

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.3971 of 2015(O&M)
Date of Decision:20.9.2017**

Jabar Khan

...Appellant

Versus

District Collector, Palwal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vishavjeet Singh, Advocate for
Mr.Keshav Pratap Singh, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction, seeking direction against the defendants to waive off the loan advanced to the plaintiff was dismissed by the learned trial Court, vide its impugned judgment and decree dated 8.7.2014 and his first appeal was also dismissed by the learned District Judge, vide impugned judgment and decree dated 6.4.2015, upholding the impugned judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of the impugned judgment, are that the suit had been filed by the plaintiff on the averments that he was owner in possession to the extent of 1/3rd share i.e. 14 kanals of land in agricultural land mentioned in detail in para no.1 of the plaint, total measuring 41 kanals 19 marlas, situated within the revenue estate of village Lakhnaka, Tehsil Hathin, District

Palwal. 2 kanals 18 marlas of land out of this land had been acquired for the purpose of erecting a minor canal. It was submitted that defendant no.2 i.e. State Government had issued a policy thereby waiving off agricultural loans of the loanees of defendant no.3 Co-Operative Society, who were owning less than five acres of agricultural land. The plaintiff had also availed loans of Rs.41,000/- and Rs.35,000/- from defendant no.3. As per the policy of Government, he was also entitled to seek exemption from repayment of the said loan as he was owner to the extent of only 14 kanals of land. He submitted an application to Collector, Mewat on 28.7.2008 for taking benefit under the above mentioned policy of the Government. The Collector directed the Sub Divisional Magistrate to report about the matter, who in turn had directed the Manager of defendant no.3 society to submit its report after making enquiry. However, no further action was taken in this regard and now the defendant no.3 was insisting upon the plaintiff to repay the amounts of loan obtained by him. The plaintiff requested for passing of a decree for permanent injunction thereby restraining the defendants from effecting recovery of the amounts of loan availed by him, by way of filing the afore-mentioned suit.

Having been put to notice, only defendant No.3, who advanced the loan to the plaintiff-appellant appeared and filed its contesting written statement, raising more than one preliminary objections. Defendants No.1 and 2 were initially proceeded against ex parte. However, the said order was later on set aside and defendants No.1 and 2 were granted another opportunity to file written statement and to contest the suit. When defendants No.1 and 2 failed to file written statement, despite availing last

opportunity, their defence was struck off by the learned trial Court, vide its order dated 21.8.2012. Plaintiff did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants from effecting recovery of the disputed amount of loan from him, as alleged?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
4. Relief.

With a view to substantiate his stand taken in the plaint, plaintiff led his oral as well as documentary evidence. It is pertinent to note here that defendant No.3 was also proceeded against ex parte by the learned trial Court, vide order dated 17.12.2011. After hearing the learned counsel for the parties and going through the evidence brought on record by the plaintiff, the learned trial Court came to the conclusion that the plaintiff failed to prove his case for want of cogent and sufficient evidence. Accordingly, suit for permanent injunction filed by the plaintiff, seeking direction against the defendants not to recover the loan advanced to him by defendant No.3 was dismissed by the learned trial Court, vide its impugned judgment and decree dated 8.7.2014. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 6.4.2015. Hence this second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is the common case between the parties that defendant No.3

advanced loan to the plaintiff-appellant. The only stand taken by the plaintiff for waiving off the loan amount was that since he was having land holding less than 5 acres, his claim was squarely covered under the policy issued by the State Government for waiving off loan of marginal farmers. Defendant No.3, who advanced the loan to the plaintiff-appellant, took a specific stand in its written statement that plaintiff was owner of 10 acres of land as recorded in the loan documents. It is also not in dispute that the plaintiff could not prove on record copy of the policy decision, in accordance with law. His entire evidence right from Exhibit P1 to Exhibit P11 was either revenue documents or legal notice. Copy of the policy decision was not an exhibited document on record. Under these circumstances of the case, the learned courts below were well justified in recording their concurrent findings of facts, while dismissing the suit of the plaintiff because of which the impugned judgments and decrees deserve to be upheld.

Appellant being the plaintiff, onus was on him to prove his case by bringing on record cogent and convincing evidence. Alleged policy, under which the plaintiff was claiming waiver off his loan amount admittedly advanced to him by defendant No.3, ought to have been proved by him, in accordance with law. However, the plaintiff failed to do so and that too for no good reasons.

Another equally important aspect of the matter would be that defendant No.3 was a financial institution and any such policy decision taken by the State Government may not be binding on defendant No.3. It is not even the pleaded or argued case on behalf of the appellant that the

policy decision of the State government was having binding force against defendant No.3. In fact, the plaintiff did not make even an effort in this regard to prove his case as per his pleadings. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“Having heard the respective contentions of learned counsel for the parties and on a careful perusal of record, I am of the opinion that there is no merit in the appeal. No doubt, from the documentary evidence produced on record in the form of jamabandi entries, it is revealed that the plaintiff was having 1/3rd share in agricultural land total measuring 44 kanals 17 marlas. Ex.P-10 is the report of Tehsildar, Hathin verifying the fact that the plaintiff owned 18 kanals of agricultural land at village Lakhnaka, meaning thereby that he was owner of less than five acres of land. However, from this fact alone, he did not become entitled to seek the relief claimed by him and was required to prove that in fact, there was a policy of the Government to waive off the loans of the farmers owning less than five acres of agricultural land and that policy was applicable to defendant no.1 who is admitted to have provided loan to the plaintiff. In this regard, the plaintiff simply placed on record Mark PX photo copy of letter issued on 28.1.2008 by

the Haryana State Co-Operative Apex Bank Limited to the Managing Directors of all the Central Co-Operative Banks in the State of Haryana with regard to the implementation of revival package for Short-Term Co-Operative Credit Structure. First of all this document has not been proved in accordance with law as neither the certified copy of the same had been produced on record nor the said document was proved to have been brought from a proper custody. Simple production of this document on record did not dispense with the requirement of proving the same as per law. Therefore, this document could not be relied upon in evidence. More so, from an overall perusal of contents of this document it is not revealed that there was any policy of Government with regard to waiving off loans of the loanees of defendant no.3 society and further that the plaintiff fulfilled all the conditions of that policy. It was for the plaintiff to stand on his own legs and to produce cogent and convincing evidence in support of his claim. The evidence which has, however, been produced on record falls short of this satisfaction. He could not derive benefit out of the weakness of defendants' case, who failed to produce any evidence on record. From the evidence produced on record by him, it was not proved that there was any policy of the Government regarding waiving off loans of defendant no.3 society and further he fulfilled all the requirements of the so-called policy entitling him to claim the benefit thereunder as a matter of right. In such circumstances, in my opinion, the learned lower court rightly declined the prayer made by the plaintiff by deciding issue no.1 against him. Hence, the findings given by learned lower court are affirmed in this appeal also.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of

the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

20.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No