of the defendant Bank.

In view of the above mentioned circumstances and in view of Section 100 C.P.C, the appeal in respect of question of fact is not maintainable. Consequently, the appeal is without any merit and the same stands dismissed.

MARCH 27, 2015 **(K. C. PURI)**

shalini **JUDGE**