105 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA No.6098 of 2014 (O&M)
Decided on: 24.4.2015.

Sanmati Paper Udyog Samiti and others

... Appellants

Versus

Punjab State Khadi and Village Industries Board

... Respondent

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

Present : Mr. G.S. Anand, Advocate, for the appellants.

K.C.PURI.J.
CM No. 4140-C of 2015

The application stands allowed. Documents are taken on record subject to all just exceptions for the purpose of present appeal.

Main case

This is an appeal directed by the plaintiffs against the judgment and decree dated 5.7.2014 passed by Sh. Arun Kumar Singal, Additional District Judge, Chandigarh vide which the appeal filed by the plaintiffs against the judgment and decree dated 18.3.2013 passed by Sh. Parinder Singh, Civil Judge (Junior Division), Chandigarh, was dismissed.

The plaintiffs filed suit for rendition of accounts and mandatory injunction with the allegations that plaintiff No.1 had applied for grant of credit facility to the tune of Rs.3.50 lacs which was sanctioned vide letter dated 27.3.1981 and 20.9.1983. In order to secure the repayment of credit facility the defendant got mortgaged the immovable property of plaintiff No.1 to 3 and also got mortgaged the property of Sh. Vishwa Nath Bhalla. After having availed credit facility, plaintiffs cleared the loan amount and thereafter defendant issued No Due Certificate dated 26.2.1996. At that relevant period Sh. Vishwa Nath Bhalla was the Secretary of the plaintiff No.1. He along with letter dated 29.1.1996 handed over the copy of the NOC to the defendant at Chandigarh with a request to return the title deeds of the mortgage property. However, instead of returning those documents, the defendant used coercive methods so as to recover the excess amount of Rs.3.73 lacs by applying interest at the rate of 12% per annum. The plaintiff NO.1 could not utilize the loan taken from the defendant as after very short period, the dark years of terrorism in Punjab commenced and during that period CRPF had also taken possession of the property on which the Unit was to be installed. Despite all these facts the plaintiff No.1 arranged the amount from all its sources and paid the same so as to redeem its properties. Shri Vishwa Nath Bhalla untimely expired on 29.11.2008. After his death, plaintiff No.1 through its President, plaintiff No.2 made a representation dated 22.12.2008 for return of loan documents and refund of excess amount received by them. On finding no positive reply, the plaintiff approached this Court which gave directions that plaintiff would file a civil suit within a period of 45 days and same would be decided by the Court within two years. Hence, the suit.

Upon notice, the defendant appeared and filed Written statement taking preliminary objections of maintainability, cause of action, limitation etc. On merits, it was pleaded that as on date as per account statement, issued by the Accounts Department a sum of Rs.6,48,525/- was still due towards the society. The loan was availed in the year 1981-82 and the plaintiff did not return a single penny till 2003 except an amount of Rs.20,000/-. The dates of payment would show that all payments have been made after 2003 when the Collector put the pressure on the society. Thus, the plaintiff is a defaulter. No right was left with the plaintiffs to retain the loan amount as per terms and conditions. If any amount of loan remained unused or the part of loan mis-utilized then whole of the due amount was recoverable along with penal interest at the rate of 5% in addition to 4-6% normal interest. The letter dated 26.2.1996 was never issued by the defendant. No Due Certificate dated 17.7.1997 is also a forged and fabricated document and it was never issued from the office of the defendant.

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

i. Whether the plaintiff is entitled to rendition of accounts as prayed for ?OPP

ii Whether the plaintiff is entitled to mandatory injunction as prayed for?OPP

iii Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP

iv Whether the present suit is not maintainable ? OPD

v Whether the plaintiff has no cause of action to file the present suit ?OPD

vi Whether the present suit is barred by limitation ?OPD

vii Whether the plaintiff has not approached the Court with clean hands ?OPD

viii Relief.

Learned trial Court reached to the conclusion that plaintiffs have forged the 'No Due Certificate' and has failed to prove that the amount has actually been paid and the suit was dismissed vide judgment and decree dated 18.3.2013 passed by Sh. Parinder Singh Civil Judge (Junior Division), Chandigarh.

Feeling dis-satisfied with the said judgment and decree dated 18.3.2013, the plaintiffs preferred appeal before the first appellate Court. The said appeal was dismissed with costs throughout vide judgment dated 5.7.2014 by Sh. Arun Kumar Singal, Additional District Judge, Chandigarh.

Still feeling dis-satisfied with the aforesaid judgment and decree dated 18.3.2013 and 5.7.2014, the plaintiffs-appellants have preferred this regular second appeal.

The appellants in paragraph No.3 of the grounds of appeal have mentioned that following questions of law are involved:-

i. Whether the suit is within the period of limitation in view of liberty to institute it having been granted vide this Hon'ble High Court's Order dated 22.2.2011 Annexure A-18.

ii Whether the order Annexure A-18 passed by this Hon'ble High Court affords a fresh cause of action to the plaintiffs/appellants to institute the suit?

iii Whether the respondent No.1 can retain the original documents of title of the immovable properties, in question, even after the entire outstanding in respect of the credit facility, in question, has been paid vide letter of redemption Annexure P-8 has been issued ?

iv. Whether the respondent No.1 can retain the excess amount recovered through respondent No.2.?

v. Whether the suit has been properly framed?

vi. Whether the suit is maintainable?

The case of the plaintiffs, in nutshell, is that the loan amount has been cleared and 'No Due Certificate' was issued. Both the

Courts below after appreciating the evidence on the file reached to the conclusion that documents regarding 'No Due Certificate' are forged documents and that plaintiffs have failed to prove that loan amount has been cleared. That being a finding of fact cannot be interfered in the regular second appeal in view of Section 100 CPC. There is no substantial question of law in the present case. The plaintiffs can succeed only in case they are able to prove the fact that defendant-respondent has actually issued 'No Due Certificate' and no amount is actually due. The plaintiffs have failed to prove the said fact. Even during the course of arguments, learned counsel for the appellants failed to point out any evidence that loan amount has been paid. No receipt has been referred during the course of arguments. Mere filing of the writ petition does not give a fresh cause of action. The original document could only be returned in case the loan amount is cleared.

Learned counsel for the appellants has further submitted that since no FIR has been registered inspite of the writing by the defendant and as such, stand of the defendant regarding 'No Due Certificate' is wrong.

However, that argument is devoid of any legal force. Mere fact that police has not registered the case at the asking of the defendant is not a ground to reach at the conclusion that 'No Due Certificate' was actually issued. It seems a negligence on the part of the police not to register the case.

No question of law much less substantial question of law has arisen in the present case. The questions mentioned in paragraph No.3 of the grounds of appeal do not exist in the present case.

In view of above discussion, the appeal is without any merit and the same stands dismissed.

It is not out of place to mention here that even without clearing the dues, the plaintiffs have entangled the defendant in various type of litigation. At one occasion, the plaintiffs filed writ petition and that was dismissed observing that disputed question cannot be agitated in the writ petition and the matter can be decided in the civil suit. Even, after losing in two Courts, the plaintiffs are still agitating before this Court in support of a false claim. The conduct of the appellants is not above board. So, in these circumstances, the appeal stands dismissed with special costs of Rs.25,000/-. The said costs, on realization, be deposited before the District Legal Services Authority, Chandigarh.

24.4.2015. **(K.C.PURI)**
SN **JUDGE**