

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO NO.61 OF 2012 (O&M)
DECIDED ON: 02.07.2019

RUPINDER KUMAR

...APPELLANT-PLAINTIFF..

VERSUS

GURJANT SINGH AND ANR.

...RESPONDENTS-DEFENDANT..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ghulam Nabi Malik, Advocate,
for the appellant.

Mr. Mahesh Gupta, Advocate,
for respondent No.1.

None for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Instant SAO has been filed against judgment dated 03.09.2012, whereby appellate court, while setting aside judgment and decree of the trial court dated 13.09.2011, remanded the case to the trial court for a fresh decision with certain directions to the appellant-plaintiff to implead some persons as necessary parties.

Briefly, at the relevant time, appellant-plaintiff was Panch, whereas, respondent No.1 was Sarpanch of village Changli, Tehsil Dhuri, District Sangrur. Summer season was on the head. Therefore,

there was dire necessity of supply of water in the village to meet out the water demand of the village. No government funds and grants were available with the Panchayat or the concerned departments to lay down water supply pipes and to complete ancillary works in the village. However, the concerned XEN assured the respondents that he can hand over the material i.e. pipes etc. to them, in case, they make their own transport arrangements to carry the material to their village for its installation. Since, no funds were available with the Panchayat, therefore, the respondent-defendant as a Sarpanch, in an open gathering of the villagers asked appellant-plaintiff to transport the material to the village and execute the work by spending money from his own pocket, which, he would reimburse, on receipt of gram panchayat funds/grants. He also promised vide undertaking (Ex.P1) that in case, the same are not received, in that eventuality, he would reimburse the expenditure from his own pocket. However, when respondent No.1-defendant did not fulfill his promise as per his undertaking (Ex.P-1), the appellant-plaintiff filed a suit for recovery of ₹16,000/- against respondent No.1-defendant on the basis of undertaking (Ex.P-1).

The trial court, after holding trial, decreed the suit of the appellant-plaintiff for ₹11,400/- vide judgment and decree dated 13.09.2011.

Being aggrieved, respondent No.1-defendant approached the first appellate court, who, while setting aside the aforesaid judgment of trial court, remanded the case to trial court for a fresh decision, vide

judgment dated 13.09.2011, in the manner as mentioned above in the opening part of the judgment.

Learned counsel for the appellant contends that the appellate court has erred in remanding the case to the trial court, without appreciating the fact that the amount decreed by the trial court was quite meagre. Respondent No.1-defendant was bound to pay the same in view of his undertaking (Ex.P-1), which was duly and legally proved during trial. No claim, whatsoever was demanded from the authorities, which were ordered to be impleaded by the first appellate court, therefore, the same were not necessary parties.

On the other hand, learned counsel for respondent No.1 refuting the above submissions contends that respondent No.1-defendant had to satisfy the expenditure spent by the appellant-plaintiff, on receipt of Panchayat funds, which were not received. Therefore, he was not personally liable to satisfy the expenses incurred by appellant-plaintiff. Even otherwise, the appellant-plaintiff had spent money for the welfare of the village, for which, respondent No.1-defendant could not have been made personally liable.

Having given thoughtful consideration to the rival submissions, this Court finds merit in the instant appeal for the reasons to follow:-

1. The appellate court has failed to appreciate that on remand, the appellant-plaintiff was unnecessarily burdened for the expenditure to be incurred by him for impleading unnecessary parties,

against whom, he did not claim anything or on the retrial of the case.

The authenticity of undertaking (Ex-P-1) of respondent No.1-defendant is not doubtful. It was legally proved on record. Respondent No.1-defendant had undertaken to pay all the expenses incurred by the appellant-plaintiff, from his own pocket, in case, the same are not received from the government or the concerned authority. The appellate court failed to appreciate that vide above undertaking, respondent No.1-defendant had personally bound himself to reimburse the expenses incurred by the appellant-plaintiff.

Counsel for respondent No.1-defendant by urging that the amount so, spent by appellant-plaintiff was for the betterment of the villages, therefore, he was not personally liable to pay the same has made an effort to do charity for the villager at the cost of the appellant-plaintiff, for which, he cannot be permitted. If respondent-defendant was so generous and genuine, he would have done charity by spending money from his own pocket, but not at the cost of appellant-plaintiff. The appellant-plaintiff, in view of his above undertaking, cannot be permitted to wriggle out of the same.

I have gone through the judgments of both the courts below and find that the judgment of appellate court is totally erroneous being based on cryptic findings and that of the trial court is well reasoned.

In view of the discussion made above, instant appeal is allowed. The impugned judgment & decree of the appellate court is set aside and that of trial court is modified to the extent of only interest

part, which is increased from 8% per annum to 12% per annum from the date of receipt (Ex.PW5/B) till realization.

02.07.2019

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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No