

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

**RSA No. 901 of 2016 (O & M)
Date of Decision:-03.04.2017**

Rohtash Singh

...Appellant

Versus

Haryana State through Collector, District Mahendergarh at Narnaul and others

...Respondents

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

Present:- Mr. J.P. Sharma, Advocate
for the appellant.

HARI PAL VERMA J.

C.M. No.2465-C of 2016

This is an application seeking condonation of delay of 16 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 16 days in filing the appeal is condoned.

RSA No.901 of 2016 (O & M)

The appellant-plaintiff (hereinafter referred as 'the plaintiff') has filed the present regular second appeal against the judgment and decree dated 13.8.2015 passed by the Additional District Judge, Narnaul, whereby

his appeal against the judgment and decree dated 13.2.2013 passed by learned Additional Civil Judge (Sr. Division), Narnaul, was dismissed.

Briefly stated, the plaintiff, who remained Sarpanch of Gram Panchayat Bihali from the year 2000 to 2005, had filed a suit for permanent injunction restraining the defendants from seeking any kind of recovery or initiating proceedings for the recovery, on the basis of impugned notice bearing No.2224 dated 25.8.2005. It is alleged that on account of collusion of the present Gram Panchayat with Gram Secretary, a false report was prepared, wherein it has been shown that amount of wheat to the tune of 159 quintal 92 kilograms was outstanding towards the plaintiff, having value of Rs.87,956/- and cash of Rs.11,412/-. Thus, total amount of Rs.99,368/- was lying outstanding with the plaintiff. Plaintiff neither deposited the same in the account of Panchayat nor handed over to the current Sarpanch at the time of relinquishing the charge. The allegations are completely based on concocted facts as entries in the muster roll and stock register are duly established that the wheat was distributed among the inhabitants of the village and no amount was outstanding against the plaintiff. The plaintiff has submitted the reply to the impugned notice dated 25.8.2005 and has prayed for dropping of the recovery proceedings against him. However, no opportunity of hearing was given to the plaintiff, but still on the basis of concocted facts, proceedings for recovery have been initiated against him. At the time of handing over the charge to the Panchayat, the plaintiff had requested to defendant No.4 i.e. Gram Panchayat of Village Bihali to take the muster roll and stock register from

him, but defendant No.4 had refused to do so. The plaintiff had devotedly worked for the welfare of the village, but despite that the impugned notice dated 25.8.2005 has been issued giving show cause to him for the recovery of aforesaid amount.

Since the prayer of the plaintiff was not acceded to, plaintiff was left with no alternative but to file the present suit.

Defendants No.1 to 3 filed their written statement taking preliminary objections regarding maintainability, limitation, concealment of true and material facts from the Court. It is submitted that defendant No.2-Block Development and Panchayat Officer (BDPO), Ateli Nangal, Tehsil Narnaul had sent a letter bearing No.2098 dated 11.8.2005 to defendants No.1 and 3 (i.e. the Collector, District Mohindergarh at Narnaul and the Naib Tehsildar, Mandi Ateli respectively) for recovery of Rs.99,368/- from the plaintiff as arrears under the land revenue. Accordingly, defendant No.1 had issued a recovery certificate bearing No.122/2006 for the purpose of recovering the amount from the plaintiff and proceedings in that regard were initiated against the plaintiff. Similarly, written statement had been filed by respondent No.4-Gram Panchayat on 15.5.2007 stating therein that the plaintiff was rightly asked to pay the impugned amount and, accordingly recovery proceedings have been initiated against the plaintiff to recover an amount of Rs.99,368/- because the plaintiff did not pay the said amount to the present Panchayat at the time of relinquishing the charge. Even the record has also not been handed over by the plaintiff to the Gram Panchayat.

From the pleadings of the parties, vide order dated 06.6.2007, the trial Court had formulated the following issues :-

- “1. Whether the notice bearing No.2224 dated 25.8.2005 is wrong, against law and facts, null and void and not binding on the rights of plaintiff ? OPP
2. Whether the defendants are not entitled to recover the amount on the basis of notice bearing No.2224 dated 25.8.2005? OPP
3. Whether the present suit is not maintainable in the present form ? OPD
4. Whether plaintiff has no locus standi to file the present suit ? OPD
5. Whether present suit is hopelessly time barred ? OPD
6. Whether the present suit is bad for want of notice under Section 80 CPC ? OPD
7. Relief.”

The plaintiff was aggrieved by the notice (Ex.P6) dated 25.8.2005, whereby he was served with show cause notice that an amount of Rs.99,368/- is outstanding against him, which he had not deposited to the current Panchayat. The said notice was based on the recovery certificate, issued by defendant No.1, asking the defendant No.3 to recover the said amount from the plaintiff. The Court held that defendant has acted as per provision of Section 53(2) of the Haryana Panchayati Raj Act, 1994, wherein it has been laid down that the Block Development and Panchayat Officer on the application of Gram Panchayat or otherwise i.e. defendant No.2 in the present case, for loss, waste or mis-application of gram funds or property belonging to that of Gram Panchayat and after giving adequate

opportunity to Sarpanch or Panch as the case may be, to explain/assess by order in writing the amount due from the plaintiff on account of such loss, waste or mis-application of such Gram funds or property and take necessary steps for its recovery.

Accordingly, defendant No.2-BDPO, Ateli Nangal, Tehsil Narnaul has issued a notice dated 25.8.2005 (Ex.P6) to the plaintiff seeking his defence to the recovery of Rs.99,368/- including cash in hand, which the plaintiff was liable to pay/deliver to the current Panchayat or to the concerned authority at the time of relinquishing his charge.

The trial Court vide judgment and decree dated 13.2.2013 dismissed the suit of the plaintiff as he had not challenged the notice of recovery proceedings rather had simply filed a suit for permanent injunction.

Aggrieved against this judgment of the trial Court dated 13.2.2013, the plaintiff had filed an appeal before the learned Additional District Judge, Narnaul but the same was also dismissed vide order dated 13.8.2015.

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

Learned counsel for the appellant has argued that the findings of the Courts below are contrary to the evidence on record. The plaintiff has proved his case that the recovery notice dated 25.8.2005 (Ex.P6) is totally illegal and arbitrary. Once the plaintiff had filed the suit for permanent injunction restraining the defendants from seeking recovery of

any kind or to initiate proceedings for the recovery from him under the garb of notice dated 25.8.2005 with all consequential proceedings, the plaintiff was not required to impugn the subsequent notice dated 25.8.2005 (Ex.P6).

I have heard learned counsel for the appellant.

There is no dispute that the plaintiff had filed a suit for permanent injunction. Vide notice dated 25.8.2005 (Ex.P6), the plaintiff was required to explain why a sum of Rs.99,368/- is outstanding against him and to file reply to the show cause notice. There is no evidence to show that against the show cause notice dated 25.8.2005, the appellant-plaintiff has ever made any representation to the competent authority, whereas according to Section 53(3) of the Haryana Panchayati Raj Act, 1994, any aggrieved person may approach the competent authority within stipulated period. The 'Act' provides the remedy but the appellant-plaintiff has not availed the same. The appellant-plaintiff was issued a show cause notice dated 25.8.2005 for the recovery of an amount of Rs.99,368/-, which was neither deposited nor handed over by him to the newly elected Sarpanch at the time of relinquishing the charge. Resultantly, recovery certificate No.122/2006 was issued by defendant No.1 to the appellant-plaintiff for the recovery of the said amount. While filing the suit, the appellant-plaintiff had not challenged the recovery proceedings and only suit for permanent injunction restraining the defendants from effecting recovery pursuant to notice dated 25.8.2005 (Ex.P6) was filed. Even otherwise the appellant-plaintiff had not submitted any representation against the show cause notice dated 25.8.2005 (Ex.P6) despite the available

mechanism as provided under Section 53 of the Haryana Panchayati Raj Act, 1994. Therefore, this Court does not find any illegality in the judgments and decrees passed by the Courts below being based on concurrent findings of facts.

No other point is argued.

Since no substantial question of law is involved in the case, present appeal is dismissed.

April 03, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No