IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3676 of 2016 (O&M).
Decided on:-January 19, 2017.

Satkartar Gram Udyog Samiti (Registered) & another

.........Appellants.

Versus

The Punjab Khadi and Village Industries Board & others

.........Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arvind Kashyap, Advocate
for the appellants.

HARI PAL VERMA, J.

CM-9601-C-2016

Prayer in this application filed under Section 151 CPC is for condonation of delay of 13 days in re-filing the present appeal.

For the reasons stated in the application, the same is allowed and the delay of 13 days in re-filing the instant appeal is condoned.

RSA No.3676 of 2016

Appellants-plaintiffs have filed the present regular second appeal against the judgment and decree dated 11.12.2015 passed by learned District Judge, Pathankot whereby their appeal against the judgment and decree dated 20.12.2014 passed by learned Civil Judge (Junior Division), Pathankot, was dismissed.

Briefly stated, facts of the case are that the appellants-plaintiffs had filed a suit for declaration against the respondents-defendants claiming therein that the plaintiffs are entitled for the grant of subsidy amount of Rs.3,90,000/- and the said amount is required to be adjusted against their loan case. A consequential relief in the nature of mandatory injunction directing the defendants No.1 to 3 to adjust the subsidy amount in the loan case of the plaintiffs and to withdraw all the penal interest which has illegally been levied against the plaintiffs, has also been prayed.

The appellant-plaintiff No.1 is a co-operative society and was constituted for manufacturing plywood and plyboard at a small scale level at village Phangrian, P.O. Sarna, Tehsil Pathankot. The plaintiff No.2 is President of the said society. The society applied for a loan from defendants No.1 and 2 in the year 1999. Accordingly, a loan of Rs.17,70,000/- for machinery and working capital was advanced to the plaintiffs. Out of the said amount, a sum of Rs.3,90,000/- was considered as marginal money on account of subsidy. The appellants-plaintiffs utilized the entire loan and utilization certificates were given to the defendants which were approved by the Board. However, on 3.6.2000, the industrial unit of the plaintiffs caught fire. Resultantly, the entire machinery, raw material and finished goods were burnt. The appellants-plaintiffs suffered heavy loss on account of this fire. The matter was immediately reported to the Board. The Board was requested to give necessary relaxation in repayment schedule. Vide letter dated 17.11.2000, the Board recommended concession in loan and relaxation in the mode of payment of monthly installments. The appellants-plaintiffs were verbally assured of all possible help by the defendant. On assurance of the Board, the plaintiffs paid a sum of Rs.3,00,000/- in December, 2002 and Rs.1,50,000/- in January, 2003. The appellants-plaintiffs requested to give relaxation and subsidy, but the same was refused. However, on 22.2.2010, the appellants-plaintiffs were served with a notice of defendant No.5 i.e. Assistant Collector, Pathankot that they should deposit a sum of Rs.51,27,506/- failing which they would be arrested and their property would be attached and auctioned. On receipt of such notice, the appellants-plaintiffs approached the respondents-defendants No.1 to 3 and requested them to grant the concession and also the marginal money of Rs.3,90,000/- to the plaintiffs as per the agreement. It was requested that the said amount be adjusted against the outstanding amount of loan. But, the defendants refused to accept this request leading to filing of the present suit for declaration to the effect that the appellants-plaintiffs are entitled for grant of subsidy of Rs.3,90,000/- and its adjustment against the amount of loan and also for permanent injunction restraining the defendants from enforcing the order of recovery dated 22.2.2010.

The respondents-defendants No.1 and 2 filed written statement taking preliminary objections regarding maintainability of suit, plaintiffs have not come to the court with clean hands and the court has got no territorial jurisdiction to try and entertain the suit. On merits, it was pleaded that industrial unit of the plaintiffs caught fire and its case was recommended to KVIC, Mumbai for concession in the loan and relaxation in monthly installments. It was denied that the appellants-plaintiffs were assured of all possible help as claimed by them.

On the basis of pleadings of the parties, following issues were formulated by the trial Court:

1. Whether the plaintiffs are entitled to the suit for

declaration as prayed for? OPP

2. Whether the plaintiffs are entitled to mandatory injunction as prayed for? OPP

3. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP

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

5. Whether the plaintiffs have not come to the Court with clean hands and have suppressed material facts? OPD

6. Relief.

The trial Court on the basis of evidence so led by the parties dismissed the suit of the plaintiffs vide judgment and decree dated 20.12.2014 and observed as under:

> "*Admittedly, there was any agreement between both the parties. The base of the present suit is agreement which is Ex.P21. Clause 8 of the said agreement dated 05.03.1999 provides that borrower will pay all rents, rate, taxes, payments and outgoings in respect of the hypothecated goods and shall keep the same insured for their full market value against loss or damage by the fire and shall insure against such other risk as the Lender shall require & Shall deliver to the lender the policy or policies of insurance duly assigned or transferred in favor of the lender. All sums received under any such insurance as aforesaid shall be applied on or towards the liquidation of the amounts due by the borrower to the lender. As base of the agreement shows that plaintiff must make the insurance relating to damages or risk. No document is placed on file to show that he had complied with the clause 8 of the said agreement, hence, plaintiff himself had not complied with the provision of impugned agreement. It is settled principle of law that one who*

seeks equity must do equity in the present case. Plaintiff has been failed to comply with the provisions of the agreement. Therefore, he is not entitled for the relief sought. Hence, the plaintiff has failed to prove these issues in his favor. These issues are decided in favor of defendant and against the plaintiff."

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellants-plaintiffs had preferred an appeal before the lower appellate Court. But the same was also dismissed by learned District Judge, Pathankot vide judgment and decree dated 11.12.2015.

It is in the aforesaid circumstances, the appellants-plaintiffs have filed the present regular second appeal.

The appellants-plaintiffs have formulated the following substantial questions of law:

i. Whether the learned trial Court below misread evidence on record in holding that there was non-compliance of Clause 8 of the Agreement dated 05.03.1999 when said issue was not part of lis?

ii. Whether the learned courts below have misread the evidence on record in holding that the plaintiffs have failed to prove their case when the plaintiffs had placed on record Utilization Certificates?

iii. Whether the learned first appellate Court should have remanded the case to trial court to adjudicate on the real controversy between the parties as the trial court had not dealt with the real issue?

iv. Whether after having adjudicated upon the rights of parties the learned court below acted against law in dismissing the suit on ground of territorial jurisdiction in view of agreement between the parties?

v. Whether when there was an arbitration clause and specific objection had been taken by defendants then the dispute was liable to have been referred to an Arbitrator?

Learned counsel for the appellants-plaintiffs has argued that there is misreading of evidence on record. The Courts below have not considered the real controversy between the parties. The suit had been dismissed on the ground of not insuring the industrial unit, goods and stocks etc. of the plaintiffs where as this fact was never an issue between the parties. Even the first appellate Court has not given the reasoning of upholding or reversing the findings of the trial Court. The lower appellate Court has failed to appreciate that the utilization certificates were submitted to the defendants and copy of the said documents were exhibited on record. Further, the original utilization certificates were in possession of the defendants. The documents relating to purchase of machinery and other goods were gutted in fire and whatever best possible evidence was available with the plaintiffs, the same was made available on record. Once the plaintiffs had submitted the utilization certificates, they were entitled to the release of loan amount. In this manner, the appellants-plaintiffs were entitled to the subsidy of Rs.3,90,000/- way back in the year 2000. They were also entitled to relaxation as their unit caught fire.

I have heard learned counsel for the appellants-plaintiffs.

There is concurrent finding of facts recorded by the Courts below that the appellants-plaintiffs have not furnished the utilization certificates. In order to justify their claim, the appellants-plaintiffs were required to establish that they were entitled to subsidy of Rs.3,90,000/- and its adjustment towards the outstanding amount of loan. Admittedly, in order to avail loan, an agreement dated 5.3.1999 as Ex.P9 and Ex.D5 was entered between the parties. As per clause 13 of the said agreement, if the borrower fails to carry on the work of industrial unit for which the funds have been advanced for a continuous period of five years, the entire grant i.e. subsidy relating to capital expenditure shall be treated as loan and the entire fund shall become recoverable by the Board immediately. Therefore, in view of the agreement, so entered, between the parties, the plaintiffs-borrowers were required to utilize the loan within one year from the date of issuance of the cheque. They were also required to furnish utilization certificate. But it has been recorded by the Courts below that except the oral statements made by the appellants-plaintiffs, no such document has been produced on record by the plaintiffs which may establish the purchase of machinery or raw material for the purpose of manufacturing of goods for which the loan was received by the plaintiffs.

No doubt, the appellants-plaintiffs have alleged that after establishment of the machinery and manufacturing unit, the unit caught fire, but here again the plaintiff has failed to prove the damage of machinery and the goods in the fire from any authentic evidence, except tendering into evidence photocopy of report lodged with the police. By way of letters Ex.P47 dated 3.7.2002 and Ex.P48 dated 10.7.2002, the appellants-plaintiffs have themselves admitted that they were being requested by the Board to submit utilization certificate. Other similar notices i.e. Ex.P50 dated 9.8.2002 and Ex.P51 and Ex.P52 were also issued to the appellants-plaintiffs to submit utilization certificate. The record reveals that no such utilization certificate was produced by the appellants-plaintiffs and in this manner, they have failed to prove that they have submitted utilization certificate to the Board.

Thus, once the appellants-plaintiffs have failed to comply with the condition of the agreement so as to avail loan and have not submitted the utilization certificate and have further failed to utilize the loan in accordance with terms of the agreement, the Board was well within its right to forfeit the clause of subsidy of Rs.3,90,000/-.

Both the Courts below have recorded concurrent findings and no substantial question of law arises in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

January 19, 2017
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No