IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4860 of 2012 (O&M)
Date of Decision.02.05.2018

Avtar Singh ......Appellant

Vs

The Registrar, Coop. Societies Punjab and others .....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. HNS Gill, Advocate
for the appellant.

Mr. Pawan Hooda, Advocate
for respondent No.1 to 3.

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AMIT RAWAL J.(ORAL)

C.M. No.13551-C of 2012

For the reasons stated in the application, delay of 20 days in re-filing the appeal is condoned.

Application is allowed.

RSA No.4860 of 2012

The appellant-plaintiff is in regular second appeal against the judgment and decree dated 10.11.2010 as well as the judgment and decree dated 7.3.2012 of the lower Appellate Court whereby the suit of the plaintiff seeking declaration that defendants are not entitled to recover any amount from the plaintiff on account of loan raised by Gurmail Singh, his father for construction of the house and as well as challenge to the order dated 08.06.1995 passed by the Arbitrator being void and in violation of the terms and conditions of the agreement, had been dismissed.

The appellant-plaintiff instituted the aforementioned suit on the premise that his father, Gurmail Singh, had taken loan of ₹80,000/- for construction of the house from defendant No.4 i.e. Chupki Co-operative HOUSEFED Society, Chupki and had been paying installments of the loan. Unfortunately, he died on 27.11.1995. Since the plaintiff was nominee of his father in the loan case, the defendants sought recovery of the amount from him as the HOUSEFED was to arrange an insurance cover on the life of the loanee equal to the outstanding loan. The Arbitrator ignored the aforementioned facts while passing the award as no opportunity of hearing was granted.

The aforementioned suit was contested by defendant No.2 and 3, as the defendant No.1 and 4 were proceeded ex parte, by taking preliminary objection qua maintainability of the suit being barred under Section 55 and 79 of the Punjab Cooperative Societies Act. On merits, it was stated that the arbitration proceedings were initiated as per the terms and conditions of the agreement and award of Rs.83,744/- was passed. The plaintiff never challenged the said order, for, as per the LIC Policy scheme was only granted upto 65 years.

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

> "*1. Whether the defendants are not entitled to any amount on account of loan raised by Gurmail Singh? OPP*
>
> *2. Whether the award dated 08.06.1995 is illegal, null and void and liable to be set aside? OPP*
>
> *3. Whether the plaintiff has not approached this Court with clan hands? OPD*
>
> *4. Whether the plaintiff has no cause of action and locus stanti to file the present suit? OPD*

5. Relief."

In support of averments in the plaint, the plaintiff examined himself as PW1 and tendered documents Ex.P1 and P2 copies of judgment and decree dated 25.03.2008, copy of notice as Ex.P3, copy of enquiry report as Ex.P4, photocopy of mortgage deed Mark A, photocopy of death certificate Mark-B, copy of death certificate as Mark C and copy of resolution dated 8.11.1995 as Mark D. On the other hand, defendants did not lead any evidence.

On the preponderance of evidence, the trial Court dismissed the suit on the ground that the plaintiff failed to bring on record any evidence that father of the plaintiff had paid the entire amount and thus was exempted from discharging liability. The lower Appellate Court disbelieved the documentary evidence on record for the enquiry report Ex.P4 was a marked document, therefore, could not be looked into.

Mr. Har Naresh Singh Gill, learned counsel appearing on behalf of the appellant-plaintiff submitted that the appellant-plaintiff submitted a complaint to the Department against the Field Officer, Mohinder Singh, for, he had given the death certificate of Gurmail Singh (his father) but did not place on record the same before the Department for the purpose of claiming exemption as per the terms and conditions of the agreement. On the basis of the aforementioned complaint, Enquiry Officer was appointed and the enquiry report dated 8.11.2006 (Ex.P4) had indicted the aforementioned Field Officer. Both the Courts below abdicated in not referring to the same particular lower Appellate Court being last court of fact and law, thus, there is illegality and perversity.

On the contrary, Mr. Pawan Hooda, learned counsel appearing on behalf of respondent No.1 to 3 submitted that the concurrent finding of fact cannot be interfered with unless and until there is illegality and perversity. The plaintiff has miserably failed to prove the payment of installments and therefore, being legal representative of Gurmail Singh is liable to discharge the liability, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce clause 8 of the agreement and operative part of the enquiry report:-

> *"8. The society shall through Housefed arrange for a compulsory insurance cover under group insurance schemes with the LIC on the life of the Loanee member equal to his outstanding loan."*
>
> *Remarks:*
>
> *After going through the statement of Inderjeet Singh, Superintend District Officer, Housefed, Patiala and the statement of Sh. Lalit Mohan, Secretary, I enquiry officer have reached to the conclusion that the complaint given by Sh. Avtar Singh against Sh. Mehinder Singh Field Officer, seems to be correct.*
>
> *Enquiry was closed on 4.10.2006 but up till the report was written, Sh. Mehinder Singh have not given any reason for not attending enquiry proceeding and even after one month no such information was given from this it is clear that Sh. Mehinder Singh is not attending enquiry proceeding intentionally and is not bothered by enquiry proceeding.*

Enquiry report is being send to you for further action."

On conjoint reading of Clause 8 and the enquiry report, it is evident that the appellant-plaintiff had informed the department regarding death of Gurmail Singh, his father, for, the loan amount had already been insured by the Housefed with LIC. In other words, in case of the death, the balance amount of loan was to be recovered from the insurance company and not from the legal representatives. Therefore, the finding of the lower Appellate Court is contradictory as in Para 5 it referred the documents tendered by the plaintiff as under:-

> *"5. In endeavour to establish his claim, plaintiff Avtar Singh himself stepped into the witness box as PW1 and his sworn testimony in the form of affidavit is Ex.PW1/A. Thereafter, counsel for the plaintiff had also brought on record copies of judgment and decree dated 25.3.2008 Ex.P1 and Ex.P2, copy of notice Ex.P3, copy of inquiry report Ex.P4, photocopy of mortgage deed Mark A, photocopy of death certificate Mark B, copy of another death certificate Mark C and copy of resolution dated 8.11.1995 Mark D.*

However, in para 14, the lower Appellate Court rendered the finding as follows:-

> *"Since it is the plaintiff who has come forward to seek relief from the court, onus lay heavy upon him, to stand on his own legs and prove his case. However, tested on such touch stone, when we go through the evidence brought on record, the whole claim of the plaintiff falls to the ground like a house of cards. Sole witness coming to prove the assertion of the plaint is the plaintiff himself. In his affidavit Ex.PW1/A, he has recorded his claim, as pleaded in the plaint and also further, he has proved the notice and also deposed about some Mohinder Singh, Field Officer to have obtained Rs.10,000/- from him or sending the death claim of Gurmail Singh and*

> *further started demanded Rs.10,000/- in the name of Managing Director of HOUSEFED and complaint regarding the same was made which was inquired by Shri Satnam Singh I.O. (Vigilance) and he also deposed about the award to be illegal, null and void. Besides the same, certain documents have also been brought on record by the plaintiff, which are only marked documents. However, the documents, which are not proved as per law are not to be looked into. Once, it is so done, there is absolutely no material coming on record to substantiate the claim of the plaintiff. It was first of all required at the part of plaintiff to have sought production of the loan file relating to his father Gurmail Singh, from which, the terms and conditions of the loan facility availed by Gurmail Singh would have become crystal clear."*

In my view, the finding of the Courts below, particularly, the lower Appellate Court is totally against the record, therefore, there is mis-direction and infirmity in the judgment and decree under challenge. In view of the observations made herein above, the controversy requires to be revisited at the level of the lower Appellate Court to decide the appeal in accordance with law as expeditiously as possible. The second appeal stands disposed of in above terms.

Parties through their counsel are directed to appear before the lower Appellate Court on 25.05.2018.

(AMIT RAWAL)
JUDGE

May 02, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No