

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

Date of Decision: February 16, 2016

1. R.S.A.No.5127 of 2010 (O&M)

Lalit Aggarwal

...Appellant

Versus

The Haryana Financial Corporation, Chandigarh

...Respondent

2. R.S.A.No.2691 of 2010 (O&M)

The Haryana Financial Corporation, Chandigarh

...Appellant

Versus

Lalit Aggarwal

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Lalit Aggarwal appellant in RSA No.5127 of 2010 &
respondent in RSA No.2691 of 2010 in person.

Mr.Kamal Sehgal, Advocate,
for the appellant in RSA No.2691 of 2010 &
for the respondent in RSA No.5127 of 2010.

AMIT RAWAL, J. (Oral)

CM Nos.15107-C & 15108-C of 2010 in RSA No.5127 of 2010

For the reasons mentioned in the applications, which are supported by affidavits, delay of 18 days in re-filing and 81 days in filing the appeal is condoned.

Applications stand disposed of.

CM No.15109-C of 2010

In view of the fact that the appellant has concealed the material

facts, no ground is made out to grant permission to him to sue as an indigent person.

CM stands dismissed.

CM No.8130-C of 2010

For the reasons mentioned in the application, permission is granted to the appellant to make the deficiency in the court fees good.

CM stands disposed of.

CM No.8131-C of 2010

For the reasons mentioned in the application, which is supported by an affidavit, delay of 141 days in re-filing the appeal is condoned.

CM stands disposed of.

CM No.8132-C of 2010

Exemption is granted from filing certified copy of judgment and decree dated 11.1.2002.

CM stands disposed of.

RSA Nos.5127 and 2691 of 2010

By this order, I intend to dispose of two Regular Second Appeal Nos.5127 and 2691 of 2010 as the common questions of law and facts involved in both the appeals are the same.

RSA No.5127 of 2010 has been filed by Lalit Aggarwal seeking enhancement of the damages awarded by the Lower Appellate Court and RSA No.2691 of 2010 has been filed by the Haryana Financial Corporation (for short "HFC") for setting-aside of the judgment and decree passed by the Lower Appellate Court.

On the last date of hearing, arguments in *extenso* were

addressed by Mr.Harsh Aggarwal on behalf of the appellant. Today appellant Lalit Aggarwal has appeared in person. Mr.Aseem Aggarwal Advocate for Mr.Harsh Aggarwal submits that he may be permitted to withdraw the Vakalatnama as his client has taken the brief from him.

Appellant Lalit Aggarwal submits that the entire action of the HFC of selling the land, which was branded to be industrial, was found to be incorrect as the nature of the land was agricultural. Even the land was not mutated in the name of Satwant Singh or HFC and it stood in the name of Kartar Singh. Satwant Singh had taken the loan from the HFC and he became the defaulter and proceedings under Section 29 of the State Financial Corporation Act, 1951 were initiated.

No doubt, the appellant has also taken three loans to the tune of ₹3.49 lacs, ₹2.48 lacs and ₹2.70 lacs on different occasions from the HFC, but paid the entire amount, yet the impugned action of the Corporation in taking the measures under Section 29 of the Act was not sustainable and the Lower Appellate Court has awarded partial amount, whereas considerable amount has been spent and the compensation/damages are liable to be enhanced considerably, whereas on the other hand, Mr.Kamal Sehgal, learned counsel appearing on behalf of the appellant-HFC in RSA No.2691 of 2010 submits that the suit was, *ex facie*, barred by law of limitation as it was filed on 23.5.1997, whereas the cause of action accrued in the year 1990. The loanee did not discharge the liability and proceedings under Section 29 of the Act, were initiated and after selling the land in auction, remaining outstanding amount is being sought to be recovered as arrears of land revenue as the recovery certificate was issued as way back on 14.3.1997, but the Lower Appellate Court awarded the compensation

erroneously.

The appellant, appearing in person, has drawn the attention of this Court that the suit was filed as a forma pauperis after receiving the report of the Collector and the Court granting liberty to him to pursue the case as a forma pauper, but ultimately finding no evidence dismissed the same, however, during the pendency of the appeal, the appellant moved an application under Order 41 Rule 27 CPC and sought indulgence of the Court to place on record six documents, i.e., copies of the income tax certificate, certificate of TDS issued by the Income Tax Department vis-a-vis income tax deducted and payment made w.e.f. 1.4.1998 to 31.3.1999, 1.4.1999 to 31.3.2000, 1.4.1999 to 31.3.2000 and 1.4.1999 to 31.3.2000 and certain letters written. In fact, the plaintiff had not approached the Court with clean hands and even had filed a false affidavit, thus, prays that the proceedings under Section 340 Cr.P.C. be initiated against him. He further submits that no substantial question of law arises in the appeal filed by the plaintiff, whereas the following substantial questions of law arise for formulation in the appeal filed by the HFC:-

- 1) Whether the judgment and decree dated 14.10.2009 passed by the Ld.Addl.District Judge, Chandigarh is perverse?
- 2) Whether the Ld.Addl.District Judge, Chandigarh has mis-appreciated the evidence led by the appellant?
- 3) Whether the judgment and decree dated 14.10.2009 is based on conjectures and surmises?

I have heard the learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the appeal filed by the plaintiff as he had not been fair to the Court in pursuing the suit as

forma pauper and thereafter had placed on record certain documents by way of additional evidence. Without taking any further action under the law, I do not intend to delve on the merits and de-merits of the case as this is sufficient to non-suit the appellant-plaintiff and accordingly the appeal filed by him, i.e., RSA No.5127 of 2010 is dismissed.

Vis-a-vis claim of the appellant in RSA No.2691 of 2010, I am in agreement with the submission of Mr.Kamal Sehgal that no evidence has been led to show and prove the alleged damages. In fact, the plaintiff is in arrears of land revenue and the recovery certificate dated 14.3.1997 had already been issued after selling the land to the third party on 19.12.1996. The plaintiff was given chance to clear the outstanding amount, but he did not avail the opportunity and contested the matter for one reason or the other and the account has swelled crores of rupees.

In my view, the Lower Appellate Court has not examined the evidence being the last Court of fact and law in not appreciating the fact that the plaintiff had failed to lead any evidence to claim damages to the tune of ₹2,00,000/-.

In view of what has been observed above, there is merit in the appeal filed by the HFC. Accordingly, the judgment and decree of the Lower Appellate Court is set-aside. Substantial questions of law, noticed above, are answered in favour of the HFC. The suit is accordingly dismissed.

Appeal bearing No.2691 of 2010 is allowed.

February 16, 2016
ramesh

(AMIT RAWAL)
JUDGE