IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 112 CR-6283-2018

Date of decision : 24.01.2019

Nachhatar Singh ..... Petitioner

VERSUS

Punjab & Sind Bank ..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. C. L. Sharma, Advocate, for the petitioner.

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DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 01.08.2018, passed by the Civil Judge (Junior Division), Chandigarh, dismissing an application filed by the petitioner under Order 6 Rule 17 CPC for amendment of his plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein to challenge a charge-sheet issued by the respondent-Bank dated 26.11.2015 as also the resultant inquiry sought to be initiated by the Bank. In his plaint, the petitioner has inter-alia pleaded that on 31.08.2007, on attaining the age of 60 years, he had retired from the service of the respondent-Bank and that thereafter he was re-employed by the respondent-Bank as a result of which he served the respondent-Bank till May, 2011. The charge-sheet was challenged primarily on the ground of delay. On being put to notice, the respondent-Bank appeared before the Trial Court and filed its written statement through which the charge-sheet issued to the petitioner was sought to be justified. It was submitted that the petitioner, while in service of the Bank, had misappropriated an amount of more than

₹1 crore by transferring such amount in different accounts of his family members. In this regard, a written confession was made by the petitioner on 10.04.2013 and thereafter some of the misappropriated amount had been redeposited by him. FIR against the petitioner had been lodged for the afore-referred misappropriation on his part and the Bank had also filed a recovery suit against him.

After dismissing the stay application filed by the petitioner, the Trial Court framed the issues but before any evidence could be led by either party the petitioner filed an application under Order 6 Rule 17 CPC seeking therein to withdraw his admission that after his superannuation on 31.08.2007 he was re-employed by the respondent-Bank till May, 2011. The Trial Court dismissed the petitioner's amendment application through the order which is under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

Through the charge-sheet impugned by the petitioner in his suit, he, while in the service of the Bank, is alleged to have misappropriated an amount of over ₹1 crore by transferring the said amount in different accounts of his family members. It is the case of the respondent-Bank that the petitioner admitted his guilt through a written confession as also through his conduct by re-depositing a part of the aforesaid amount. According to the respondent-Bank such deposits were made by him till May, 2011 i.e. the time that the petitioner admits to have served the respondent-Bank after being re-employed. It was further submitted that since as per the petitioner's own admission he served the Bank till May, 2011, the detection of fraud by him and action taken against him was within a period of four years-thus within the time prescribed under the Rules. Paragraphs 4 to 6 of the written statement filed by the respondent-Bank before the Trial Court, in this regard, are reproduced below: -

> "4. That the whole case of the plaintiff is based upon the ground that the disciplinary proceedings could not be initiated being contrary to Rule 48 of the Punjab & Sind Bank (Employees) Pension Regulations, 1995. The said contention of the plaintiff is not sustainable in the eyes of law. It is an admitted case of fraud by the plaintiff with the defendant Bank during the course of his service. The plaintiff has misappropriated an amount of more than Rs. 1.00 Crore and the said amount was transferred in different accounts of the family members of the plaintiff by the plaintiff himself while he was dealing with the work of the Punjab & Sind Bank, Branch Office, Sector-17-B, Chandigarh. The plaintiff retired from the service of the Bank on 31.08.2007 and as per his own pleading in Para No. 2 of the plaint, he was re-employed and worked till May, 2011 at Branch Office, Sector-17-B, Chandigarh. Thus, as per the admission of the plaintiff, he was in service of the Bank till May, 2011 and the fraud which has been detected, was within period of 4 years of the service of the plaintiff with the defendant Bank. It is only when the fraud came to the notice of the Bank the fact finding was got conducted and the plaintiff admitted the misappropriation of the amount of the defendant Bank and started depositing the same. In a case of fraud the cause of action arises from the date the same comes to the notice and same continues till its investigation is completed.
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> 5. That the plaintiff is estopped by way of his own act, conduct and admission to file the present suit and challenge the disciplinary proceedings.
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> 6. That initially, the amount of fraud which was detected, was to the tune of Rs.91,21,382/- and the plaintiff deposited an amount of Rs.63,40,164/- till May, 2011 and thereafter, further amount was also deposited by the plaintiff out of his account as well as that of his family members in CA No.68126 from where the amount was misappropriated by him. The plaintiff also made a written confession on 10.04.2013 vide which he had admitted the misappropriation of the amount and deposit of the amount of Rs.50,40,164/- out of the misappropriated amount. It was further admitted that he has worked in the Branch Office, Sector-17-B, Chandigarh till May, 2011 and further undertook to make good the whole loss which was caused to the Bank by unauthorizedly misappropriating the amount which may be ascertained by the Bank. It was further undertook by the plaintiff that the defendant Bank may even keep the house of his wife under lien to recover the amount. The copy of the said undertaking dated 10.04.2013 is annexed herewith as **Annexure D-1**. The plaintiff later on, disputed only an amount of Rs.12,09,136/- vide his letter dated 23.10.2015 and copy of the same is **Annexure D-2**. The clarification in this regard was given by the defendant."

(emphasis supplied)

From the above, it is clear that there are serious allegations against the petitioner and the fact whether he served the respondent-Bank till his superannuation i. e. 31.08.2007 or till May, 2011 would be an important fact in the determination of the dispute between the parties.

Further, one of the main grounds taken by the petitioner to challenge the issuance of the charge-sheet against him is the ground of delay. Qua that ground too the fact whether the petitioner was in service till the date of his superannuation i.e. 31.08.2007 or May, 2011 would assume importance.

In view of the above, through an amendment the petitioner cannot be allowed to withdraw an admission made by him especially when such admission would have bearing on the determination of the dispute between the parties.

Dismissed.

24.01.2019 [DEEPAK SIBAL]
shamsher JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No