

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

1. **Date of decision: 04.09.2019**
RSA No.4470 of 2016 (O&M)

Lakhbir Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

2. **RSA No.3408 of 2016 (O&M)**

Lakhbir Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagram Singh Cooner, Advocate,
for the appellant(s).

Mr. Ashok Singla, Sr. DAG, Punjab.

Ritu Bahri, J.

This judgment shall dispose of RSA No.4470 of 2016 and RSA No.3408 of 2016 together as common questions of law and facts are involved in both the appeals.

RSA No.4470 of 2016 has been filed by Lakhbir Singh plaintiff-appellant (hereinafter referred to as 'the plaintiff) against the judgment dated 19.11.2015 passed by the District Judge, Amritsar, whereby civil appeal bearing No.206/2015 (titled as **State of Punjab etc. vs. Lakhbir Singh etc.**) filed by defendants-State of Punjab etc. (hereinafter referred to as 'the defendants') against the judgment and decree dated 09.12.2014 passed by

the Civil Judge (Junior Division), Amritsar, has been accepted and the suit of plaintiff has been dismissed.

RSA No.3408 of 2016 has been filed by appellant-Lakbir Singh (plaintiff) against the same judgment passed in civil appeal bearing No. 575/2015 (titled as **Lakhbir Singh vs. State of Punjab and others**), whereby his appeal has been dismissed.

Lakhbir Singh-plaintiff (appellant herein) filed a suit seeking relief of mandatory injunction against the defendants with the averments that he (plaintiff) was registered owner of truck bearing No. HR-58-4116. He was in possession of all the relevant documents pertaining to the said truck i.e. permit, payment of tax receipts, driving licence, registration certificate, insurance cover note etc. On 15.07.2012, plaintiff got loaded papers weighing 14380 Kgs. in his truck from Gurgaon, which were to be delivered at Khanna Paper Mills, Amritsar. On 17.07.2012, he reached near Toll Plaza outside Amritsar, where defendant Nos. 2 and 3 on behalf of defendant No.1, stopped the truck. Plaintiff had shown all the documents pertaining to the truck in question, but even after going through those documents, they did not release the truck and retained it illegally and arbitrarily. Plaintiff also disclosed that the material was under weight, but despite that defendants challaned the truck and retained original documents i.e. permit, registration certificate, insurance cover note and tax receipts etc. besides driving licence and issued challan slip No.11324, Form No.69, imposing a fine of Rs.10,000/-. On the next day, plaintiff paid the said amount to defendant Nos. 2 and 3 and they issued receipt bearing No. 566324 dated 18.07.2012, but did not release original documents of the truck. However, on his repeated visits to the office of defendants, they

issued a letter to the effect that the original documents were lost by defendant Nos. 2 and 3. Since 19.07.2012, the truck of plaintiff was lying stationary for want of original documents and was detained by the defendants. The plaintiff had been suffering loss of Rs.3000/- per day and was also unable to deposit installments of the truck. Finding no way, plaintiff got served a legal notice dated 16.10.2012, under Section 80 CPC upon the defendants, but to no avail. Hence, the suit.

Upon notice, defendant Nos.1 and 2 filed joint written statement stating that the plaintiff had not come to the Court with clean hands. Infact, on 17.07.2012, the truck in question was checked and was found to be over loaded. It was equipped with pressure born and no reflector was affixed on its rear side. The owner was not having original documents such as registration certificate, route permit, insurance cover note, receipt of token tax etc. Therefore, the truck was impounded by then DTO Shri Vimal Kumar Satia at the spot. On 18.07.2012, plaintiff had come to the office of defendant No.2 requesting for compounding the offence. Considering his request, a penalty of Rs.10,000/- was imposed upon him and thereafter, his vehicle was ordered to be released. The truck was released vide report No.17 dated 18.07.2012. It was further stated that the plaintiff did not challenge the order of penalty in any Court of law. As per defendants, there was no person in the name of Bhupinder as Assistant. Rather, Shri Bhupinder Singh was working as driver, who had got no connection with the present case.

Defendant No.3 filed a separate written statement taking preliminary objections with regard to maintainability of the suit and locus standi. On merits, it was stated that the plaintiff was challaned for violation

of rules and regulations due to over load, over height, pressure born etc. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
2. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
3. Relief.

Vide order dated 09.12.2014, issue No.1 was recasted as under:-

1. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP

Trial Court, after hearing learned counsel for the parties, decreed the suit by referring to the document Ex.P3, wherein it had been mentioned that truck bearing No. HR-58-4116 was challaned on 17.07.2012 vide receipt No.11324/69. Thereafter, on 18.07.2012, vide receipt No.566324, the said vehicle was released. All the documents were misplaced by the department. It was stated that after tracing those documents, the same would be returned to the plaintiff. Since, the DTO had admitted that the documents were misplaced by his office, suit of the plaintiff was decreed by giving direction to the defendants-respondents to return those documents to plaintiff.

On appeal, the lower appellate Court examined the documents i.e. challan book No.11324, Form No.69 Ex.P2, a perusal of which showed that offences committed by the plaintiff were mentioned against column No.4 i.e. (i) O/L (overloading), (ii) O/H (over height), (iii) P/H (Pressure Horn),

(4) without reflector, (v) without documents and the truck in question was got impounded/detained in Police Station, Jandiala. Plaintiff had agreed to compound the offence and put his signatures thereon. This fact was admitted by the plaintiff during his cross-examination that he had signed the challan form without hesitation. After this, the lower appellate Court examined writing Ex.P3, which was issued by the District Transport Officer, Amritsar. This writing was on a plain paper and was only a photocopy. It did not bear any date or endorsement number of the issuing department. Original thereof had not been proved on record by the plaintiff. It was further observed that no permission had been sought by the plaintiff from the trial Court as per provision of Section 65 of Indian Evidence Act. Hence, writing Ex.P3 could not be made basis for giving direction to the department/State of Punjab to return the original documents to the plaintiff. Another fact, which has been observed by the lower appellate Court is that the registration certificate had been issued to the plaintiff by the District Transport Officer, Yamuna Nagar and he was not made party in the civil suit. With these observations, appeal filed by the defendants has been accepted and suit of the plaintiff has been dismissed.

After going through the impugned judgment, this Court is of the view that since the documents of the plaintiff were not in the custody of the Transport Authority, as is reflected from Ex.P2, copy of the challan, the suit of the plaintiff has been rightly dismissed. Plaintiff has failed to lead any cogent and convincing evidence to prove his case. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Resultantly, finding no merit, both the appeals i.e. RSA No.4470 of 2016 and RSA No.3408 of 2016 are dismissed.

04.09.2019
ajp

(RITU BAHRI)
JUDGE

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