

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2063 of 2018
Date of Decision: 06.03.2020

Jagdish Kumar Jindal

.....Appellant

versus

State Bank of Patiala and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. B.D. Sharma, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

By this appeal, the appellant impugns the judgments and decrees passed by the Additional Civil Judge (Senior Division), Faridkot, and the learned District Judge, Faridkot, by the first of which his suit seeking a recovery of Rs. 92,000/-, along with interest @ 24% per annum from the respondent-bank, was dismissed, with the first appeal against that judgment having been dismissed by the latter court.

In a nutshell, the appellants' case is that he and his daughter had applied for a loan on 18.08.2001 for the purpose of her education, which was sanctioned, and eventually an agreement for that purpose was entered into on 18.08.2001, the terms of which were that after disbursement of the loan for an amount of Rs. 4,00,000/-, it would become repayable w.e.f. 01.04.2008, with clause 4 of the said agreement (Ex. P-3 before the learned courts below), also stating in clause 4 thereof that the payment would be made by way of 84 Equated Monthly Installments (EMIs), either six months after the completion of the studies of the student, or on her getting a job. (Despite that 'alternate clause', the loan was

in any case to be repaid in instalments starting from 01.04.2008).

The loan having been disbursed/partly disbursed (with learned counsel not sure of that and the exact amount of disbursement not actually discussed in the judgment of the learned courts below), the loan instalments 'fell in default', as a result of which the bank recovered an amount of Rs. 92,000/- from the salary account of the appellant on 19.07.2010, the appellant in fact being an employee of the bank itself.

The appellants' contention before the courts below (as also before this court today), was to the effect that essentially the loanee being the appellants' daughter, no recovery could have been made from the appellants' salary account, with no specific stipulation to that effect in the agreement in question.

As per the learned courts below, in the written statements of respondents no. 1 to 3, i.e. the State Bank of Patiala, it was stated that the agreement was binding on respondent-defendant no. 4, i.e. the daughter of the appellant, as also the appellant himself (he being a joint/co-loanee).

It was further stated that in fact the appellant had initially approached the District Consumer Disputes Redressal Forum, Faridkot, on account of an alleged deficiency of service on the part of the bank, which litigation eventually resulted in an appeal first before the State Consumer Redressal Commission, which imposed a penalty of Rs. 50,000/- upon the appellant, with him thereafter having filed an appeal before the National Commission, which he withdrew.

It was therefore the stand of the respondent-bank that the appellant had simply filed the suit in the present *lis* to avoid payment of the amount of penalty imposed upon him, and that no cause of action actually arose to him.

The appellants' daughter, i.e. respondent-defendant no.4, Shashi

Jindal, also filed a separate written statement, stating therein that she has no objection if a sum of Rs. 92,000/- was transferred from her loan account to the savings bank account of the appellant, as the bank had transferred the said amount to the loan account without consent.

Upon a replication having been filed, from the pleadings of the parties the following issues were framed by the trial court:-

“1. Whether the plaintiff is entitled for recovery of Rs. 92,000/- along with interest @ 24% with monthly rests from the date of marking lien on the amount, till realization, as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable, as alleged? OPD.

3. Relief”

Thereafter, upon appraising the pleadings and the evidence led by the parties, the trial court first noticed that the appellant in his cross-examination had admitted that some of the installments of the loan were paid from his account, he having thereby admitted his liability and having consequently paid the installments.

It was next noticed by that court that the appellant having retired from the service of the bank, his daughter, after completing an MBBS degree, got married, but neither she nor he, ever bothered to repay the loan to the bank.

Consequently, it was held that as both she and he were liable to repay the amount of the loan taken, of which only a part had been paid, there was nothing illegal in the action of the respondent-bank, in recovering Rs. 92,000/- from the savings bank account of the appellant-plaintiff.

Essentially on those findings, the suit was dismissed.

In the first appeal filed, the learned District Judge also, on exactly the same reasoning, while also noticing the factum of the earlier litigation before the

Consumer Commission in a little more detail, dismissed that appeal.

As already noticed at the outset, that before this court also, learned counsel for the appellants has reiterated the appellants' contention before those courts, to the effect that the loan being an education loan for his daughter and it having been recovered from his personal savings account, without even a notice issued to him, he was entitled for recovery of the said amount of Rs. 92,000/-, along with interest thereupon.

Having considered the argument, as also the judgments of the learned courts below, I find myself unable to agree with learned counsel for the appellant, because admittedly a loan had been obtained by the appellant and respondent no. 4 as "joint loanees", the whole of which had not been repaid, with Rs. 92,000/- still outstanding despite the fact that the appellants' daughter had obtained a job thereafter, though learned counsel submits was only a contractual job for a period of three years. However, in any case, regardless of that fact, the loan was admittedly to be paid by way of 84 Equated Monthly Installments starting from 01.04.2008.

Learned counsel has also not been able to deny that the finding of the trial court to the effect that certain installments of the loan had been paid by the appellant from his own savings account, thereby admitting his liability.

That being so, I would see no infirmity in the judgments and decrees passed by the learned courts below, even though no notice may have actually been issued to the appellant before deduction from his personal account, he being a (now former) employee of the bank and he having admittedly paid instalments from his own account also, in respect of a loan taken jointly by him and his daughter.

That apart, upon query to learned counsel he submits that as a matter

of fact the entire loan stands paid.

Consequently, even if this court was to observe anything in favour of the appellant *qua* the issue that no notice had been issued to him (without of course hearing the respondent bank on that aspect), the fact remains that the money that has been deducted from the appellants' account, was in fact due to the respondent-bank on account of the loan advanced by it to him and respondent no. 4, and there would be therefore no reason to eventually direct reversal of such deduction at this stage, even if the technicality of a notice not being issued to the appellant at that stage was found to be correct.

Further, he already having approached the District Consumer Disputes Redressal Forum, and having eventually having withdrawn his appeal against imposition of a penalty/costs of Rs.50,000/-, obviously he had not succeeded in that *lis* too.

It needs to be noticed here that learned counsel for the appellant has not pressed at all the appeal against the appellants' daughter, i.e. respondent no.4, even upon this court having asked him as to why he is not seeking recovery of the amount from her, if he is aggrieved thereof. Obviously therefore, though she was impleaded in the suit, as also in this appeal as a defendant-respondent, the appellant is actually not interested in any recovery from her but only from the respondent bank, knowing fully well that he and she were joint 'loanees' of the loan taken.

Thus, finding no merit in this appeal, it is dismissed *in limine*.

March 06, 2020
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes