IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.269 of 1998 (O&M)
Date of decision:26.07.2018

Saraswati Devi ... Appellant

Vs.

Haryana Financial Corporation ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the appellant.

Mr. Kamal Sehgal, Advocate
for the respondent.

AMIT RAWAL J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 12.11.1997, whereby, the appeal of the respondent-defendant/Haryana Financial Corporation, preferred against the judgment and decree dated 27.08.1994 decreeing the suit for rendition of account of M/s Laxmi Plastic Industries Narwana (for short 'the firm'), has been allowed, in essence, judgment and decree of the trial Court, has been set aside.

The facts which emanate from the pleadings of the parties are that plaintiff instituted the suit for rendition of account in respect of loan account of the firm on the premise that a loan of ₹1,60,000/- was sanctioned to the firm but only a sum of ₹1,30,000/- was disbursed. The aforementioned firm was dissolved and in the year 1975 had paid a sum of ₹2995.41 paise towards the interest to the defendant and had also deposited the amount referred to in the plaint, i.e., ₹623,250/- + ₹2995.41 paise under protest which was in excess to the amount due against the said firm. The plaintiff lodged the protest but to no effect, therefore, cause of action arose to file the suit.

The Haryana Financial Corporation contested the suit on the ground of jurisdiction, valuation, mis-joinder and barred by principles of natural justice. On merit, it was asserted that regular proceedings were initiated against the firm on account of having committed default in repayment of the loan but on payment of outstanding amount, the mortgaged property was released and account of the firm was closed. The factum of deposit of amount was emphatically denied. The statement of account was also furnished to the plaintiff, therefore, prayer was made for dismissal of the suit as no question arose for rendition of account.

Since the parties were at variance, the trial Court framed the following issues:-

> "1. Whether the plaintiff is entitled to a decree for rendition of accounts of the loan account of M/s Laxmi Plastic Industries and if so to what effect?OPP
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> 2. Whether this Court has no jurisdiction to try the suit?OPD

3. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD

4. Whether the plaintiff has no cause of action to sue?OPD

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

6. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD

7. Whether the suit is hit by principles of resjudicata?OPD

8. Whether the plaintiff estopped from filing the suit by her own act and conduct?OPD

9. Whether the defendant is entitled to get special costs and if so how much?OPD

10. Relief."

The plaintiff examined three witnesses and brought on record documents, Ex.P1 to Ex.P11. On the other hand, defendant examined DW1.

On the basis of evidence brought on record, the trial Court by noticing the fact that Manager of the Corporation admitted that the plaintiff deposited the amount in excess to the due amount, had passed the preliminary decree.

The aforementioned preliminary decree was assailed by the Haryana Financial Corporation before the Lower Appellate Court which vide judgment and decree dated 12.11.1997 has been allowed. In these circumstances, the present regular second appeal has been filed. Alongwith appeal, an application under Order 41 Rule 27 CPC for placing on record certified copy of order dated 12.12.1980 rendered in civil appeal No.144/3/1979 titled as Saraswati Devi Vs. Gian Chand and others, as Annexure A-3, has been filed to substantiate dissolution of firm.

Mr. S.K.Garg Narwana, learned Senior counsel assisted by Mr. Naveen Gupta, Advocate appearing on behalf of the appellant submitted that genesis of the judgment of the Lower Appellate Court had been that plaintiff being partner of the firm had not been able to prove that firm was dissolved. The fact of dissolution specially pleaded in the plaint was not denied, therefore, there was no occasion for placing on record the judgment of the Court below tendering the dissolution of the firm but in view of the findings of the fact and law of the Lower Appellate Court, necessity arose to place on record the same. The same may be taken on record as the judgment of the Court is per se admissible.

On merit, he submitted that dissolution of the firm was never disputed by the defendant in the written statement or in the evidence of DW1, therefore, the judgment of the Lower Appellate Court was self contradictory and result of mis-direction and liable to be set aside. PW2-Arjun Parshad Chaudhary, Manager of HFC, when appeared in the witness box admitted that plaintiff had deposited an excess amount. The aforementioned statement was reiterated by DW1, Sudhir Chadda, Branch Manager as to question in cross examination submitted that it was possible that excess amount of the firm was due towards defendant, therefore, the judgment and decree of the trial Court is liable to be restored. Defendant did not press issue nos.4 and 5 with regard to cause of action and maintainability, therefore, there was no occasion for the Lower Appellate Court to dismiss the suit on account of maintainability.

Per contra, Mr. Kamal Sehgal, learned counsel appearing on behalf of the respondent submitted that the Lower Appellate Court being the last Court of fact and law after examining the evidence found that plaintiff miserably failed to prove the dissolution of the firm and therefore, the suit for rendition of account was not maintainable. There was specific denial in para 4 of the written statement that the firm was not dissolved and therefore, plaintiff failed to discharge the onus and thus, proof of dissolution of the firm was essential for adjudication of the lis and urged this Court for dismissal of the appeal and the suit was required to be filed by the firm.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that the reason assigned in the application for producing on record the additional evidence, i.e. copy of the judgment dated 12.12.1980 (Annexure A-3), *ibid* is genuine and as per the said judgment, it has been held that the firm had been dissolved and the defendants therein were held to render account to the plaintiff. By taking the aforementioned evidence on record, the finding of the Lower Appellate Court *vis-a-vis* lack of proof with regard to dissolution no longer subsists and is hereby set aside.

By coming to other question of rendition of account, I am of the view that pith and substance of the findings of the Lower Appellate Court was only on the point that plaintiff miserably failed to prove on record that the firm was dissolved, therefore, suit should have been filed on behalf of the firm. Once the firm was dissolved by virtue of decree dated 12.12.1980, Annexure A-3 (Additional Evidence) and in view of the admission of PW2 and DW1 with regard to excess payment made by the plaintiff, finding of the trial Court passing the preliminary decree directing the Haryana Financial Corporation to render the account is most innocuous and is hereby restored.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213,*** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

"Since Section 41 of the Punjab Act is expressly in

> *conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of* ***Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]*** *cannot be sustained and is thus overruled." [at paras 27 - 29]"*

"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by

virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As an upshot of my findings, I am of the view that the Lower Appellate Court abdicated in dismissing the suit as noticed above. The judgment and decree of the Lower Appellate Court is hereby set aside and that of trial Court is restored.

The appeal stands allowed.

(AMIT RAWAL)
JUDGE

July 26, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No