IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6051 of 2017 (O&M)
Date of Decision.12.03.2019

Municipal Corporation, Jalandhar ...Appellant

Vs

Sh. Nardev Kumar (since deceased) through his LRs
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Paruthi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is against the concurrent finding of fact whereby the suit of the appellant-plaintiff for recovery of ₹57,29,201.55 has been dismissed.

The appellant-plaintiff sought recovery of aforementioned amount on the premise that defendant was promoted as Clerk in the year 1975 and placed as Junior Assistant w.e.f. 1.1.1988 and worked as Bill Clerk w.e.f. 16.05.1986 to 29.11.2002 when was placed under suspension. As per the sanctioned budgetary provisions, the plaintiff had 44 sanctioned posts of Police Constables, 6 Head Constables, 5 Assistant Sub Inspectors, 2 Sub Inspectors, 1 Inspector and 1 deputy Superintendent of Police. The aforementioned officers were working under the supervision and control of the plaintiff, thus, being paid salaries by Municipal Corporation. The entire service record remained in the custody of defendant. On 29.11.2002, one Constable Karnail Singh attended office of the plaintiff to join the Municipal Corporation, Jalandhar and request was made to verify vacancy of the Constable. The Government approved appointment of 44 police Constables but only 41 were actually on duty. It was found that as per the wage bill record of the police establishment in the month of October, 2002, salary of 52 police constables had been withdrawn by the defendant and same was brought to the notice of Deputy Controller of Finance and Accounts. On 29.11.2002, defendant confessed before the DSP Ranvir Singh and V.K. Kapoor, the then D.C. (F&A) regarding the fraudulently drawing of excess payment of 11 police constables by manipulation of bills. The defendant assured the plaintiff that embezzled amount would be deposited within 15 days as sum of ₹7 lakhs in cash was lying in his house, which was deposited on 29.11.2002 and subsequently another amount of ₹2,03,000/- was recovered on 3.12.2002 but no other payment. On further probe and enquiry, it was revealed that defendant had been embezzling and misappropriating funds of the plaintiff by manipulating the relevant accounts records.

Defendant opposed the suit and denied the alleged embezzlement and sanction of 44 posts of police officials. It was explained that he was working under the Deputy Controller (Finance & Accounts), who was custodian of entire record. There was a practice of monthly audit conducted by it and no embezzlement was noticed. As per the rules and regulations of Municipal Corporation, document were checked by the relevant authorities and only after preparation of bill, payment was made.

Plaintiff in support of evidence examined four witnesses and brought on record documents Ex.P1 to P93. On the other hand, defendant examined four witnesses and closed evidence.

Mr. Sudhir Paruthi, learned counsel appearing on behalf of the appellant submitted that before the lower Appellate Court, application under Order 41 Rule 27 for placing on record additional evidence was submitted for proving on record entries of Chest Book, Check Register, original documents and relevant acquaintance roll but the same has erroneously been dismissed. Acquittal in the criminal case i.e. FIR cannot be a ground for dismissal of the suit as the documents established the embezzlement. Deposit of ₹7 lakhs is testimony of the same. Defendant in cross-examination admitted that he had seen salary bills Ex.P11 to P91, which were not only prepared but entered by him. Salary of employees was given without any receipt and signature on official document. The aforementioned piece of evidence has been omitted, thus, there is abdication.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit for the simple reason that plaintiff failed to prove involvement of the defendant regarding embezzlement as PW4 admitted that original record including attendance register of the police was not brought before the Enquiry Officer. It is also matter of record that in the enquiry proceedings, nothing contrary surfaced against the delinquent. Once the plaintiff failed to place on record any material entailing to exoneration and acquittal in the criminal case and noticing the fact that suit was filed day before the expiry of limitation and no documentary evidence has been placed on record, embezzlement on the part of defendant was not proved.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 12, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No