204.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-907-1995
Date of decision:05.04.2017

M/s Bhim Sain & Bros. Garhi Birbal, District Karnal ... Appellant

versus

Stage of Haryana and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: None for the appellant.

Mr. Paramjit Singh, AAG, Haryana,
for respondents No.1 to 3.

HARI PAL VERMA, J.

The appellant-plaintiff (herein referred as plaintiff) has filed the present Regular Second Appeal against the judgment and decree dated 27.10.1994 passed by learned Additional District Judge, Karnal, whereby the appeal filed by the respondents-defendants (herein referred as defendants) against the judgment and decree dated 19.09.1991 passed by learned Sub-Judge Ist Class, Karnal, was allowed (meaning thereby, the suit of the plaintiff was dismissed).

Briefly stated, the plaintiff, who was running a Sugarcane Crusher at Village Garhi Birbal under the name and style of M/s Bhim Sain and Brothers, had filed a suit for permanent injunction. As per plaint, he dealt in khandsari business and had applied for the grant of licence from time to time to the authority-defendant No.2 i.e. Sugar

Cane Commissioner, Haryana (respondent No.2 herein). Licences were issued to him from year to year, for which, he had been paying the licence fee regularly. However, vide notice dated 07.04.1986, the defendants had found the outstanding difference of ₹4,700/- in the licence fee deposited by the plaintiff for the years 1977-78, 1979-80 and 1980-81 and accordingly, the plaintiff was directed to deposit this amount. The plaintiff contested the said notice and had also written a letter dated 26.08.1986 to defendant No.2 questioning the amount.

The defendants filed written statement controverting the claim of the plaintiff and for dismissal of the suit.

Vide judgment and decree dated 19.09.1991, the trial Court decreed the suit of the plaintiff and held that the defendants are not entitled to recover the impugned demand from the plaintiff.

Aggrieved against the aforesaid judgment and decree of the trial Court dated 19.09.1991, the defendants filed an appeal, which was accepted by the Lower Appellate Court vide judgment and decree dated 27.10.1994. Thus, judgment and decree passed by trial Court dated 19.09.1991 was set aside.

It is in the aforesaid circumstances, the appellant-plaintiff has filed the present regular second appeal.

No one is present on behalf of the appellant. Record has been perused. As per the grounds of appeal, the Lower Appellate Court has not taken into consideration the pleadings of the parties and has not appreciated the law in its right perspective. Defendant No.4-Jai Dayal

Dewan (respondent No.4 herein) was a Head Clerk in the office of defendant No.2 and he had collected money on account of licence fee from the plaintiff from time to time. Therefore, the plaintiff cannot be held liable to pay the amount demanded through notice dated 07.04.1986. On account of embezzlement on the part of Jai Dayal Dewan-defendant No.4, an FIR had been lodged against him. He was suspended for the allegations of embezzlement. Therefore, the defendants are required to be restrained from effecting any recovery as the appellant-plaintiff is not liable to pay the amount sought to be recovered. Defendant No.4 was a responsible and permanent employee and was authorized to collect the licence fee from the plaintiff for all these years.

On the other hand, learned counsel for the respondents No.1 to 3-State has argued that the impugned recovery on account of licence fee is legally sustainable against the plaintiff as he was supposed to pay the licence fee as detailed in the notice dated 07.04.1986. It was admitted by the plaintiff himself that defendant No.4-Jai Dayal Dewan bungled and deposited less amount in the treasury while forging the treasury challans, and issued the licences. The plaintiff was required to deposit the licence fee leviable by the State Government in the treasury or bank authorized by the treasury instead of giving this amount to Jai Dayal Dewan. There is no material on record to suggest that the State Government had ever authorized defendant No.4-Jai Dayal Dewan to visit khandsari units so as to collect the licence fee without issuing regular receipts and then to deposit the amounts in the treasury. Defendant No.4, while taking benefit of the general lethargy of the licence holders of the khandsari units, started exploiting it by visiting the villages and collecting the fee in cash. If any payment was made by the plaintiff to defendant No.4, it was at the risk and responsibility of the plaintiff, and the State cannot be put to loss.

I have heard learned State counsel appearing for the respondents No.1 to 3.

The plaintiff was running a Sugarcane Crusher at Village Garhi Birbal under the name and style of M/s Bhim Sain and Brothers, and had applied for grant of licence to run the said Crusher. He had been paying the licence fee regularly and it was only vide notice dated 07.04.1986, the plaintiff came to know that he had to deposit the balance licence fee for the years 1977-78, 1979-80 and 1980-81. The plaintiff has claimed that he had already paid the amount and, therefore, he contested the claim as raised by the official defendants. There is no denial of the fact that defendant No.4-Jai Dayal Dewan was employed as Head Clerk in the office of defendant No.2. He had been collecting licence fee regularly from the plaintiff for all these years. This embezzlement has continued even before that period and it is only on 07.04.1986, the defendants had issued notice for recovery of unpaid licence fee i.e. ₹4,700/-. So far as the role of the plaintiff in depositing the licence fee is concerned, there is no denial of the fact that defendant

No.4 was a Head Clerk in the office of Cane Commissioner and believing him (defendant No.4) as an authorized person to collect licence fee, the plaintiff had been paying licence fee for the aforesaid period. Since defendant No.4 had committed embezzlement, the plaintiff cannot be held liable as he had been depositing/paying the licence fee with defendant No.4 under a bona fide belief that defendant No.4 is a representative of defendants being government official. All these years defendants did not raise any demand regarding non-deposit of licence fee for the years 1977-78 to 1980-81. It is only on 07.04.1986 a notice of recovery was issued to the plaintiff. This notice of recovery for outstanding amount was issued only on 07.04.1986, which otherwise after an inordinate delay of 9 years i.e. w.e.f. 1977-78.

Therefore, this Court finds that the judgment and decree dated 27.10.1994 passed by the Lower Appellate Court deserves to be set aside and that the judgment and decree dated 19.09.1991 passed by the trial Court deserves to be upheld. The defendants are not entitled to recover the impugned demand from the appellant-plaintiff as the said amount has already been collected by defendant No.4-Jai Dayal Dewan in his capacity as an official of the Cane Commissioner. The facts that defendant No.4 remained under suspension and an FIR was registered against him, are sufficient to establish that the plaintiff has been acting in a bona fide manner.

No substantial question of law are involved in the present appeal.

In view of above, the judgment and decree dated 27.10.1994 passed by the Lower Appellate Court is set aside and the judgment and decree dated 19.09.1991 passed by the trial Court is upheld. Accordingly, the present regular second appeal stands allowed.

(HARI PAL VERMA)
JUDGE

05.04.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No