IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215 RSA No.4986 of 2014 (O&M)

Date of decision: 18.07.2019

AJIT SINGH ... Appellant

Versus

CANARA BANK & ANR ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Avtar S. Khinda, Advocate for the appellant.
None for the respondents.
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REKHA MITTAL, J. (Oral)

CM No.11749-CII of 2014

Heard.

Allowed as prayed for. Delay of 26 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of Rs.4,05,742/- along with interest by sale of mortgaged property, detailed in headnote of the plaint was decreed by the trial Court vide judgment and decree dated 12.11.2013 and appeal preferred by un-successful defendant/appellant was dismissed by the Additional District Judge, Kapurthala.

The sole submission made by counsel is that loan was obtained for the purpose of purchase of tractor and trolla and the loanee was obligated to repay the loan amount by way of instalments. It is further submitted that as loanee failed to pay the instalments in terms of agreement between the parties, the respondent Canara Bank took over possession of the tractor and sold the same after about 9 months thereafter. The amount recovered from sale of tractor was not adjusted towards the outstanding liability of the appellant. It is further argued that the Courts rejected this plea of the appellant primarily on the ground that he had not claimed set off in the written statement.

Counsel for the appellant, in response to a query, has fairly informed that the appellant did not raise any plea in the written statement that amount recovered by the bank from sale of tractor, hypothecated with the bank is liable to be set off in case liability in respect of the loan advanced in favour of the appellant is found to be outstanding.

Order VIII Rule 6 CPC deals with particulars of set off to be given in written statement.

A relevant extract therefrom, reads as follows:-

> (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiffs suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.
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> (2) Effect of set-off- The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off : but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.
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> (3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Since in the present case, appellant never claimed set off of ascertained sum of money legally recoverable by him from the respondent/plaintiff bank, findings of the Courts that the appellant cannot seek adjustment of the price of tractor towards outstanding liability by way of set off cannot be faulted with.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed.

18.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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