IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1523 of 2015 (O/M)
Date of decision : 16.5.2018

Harvinder Singh and another ...... Appellants

Versus

The Punjab Coop. Agriculture Development Bank (P.A.D.B.) Abohar, and another .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Jasuja, Advocate,
for appellants.

None for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present regular second appeal is judgment and decree dated 14.11.2014, passed by learned Additional District Judge, Fazilka, affirming judgment and decree dated 15.11.2012, passed by learned Civil Judge (Junior Division), Abohar, vide which suit of plaintiffs for rendition of accounts and permanent injunction was dismissed.

The short facts which are required to be notice for disposal of appeal are that Tehal Singh, father of plaintiff No. 1 and father in law of plaintiff No. 2 obtained a loan from defendant-bank, namely, Punjab Coop. Agricultural Development Bank (P.A.D.B.), Abohar. It was claimed that plaintiffs repaid loan amount with interest from time to time, as mentioned in plaint and paid Rs. 1,40,000/- on 4.9.2003, Rs. 50,000/- on 22.1.1999, Rs. 70,000/- on 16.1.2001, Rs. 90,000/- on 17.1.2003, Rs. 40,000/- on

20.11.1997 as full and final settlement of account alongwith subsidy of Rs. 1,27,392/- on 18.3.1997 and nothing is outstanding. Plaintiffs fall within the ambit of Waiver Scheme announced by Government of India and Punjab Government. Thus, no recovery could be effected from them. Thus, accounts of plaintiffs are required to be renditioned. All the bank accounts of plaintiffs are with defendants. Now, defendants have threatened them to recover amount from them illegally and forcibly, for which they are going to put their land on auction on 21.5.2010, as mentioned in recovery notice for Rs. 8,09,121/- from plaintiffs.

In reply, defendant bank took stand that loan was obtained in the year 1995 and Debt Waiver Scheme was applicable only to those persons who obtained the loan after year 1997. Objections were also raised that plaintiffs also not issued notice under Section 79 of Punjab Coop. Societies Act, 1961, before filing the suit. The civil suit is also barred under Section 82 of Punjab Coop. Societies Act, 1961. Deposit of amount by plaintiffs was admitted, but it was denied that entire loan amount was deposited. It was stated that due procedure of arbitration was adopted and a sum of Rs. 8,09,121/- was found outstanding against plaintiffs upto 31.3.2010, as per decision announced by way of award. Despite the final award, plaintiffs are not paying the settled amount.

From the pleadings, following issues were framed :-

1. Whether the plaintiffs are entitled to rendition of account as prayed for ? OPP

2. Whether plaintiffs are entitled to permanent injunction as prayed for ? OPP

3. Whether the suit is barred under the Punjab Co-opearative Act ? OPD

4. Whether the suit is false and frivolous and is liable to be dismissed with special costs ? OPD

5. Relief.

Trial Court while relying upon judgment of Hon'ble Supreme Court in *K.C. Skaria Versus Government of State of Kerala and another*, 2006 AIR (SC) 811, took view that remedy of rendition of accounts is not available to defendants. It was further held that due course of law has been adopted. Therefore, permanent injunction cannot be granted.

I have heard the learned counsel for appellants and have also considered the case of respondents and have also examined lower Court file.

So far as permanent injunction is concerned, in plaint itself it is stated that land of plaintiffs is being auctioned for alleged recovery of Rs. 8, 09,121/-. If it is so, defendants are adopting due course of law, for which no permanent injunction could be issued. So far as rendition of accounts is concerned, defendant-bank is covered under the Punjab Cooperative Societies Act, 1961, and before filing the civil suit, compliance of Section 79 of Punjab Cooperative Societies Act, 1961, was required. No notice to defendant bank is alleged to have been served under said section. Therefore, civil suit is otherwise not maintainable without notice under Section 79 of Punjab Cooperative Societies Act, 1961. Further, in the matters covered under the Punjab Societies Act, 1961, jurisdiction of Civil Court is barred under Section 82 of Punjab Cooperative Societies Act, 1961. It further comes out that auction proceedings were initiated against plaintiffs which shows that some proceedings might have taken place. The learned counsel for appellants has informed the Court that the Civil Court was executing the order.

I am of the view that if it was so, plaintiffs could always approach the Civil Court in execution proceedings and file objections to the effect that they have paid the entire loan amount. The matter could have been decided by Executing Court. So far as, rendition of accounts is concerned, the benefit of Order XX Rule 16 CPC, 1908 is claimed, which is reproduced as under :-

> '16. Decree in suit for account between principal and agent.- In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.'

The matter was examined by Hon'ble Supreme Court of India in *K.C. Skaria Versus Government of State of Kerala and another*, 2006 AIR (SC) 811.

The learned counsel for appellants relies upon following observations of Hon'ble Supreme Court of India :-

> '16. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due

to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.'

It goes to show that rendition of accounts can be claimed when a right is created or recognized under a statute or it is based on fiduciary relationship between parties as in case of beneficiary or trustee or is claimed in equity when relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. In present case, no statutory right is given. Plaintiffs claim the benefit of relationship with bank. Even if, it is fiduciary relationship between bank and customer, but even then rendition of accounts is not the only remedy available to them. Plaintiffs could as a matter of right get statement of accounts from the bank to find out that whether entire amount paid by them is shown in the statement of accounts or not and if any wrong amount has been claimed from them and then can challenge the specific entry before appropriate forum. It being so, suit for rendition of account in present case was not maintainable. There is no illegality or infirmity in concurrent findings recorded by two Courts below. Consequently, there is no force in present regular second appeal. Same is accordingly dismissed.

Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

16.5.2018
sjks

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No