IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5575 of 2018 (O&M)
Date of Decision: January 14, 2019

Ram Singh Bhankar

...Appellant

Versus

Sarva Haryana Gramin Bank, Rohtak

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ranvir S. Chauhan, Advocate, for the appellant.

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AMIT RAWAL, J. (Oral)

CM No.139-C of 2019

Learned counsel for the appellant submits that the execution application is pending for today in respect of the decretal of the suit filed by the respondent-plaintiff. In view of the aforementioned fact, the hearing of the appeal is preponded to today and the appeal is taken for hearing on merit.

Application stands disposed of.

RSA No.5575 of 2018

Appellant-defendant is in Regular Second Appeal against the decretal of the suit to the extent of ₹ 3,96,993/- along with interest @ 15.75% per annum with future interest @ 6% per annum, which was modified by the Lower Appellate Court by confining future interest @ 11.75%.

Appellant-defendant, on his request, granted a term loan of ₹1,42,000/- on 23.02.1999 for purchase of a car. He alleged to have paid

₹3,30,000/- and thereafter did not pay. His services were terminated in the year 2007 and later on the bank rates were changed.

Appellant-defendant contested the suit and raised the objections qua its maintainability, cause of action and locus-standi. On merits, it was stated that at the time of availing of the loan, the appellant was an employee. However, his services were terminated on 12.10.2007 and did not pay the aforementioned amount as the Bank was liable to pay the same after making deduction of the loan amount. Bank was requested many times regarding his terminal dues as provident fund and gratuity and the dues were to be recovered from the aforementioned payment and in case of some shortfall, the same was to be made known to him for payment. The execution of the hypothecated deed was not denied. It was asserted that the loan would carry a lien of gratuity and the bank should have adjusted it and having failed to do so, liability of interest could not have been fastened.

Since the parties were at variance, the trial court framed the following issues:-

"*1) Whether the plaintiff is entitled for the recovery of Rs.396993/- as prayed for? OPP*

2) If issue No.1 is proved in favour of plaintiff, then whether plaintiff is entitled for interest, if so, at what rate? OPP

3) Whether the suit of the plaintiff is false and frivolous? OPD

4) Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5) Whether the suit of the plaintiff is not maintainable? OPD

6) Whether the plaintiff is estopped from filing the present suit by way of his own act and conduct? OPD

7) Whether the suit is not filed by the competent person?

OPD

8) Relief.”

Respondent-plaintiff examined Suresh Dhillon, Office Associate as PW-1, Yogesh Sharma, Regional Manager as PW-2 and Randhir Singh Pannu, Regional Manager as PW-3 and also brought on record documents Ex.P1 to Ex.P39. On the other hand, appellant-defendant himself appeared as DW-1 and also examined DW-2 Sumil Dalal, PW-3 Radhe Sham, Branch Manager, DW-4 Bhupender Ahlmad and also brought on record documents Ex.DW1/A, Ex.DW2/A, Ex.DW4/A and Ex.D5.

Mr. Ranvir S. Chauhan, learned counsel representing the appellant-defendant submitted that out of the decretal amount, the appellant-defendant had already paid a sum of ₹ 2,53,306/-, which included ₹1,53,000/- after filing of the execution. The Lower Appellate Court ought not to have increased the future interest @ 11.75% which is against the Bank rates. The Bank failed to realise the amount from the dues for adjusting against the loan as it would have arrested the period of interest. The negligence of the Bank cannot go unnoticed. The commercial rate changed with effect from 2005, whereas it should have been from 2007 and this fact is reflected from the account statement Ex.P6.

I have heard the learned counsel for the appellant-defendant, appraised the paper book, records of the courts below and of the view that there is no force and merit, for, the bank statement Ex.P6 reflects the entry from 2009 and not from 2001 as alleged. Clause 6 of the hypothecated deed was sacrosanct between the parties as interest @ 8.5% and 12% was to be charged in case of the employee but if a person does not remain in service, the rate of interest was different. The signature of the defendant on the hypothecation has been proved and remained uncontroverted. The parties were bound by the same. The stand in the written statement also reveals that there was intention of the defendant but he did not pay and coined the story of lien. The lien was not reflected from any hypothecation deed, but reliance was made to Ex.P8, i.e., the sanction letter dated 23.02.1999 assigning that a letter of authority be obtained from the subject for making lien on his provident fund, gratuity and retirement dues, which was ordered to be kept with the loan documents. It was asserted that such sanction was obtained, but no certificate has been produced on record or proved. In such circumstances, the story coined in the written statement remained unproved. In case the defendant had paid certain amounts that can always be adjusted as per the terms and conditions of the hypothecation and claim adjustment.

For the reasons mentioned above, I do not find any illegality or perversity in the findings under challenge, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on merit and as well as on delay.

January 14, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No