

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

**RSA No.3471 of 2018 (O&M)
Date of Decision:19.07.2019**

The Jagadhri M.C. Emp. Co-op., Urban S.E.T.C, Society Limited, Jagadhri
through its Secretary Sh. Dharamver Singh.

.....Appellant

Versus

Lakshmi Chand and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.K.Biriwal, Advocate
for the appellants.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgement and decree dated 15.04.2015, passed by learned Civil Judge (Jr. Division), Bilaspur, as well as judgement and decree dated 19.02.2018, passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for recovery of ₹67,669/- i.e., ₹23,791/- as Principal amount and ₹43,878/- as interest thereon calculated at the rate of 15% per annum from 06.12.1999 to 31.12.2009 along with future interest till realization, besides relief of permanent injunction restraining respondents-defendants no. 2 to 4 from disbursing retiral benefits to defendant no.1 at the time of his superannuation, unless the amount due towards the plaintiff was cleared. It is pleaded that defendant-respondent no.1 was employed as an Octroi Clerk with M.C. Sadhaura and was a member of the plaintiff-society.

Defendant no.1 availed a loan of ₹23,791/- from the plaintiff being a member of the society. However, he defaulted in repayment of the loan amount and interest of a sum of ₹43,878/- was also due on 31.12.2009. After abolition of the M.C. Sadhaura, defendant no.1- was stated to be shifted to the Public Health, Department and was thus working in the office of defendant no.3 under the supervision of defendant no.2. It is further prayed that defendants no.2 to 4 be directed to withhold the retiral benefits on his retirement on 26.02.2010, in terms of the agreement between defendant no.1 with the plaintiff society. Despite request, needful was not done by defendants no.2 to 4 neither the amount was being returned by defendant no.1. Hence the suit was filed.

Defendant no.1 while resisting the suit, admitted in his written statement that he was earlier employed with the M.C. Sadhaura, as Octroi Clerk and was a member of the plaintiff society. The loan was given without any interest being a member of the society. The entire loan amount stood repaid and nothing was due towards the plaintiff. It is further stated that despite request, the 'no due certificate' was not issued by the plaintiff. Defendant no.1 had since retired.

Defendants no.2 to 4 also contested the suit while taking a specific stand that pensionary benefits of defendant no.1 cannot be withheld. Moreover, defendant no.1 had joined the department on 19.02.2002 as Assistant Sub Divisional Clerk. Answering department had no concern with the dispute between the plaintiff and defendant no.1. They did not have any power to withhold the pensionary benefits of defendant no.1. Dismissal of the suit was prayed for.

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

1. Whether the plaintiff is entitled for recovery of Rs. 67,669/- i.e. Rs.23,791/- as principal amount and Rs.43,878/- as interest thereon calculated @ 15% per annum with future interest till realization?OPP
2. If issue no.1, is proved that the plaintiff is entitled for permanent injunction restraining the defendants no.2 to 4 from disbursing retirement benefits to the defendant no.1 as prayed for?OPP
3. Whether the suit is not maintainable?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the suit of the plaintiff is hopelessly time barred?OPD
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Whether the plaintiff is estopped from filing the present suit by his own act?OPD
8. Whether the plaintiff has concealed the true and material facts from the Court?OPD
9. Whether the suit of the plaintiff is bad for mis joinder and non joinder of the necessary parties?OPD
10. Whether the suit is liable to be dismissed with specific cost under Section 35-A CPC?OPD
11. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record, dismissed the suit filed by the plaintiff while holding that the suit was time barred, the last transaction between the plaintiff and defendant no.1 being in the year 2004. Moreover, defendants no.2 to 4, it is observed, had no power to withhold the pensionary benefits of defendant no.1. The department, in any case, had no notice about the transaction between the plaintiff society and defendant no.1. No notice or communication was ever issued by the plaintiff to defendants no.2 to 4 for deduction of the loan amount from his salary.

Appeal preferred by the present appellant was also dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide judgement and decree dated 19.02.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the impugned judgements and decrees are liable to be set aside as both the learned Courts below have grossly erred on facts and in law in dismissing the suit filed by the plaintiff-appellant. Defendant no.1, in his written statement has admitted the availing of a loan of ₹11,500/- and ₹15,000/-. Defendant no.1, it is stated through his acts of commission and omission has cheated and defrauded the plaintiff society. It is submitted that loss to the public exchequer, shall be caused, in case, this appeal is not allowed. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

It is a matter of record that defendant no.1 was an employee of the M.C. Sadhaura, earlier. The said committee was abolished in the year 2001. Defendant no.1 has admitted that he took a loan of ₹11,500 and ₹15,000/-, but it is stated that the said loan amount had been repaid, though the plaintiff had not issued the 'no due certificate.'

Learned counsel for the appellant is unable to deny that as per communication, Ex.P-5, a sum of ₹600/- was being deducted from the salary of defendant no.1 by the plaintiff committee, when he was in the

employment of the Municipal Committee, Sadhaura. Last payment of ₹2000/- was made by defendant no.1 to the plaintiff committee in the year 2004 as is reflected in Ex.P5. Municipal Committee, Sadhaura stood abolished in the year 2001.

At this stage, it is relevant to refer to the statement of PW-1- Dharamvir, Secretary of the Society. PW-1 has admitted that Lakshmi Chand deposited a sum of ₹2000/- on 08.03.2004 with the plaintiff society. It is further stated by PW-1 that when the loan was advanced, no document etc., was obtained from defendant no.1. There is no document on record to prove that a particular/any rate of interest was settled upon, between the parties. Reliance upon Ex.P-4, is of no avail to the appellant. As per Ex.P-4, Secretary of the then Municipal Committee, Sadhaura (since abolished) has written to the Secretary of the plaintiff society in context of application dated 18.06.1997, that the amount of installment in respect of its member, who have raised a loan from Yamuna Nagar Central Co-operative Bank Ltd., shall be deducted on monthly basis. The said document is clearly not a loan agreement. As per Ex.P-5, it is revealed that a sum of ₹15,000/- was advanced to defendant no.1 on 04.10.1997 and recovery was being effected through deductions of ₹600/- per month from the salary of defendant no.1. There are two deductions at the rate of ₹1200/-, as well. A further advance of ₹11,500/- on 06.12.1999 also finds mention. Total advance amount to defendant no.1 is reflected as ₹23,791/- as on 06.12.1999.

It is not in dispute that Municipal Committee, Sadhaura, was abolished in the year 2001. Last payment made by defendant no.1 was of ₹2000/- on 08.03.2004. Learned Courts below have rightly held that the

period of limitation of three years is to be reckoned from 08.03.2004. It is a matter of record that no action was taken by the plaintiff society till the issuance of notice dated 12.01.2010, Ex.P-6 to defendant no.1. Suit was filed by the present appellant on 17.02.2010. There is indeed no explanation whatsoever on the part of the plaintiff society for their inaction for such long years since March 2004. In this situation, findings of both the learned Courts below to the extent that the suit is barred by limitation, is correct.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings of fact vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 15.04.2015 and 19.02.2018 passed by the learned Civil Judge (Jr. Division) Bilaspur and learned Additional District Judge, Yamuna Nagar at Jagadhri, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

19.07.2019
s.khan

[LISA GILL]
Judge

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