IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.174 of 2018 (O&M)
Date of Decision:4.2.2020

Managing Director HSCARDB ... Petitioner

Versus

Om Parkash Kadian and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.UK Agnihotri, Advocate
for the appellant/defendant no.2

RAJIV NARAIN RAINA, J. (Oral)

1. This is a frivolous appeal filed against the well reasoned judgment dated 6.12.2016 passed by the first appellate court decreeing the suit of the plaintiff/respondent-Om Parkash Kadian by reversing the judgment dated 9.9.2014 passed by the trial court.

2. Plaintiff Om Parkash Kadian worked as a Junior Accountant in the Haryana State Cooperative Agriculture and Rural Development Bank, Beri, District Jhajjar (for short “the Bank”). Before he retired from service, an audit party while auditing the accounts of the Bank found an amount of ₹ 50,723/- drawn in excess by Kadian. The audit report was made basis by the Bank at the time of retirement led to recovery of this amount from Kadian from his retirement dues. He challenged the action of the Bank by filing a suit which was dismissed by the judgment and decree dated 9.9.2014 passed by the trial court.

3. Aggrieved by the judgment, Kadian went in appeal to the District Judge, Rohtak where he succeeded and the judgment and decree

of the trial court was reversed. The first appellate court held that no notice had been issued to Kadian before effecting recoveries from his pensionary dues, and therefore, the recovery was illegal and nonest as it was ordered behind the back of Kadian.

4. This means that no enquiry was held against Kadian in which he should have been associated and the amount discovered by the audit party was used against him without offering him reasonable opportunities to defend himself and explain his innocence before taking any adverse action.

5. Accordingly, the District Judge issued mandatory injunction to the Bank to refund the illegal recovery.

6. There are one ot two minor issues involving trifling sums of money in the recovery package inflicted by the Bank on Kadian which are inconsequential to this appeal as they have been rightly denied, but the major relief has been decided in favour of Kadian. The issue presently subsisting is interest on recovery of the amount of ₹ 50,723/- since the Bank admits the amount has been paid to Kadian in execution along with interest as decreed at the rate of 6% per annum, which rate of interest awarded in 2016 when spread over the previous years is on the lower side and deserves to be marginally enhanced.

7. The judgment and decree dated 6.12.2016 passed by the first appellate court is upheld but is modified to the limited extent of increasing the rate of interest from 6% to 7.5% per annum payable to the respondent-Om Parkash Kadian within <u>three months</u> from the date of receipt of a certified copy of this order. If the amount is not paid within the time allowed, it will be open to execution, but with the higher rate of

interest at 10% per annum till payment, in case of default. It is accordingly ordered.

8. This marginal increase is for the reason that the patently illegal order of recovery challenged in the suit was passed by the Bank in violation of the principles of natural justice resulting in deprivation of money which Kadian was unable to use since 2007. Other than increase in rate of interest, this frivolous appeal, which should not have been advised for filing in this Court when it does not involve any substantial question of service law, is resultantly dismissed with costs of ₹ 20,000/- to be paid to respondent-Om Parkash Kadian within the same time frame fixed for paragraph 7 above.

9. It is made clear that the interest and costs will be paid firstly by the Bank and thereafter the same would be open to recovery from those who passed the illegal order in the year 2007 by fixing responsibility. Compliance report be submitted to this Court within a period of six months to be placed on the file of this case. In case it is not filed, the case be listed for orders for compelling performance, so that public money in the custody of the Bank does not suffer.

(RAJIV NARAIN RAINA)
JUDGE

4.2.2020
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *Yes/No*