In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 124 of 2013
Date of Decision: 3.3.2016.

Managing Director, Punjab State Warehousing Corporation ....Appellant

Versus

Gurmail Singh and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.D.S.Sukhija, Advocate
for the appellant.

Mr. Shekhar Verma, Advocate
for respondent No. 1.

Mr. Neeraj Yadav, AAG, Punjab.

Mr. H.S.Dhandi, Advocate
for respondent No. 4.

****

SABINA, J.

Respondent No. 1 (plaintiff) had filed suit for declaration challenging the order whereby deduction of ₹ 1,06,633/- at the rate of ₹ 3,000/- per month was ordered to be effected from his salary.

Case of respondent No. 1 (plaintiff), in brief, was that he was appointed as a Godown Assistant with defendant No. 4 and on 17.4.1995, he was transferred to Patran and remained posted there upto 31.7.2002. Defendant No. 3 had loaded three wheat specials from the godown of the corporation at Patran on 10.8.1996, 7.12.1996 and 9.12.1996. Assistant Manager (D), Food Corporation of India at Patran had issued a weight check memo on 7.12.1996 and 9.12.1996 that gunny bags used by defendant No. 4 were of BT (A) Class. However, subsequently Food Corporation of India reported that the gunny bags were of BT (B) Class quality and on account of this, recovery of ₹ 1,06,633/- was sought to be effected from respondent No. 1 (plaintiff). Hence, the suit was filed by respondent No. 1 (plaintiff).

Defendant No. 3, in its written statement, averred that after due verification it transpired that the gunny bags were of BT (B) Class quality and on account of this, ₹ 1,06,633/- were deducted from the account of defendant No. 4.

Defendant No. 4, in its written statement, averred that it was the duty of respondent No. 1 to load specials on 10.8.1996, 7.12.1996 and 9.12.1996 from the godowns of the corporation. Since respondent No. 1 (plaintiff) had been negligent, defendant No. 4 had suffered loss to the tune of Rs. ₹ 1,06,633/- and the said amount was liable to be recovered from respondent No. 1 (plaintiff). Respondent No. 1 (plaintiff) had failed to submit his reply to the show cause notice issued to him in this regard.

On the pleadings of the parties, following issues were framed by the Trial Court:-

"1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether deduction made from the salary of the plaintiff i.e. Rs. 3000/- per month totaling Rs. 1,06,633/- is illegal, null and void, arbitrary, unconstitutional, if so, its effect? OPP

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

4. Whether the suit is not maintainable in the present form ? OPD

5. Whether the plaintiff has concealed the material facts from the court? OPD

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

7. Whether the suit of the plaintiff is not within limitation ? OPD

8. Whether plaint has not been properly valued for the purpose of court fee and jurisdiction ? OPD

9. Whether the suit of the plaintiff is bad for non joinder and misjoinder of necessary parties ? OPD

10. Relief."

Trial Court vide judgment/decree dated 5.6.2009 decreed the suit of respondent No. 1 and further held that defendant No. 4 was at liberty to pass a fresh order on the basis of show cause notice dated 3.3.1998 after complying with the applicable rules within three months. Aggrieved against the said judgment and decree, defendant No. 4 and respondent No. 1 (plaintiff) preferred appeals. The First Appellate Court vide judgment/decree dated 1.10.2012 dismissed the appeals. Hence, the present appeal by the appellant-defendant No. 4.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

In the present case, vide the impugned order, recovery of ₹ 1,06,633/- was sought to be effected from respondent No. 1 (plaintiff). Admittedly, show cause notice was issued to respondent No. 1 (plaintiff) asking him to explain as to why BT (B) Class gunny bags had been used instead of BT (A) Class gunny bags. Respondent No. 1 failed to submit his reply within the stipulated period and, consequently, impugned order was passed. It has been noticed by the Courts below that case of defendant No. 4-appellant was that, in fact, A-Class gunny bags had been used. However, the amount to the tune of ₹ 1,05,594/- was deduced by the Food Corporation of India from the account of defendant No. 4. Admittedly, no departmental enquiry was held against respondent No. 1 before passing the impugned order qua recovery of ₹ 1,05,594/- from his salary. In these circumstances, the Courts below rightly held that the impugned order of recovery was liable to be set aside as it had not been passed in accordance with law. Moreover, the appellant was given liberty to hold a fresh enquiry on the basis of show cause notice dated 3.3.1998.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

March 03, 2016
Gurpreet