

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

RSA No.1832 of 2016 (O & M)
Date of Decision:30.05.2018

Sadhu Singh

...Appellant

Versus

Mela Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Salar, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Arguments in this appeal were heard and the judgment was pronounced. Now the Court proceed to record reasons.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court dismissing the suit filed by the plaintiff for recovery of the amount while reversing the judgment passed by the learned trial Court.

It is the case of the plaintiff that he engaged the defendant to work in an agricultural fields and to serve the cattle. Annual salary of the defendant was agreed at Rs.20,000/-, however, the defendant received entire salary in advance and also received Rs.30,000/-, which was repayable with interest @ 1.5% per month. It is further the case of the plaintiff that the defendant left the shop in between without completing the entire term of the employment and, therefore, the plaintiff was entitled to recover the amount.

Defendant contested the suit and pleaded that he was engaged as siri, which falls in the definition of bonded labour and therefore, the suit is barred as the Bonded Labour System (Abolition) Act, 1976 (hereinafter 'Act

the defendant worked under the plaintiff during the last year but the plaintiff did not pay the wages and when the defendant demanded wages, he forced him to work in the fields and gave him Rs.50,000/-. Thumb impressions of the defendant were obtained on blank papers.

Learned trial Court after appreciating the evidence available on the file, decreed the suit to the extent of Rs.48,350/- alongwith interest whereas learned First Appellate Court has reversed the finding of the learned trial Court and held that the suit is barred under the Act of 1976.

Learned First Appellate Court has held that the agreement was not result of free will and violation when the parties were in fiduciary relationship. The Court found that agreement was executed in the nature of security. The Court further found that the defendant was working as a bonded labour and, therefore, such suit would not be maintainable as per Section 6 of the Act of 1976.

This Court has heard learned counsel for the appellant and with his able assistance gone through the judgments passed by both the Courts below. The Bonded Labour System (Abolition) Act, 1976 was enacted by the Parliament to prevent the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto. Bonded labour system has been defined in Section 2 (g) of the Act of 1976. Section 3 of the Act of 1976 overrides anything inconsistent therewith contained in any enactment other than this Act. Section 4 provides that bonded labour system shall stand abolished. Section 6 of the Act provide that no suit or other proceedings shall lie in any civil Court or before any other authority for the recovery of any bonded debt or any part thereof. Section 2

(g) of the Act is extracted as under:-

“2. Definition.-In this Act, unless the context otherwise requires.-

(a) to (f) XXXXXXXX

(g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would-

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

[Explanation.- *For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labourer as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970, or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected*

to all or any of the disabilities referred to in sub-clauses (2) to (4) is "bonded labour system" within the meaning of this clause.]

Section 6 of the Act is extracted as under:-

“6. Liability to repay bonded debt to stand extinguished.

- (1) On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.

(2) After the commencement of this Act, no suit or other proceeding shall lie in any Civil court or before any other authority for the recovery of any bonded debt or any part thereof.

(3) Every decree or order for the recovery of bonded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall be deemed, on such commencement, to have been fully satisfied.

(4) Every attachment made before the commencement of this Act, for the recovery of any bonded debt, shall, on such commencement, stand vacated; and, where, in pursuance of such attachment any movable property of the bonded labourer was seized and removed from his custody and kept in the custody of any Court or other authority pending sale thereof, such movable

property shall be restored, as soon as may be practicable after such commencement, to the possession of the bonded labourer.

(5) Where before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family or other dependant was forcibly taken over by any creditor for the recovery of any bonded debt, such property shall be restored, as soon as may be practicable after such commencement, to the possession of the person from whom it was seized.

(6) If restoration of the possession of any property referred to in sub-section (4) or sub-section (5) is not made within thirty days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of the possession of such property and the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the concerned property within such time as may be specified in the order.

(7) An order made by any prescribed authority, under sub-section (6), shall be deemed to be an order made by a civil court and may be executed by the Court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction the creditor voluntarily resides or

carries on business or personally works for gain.

(8) For the avoidance of doubts, it is hereby declared that, where any attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, such sale shall not be affected by any provision of this Act:

Provided that the bonded labourer, or an agent authorized by him in this behalf, may, at any time within five years from such commencement, apply to have the sale set aside on his depositing in court, for payment to the decree-holder, the amount specified in the proclamation of sale, for the recovery of which the sale was ordered, less any amount, as well as means profits, which may, since the date of such proclamation of sale, have been received by the decree-holder.

(9) Where any suit or proceeding, for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceeding shall, on such commencement, stand dismissed.

(10) On the commencement of this Act, every bonded labourer who has been detained in civil prison, whether before or after judgment, shall be released from detention forthwith.”

A careful reading of the aforesaid provisions, it is apparent that recovery of the amount of any bonded debt or part thereof is specifically prohibited. Even the decree which have been passed before the commencement of this Act would be deemed to have been fully satisfied.

Now let us examine facts of the present case. In the present case, the plaintiff alleges that he engaged the defendant as a labourer and gave him advance salary for a period of one year i.e. Rs.20,000/- and also gave him a loan of Rs.30,000/- which was to be repaid alongwith interest @ 1.5% per month. It is the allegation of the plaintiff that the defendant did not serve the plaintiff for full term and left the shop on 01.07.2006. As per Contract Act, such violation would certainly entitle the plaintiff to recover the amount. However, Section 3 of the Act overrides anything in consistent therewith contained in any enactment other than this Act.

Still further, Section 6 debars maintainability of a suit before the civil Court for recovery of any bonded debt. The facts of the present case established that the defendant was engaged as a bonded labour as defined in Section 2 (g) of the Act of 1976. Entire effort of the plaintiff was to bound down the defendant for a period of one year. This is exactly what has been abolished by the Act of 1976.

In view thereof, there is no ground to interfere with the order passed by the learned First Appellate Court.

Regular second appeal is dismissed.

30.05.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No