

HIGH COURT OF ORISSA : CUTTACK

RSA NO.192 of 2019

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 22.04.2019 and 04.05.2019 passed by the learned District Judge, Bhadrak in Money Appeal No.02/2017 in confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Bhadrak in Money Suit No.99/2016.

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Bharat Charan Mohanty **:::: Appellant.**

-:: VERSUS ::-

State Bank of India & Others **:::: Respondents**

Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.

For Appellant

... M/s.Maheswar Mohanty &
S. Rath (Advocates)

For Respondents

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**CORAM :
MR. JUSTICE D.DASH**

Date of Hearing: 21.10.2022 :: Date of Judgment:23.12.2022

D.Dash,J. The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned District Judge, Bhadrak in Money Appeal No.02 of 2017. By the same, the Appeal filed by the

present Appellant as the unsuccessful Plaintiff in Money Suit No.99 of 2016 of the court of the learned Civil Judge (Senior Division). Bhadrak under section 96 of the Code has been dismissed. The suit filed by the Appellant as the Plaintiff having been dismissed by the Trial Court, the same has been upheld in the First Appeal.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case is that in the year 1983-84, the Defendant-Bank published an advertisement for recruitment to the post of Clerk in the said Bank. The Plaintiff applied for the post by giving his option for Bolangir Zone. He appeared in the written examination held at Bhawanipatna and was selected in multiple category in the written test, result of which was published in Oriya daily 'The Samaj' dated 30.09.1984. The Defendant Nos.1 and 2 however did not send the call letter to the Plaintiff to appear in the viva voce test. The Plaintiff after waiting, having made inquiry came to know that the viva voce for Bolangir zone was over. He could then learn that the intimation was given to him under Certificate of Posting which was never delivered. The Authorities of the Defendants-Bank were therefore requested to arrange the viva voce test for the Plaintiff. But they did not listen. The

Plaintiff then filed O.S. No.189/1985 in the Court of the Munsif, Bhadrak (as it was then) praying to direct the Defendant to conduct his viva voce test for the post advertised. The Defendant-Bank filed application questioning the jurisdiction in adjudicating the suit. The application being rejected the order being challenged in Civil Revision No.345/1986 before this Court, that too was dismissed. The suit was finally decreed and the Defendants were directed to give employment to the Plaintiff. The Defendants-Bank then carried First Appeal. The First Appellate Court confirmed the said judgment passed in the suit. The Second Appeal being preferred by the Defendant-Bank, this Court allowed the Appeal in part directing the Defendants to conduct the viva voce test of the Plaintiff. Accordingly, the viva voce test for the Plaintiff was arranged in the chamber of the Chairman of the said Bank at Bhubaneswar. it was held on 24.08.1991. The Plaintiff appeared in the test. It is now said that in spite of the fact that the Plaintiff had performed well in the said viva vice test, the recruitment cell issued a letter that he was not selected for the post.

4. The Plaintiff then filed a writ application which stood numbered as O.J.C. No.4391 of 1991 seeking quashment of the said letter. The writ stood finally dismissed on 12.03.1992. The Plaintiff then filed Special Leave Petition before the Hon'ble Apex Court. That too was

dismissed. The Plaintiff then raised the consumer dispute before the State Consumer Disputes Redressal Commission vide C.D. Case No.207 of 1993. The Commission although gave finding in favour of the Plaintiff but did not grant any relief. The Plaintiff then after making some inquiry at his level could come to know that the Defendants have resorted to forgery in depriving him of the employment, which he was entitled to get. So, the Plaintiff filed another writ application, i.e., W.P.(C) No.8017 of 2015 which was dismissed on 23.06.2015 with the observation that the claim is barred by res judicata as the matter has been set at rest by this Court on the earlier occasion and then also carrying the lis up to the Apex Court. The Plaintiff thereafter again issued notice to the Defendants stating all those facts about forgery and debarment of employment to him. He then filed a writ application, i.e., W.P.(C) No.16836 of 2015, which was disposed of on 04.11.2015 and as liberty was given to the Plaintiff to prove/establish the fact of forgery and advance the claim of compensation before the appropriate forum, the present suit has come to be filed on 24.02.2016 seeking compensation of Rs.2,57,32,000/- towards salary that which the Plaintiff would have got, had he been in employment and the compensation for the mental torture on account of such forgery with the expenses that he incurred.

5. The Defendants in their written statement have contended that the suit is barred by the principle of res judicata is also hit under the provision of Order 2 Rule 2 of the Code. It has also stated that the claim of compensation is barred by limitation. They stated that the Plaintiff having been given the opportunity to appear in the viva voce test when could not qualify, he has been denied the employment and, therefore, the liability of the Defendants to pay the compensation does not arise.

6. On the above rival pleadings, the Trial Court having framed thirteen issues, upon examination of evidence and their analysis, while not accepting the defence that the suit is barred by res judicata and hit under the provision of Order 2 Rule 2 of the Code as also not barred by limitation, it has been found that the Plaintiff has failed to establish that he had secured the highest mark in the written test and the Defendants have forged any document with an intention to cause damage to the Plaintiff. Having said so, the suit has been dismissed.

The Plaintiffs thus being non-suited had carried the First Appeal. That too has been dismissed. The First Appellate Court straight way going to judge the sustainability of the finding of the Trial Court on the core issue of forgery, upon appreciation of evidence has held that the forgery by the Bank as alleged has not been proved and the Plaintiff has failed to establish the act of forgery alleged particularly against the

Authority of the Defendants- Bank in the recruitment process. It has further said that in O.J.C. No.4391 of 1991, this Court while dealing with the challenge, this Court having categorically found no justification for interference with the order of non-selection of the Plaintiff to the post in question which had been impugned therein and that having attained finality, the suit is also barred by res judicata and also is hit under the principles contained in provision under Order 2 Rule 2 of the Code as such issues which could have been raised in the earlier suit and so decided had not been raised.

7. Learned counsel for the Appellant first of all submitted that the First Appellate Court should not have held the suit to be barred by res judicata as the Plaintiff having been granted with the liberty in W.P.(C) No.16836 of 2015 has filed the suit and therefore the same could not have been held to be barred by res judicata by taking the earlier decision rendered in O.J.C. No.4391 of 1991. He further submitted that the finding of the Trial Court as well as the First Appellate Court that the Plaintiff has failed to establish the act of forgery by the Authority of the Defendant-bank are not only contrary to the weight of evidence of record but also perverse. He further submitted that the Courts below could not have said that the Plaintiff having secured the required mark in the recruitment, he cannot be benefited for such error of non-publication

of roll number of the candidate in Sl. No.13 in the notification dated 30.09.1984 and that the First Appellate Court is not right in saying that due to erroneous preparation of the merit list showing the candidate Subhendu Kumar Chand bearing Roll No.19170138 in Sl. No.5; the Plaintiff is nowhere affected and that candidate is the sole affected person. He, therefore, urged for admission of this Appeal to answer the above as the substantial question of law.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

9. The subject matter of the suit pertains to the recruitment process for the post of Clerk in the State Bank of India (Defendants) pursuant to the advertisement dated 30.09.1984 for which the recruitment examination had been held in the year 1984. The Plaintiff having got success in the first round of litigation finally in the Second Appeal No.90 of 1991 had been called to the viva voce test. But then he having not been finally selected and being so intimated vide letter dated 24.08.1998 had questioned the same by invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India in OJC No.4391 of 1991. This Court finding no infirmity in the order of the Bank Authority refused to interfere with the same. The Plaintiff had then carried the matter to the Supreme Court by filing Special Leave Petition

in questioning the order dated 12.03.1992 passed by this Court in OJC No.4391 of 1991. The SLP stood dismissed. So the matter concerning the denial of employment to the Plaintiff in the said recruitment process has attained finality. The Plaintiff claims that later on, he could detect that the Bank Authority have forged the documents in denying the employment to the Plaintiff. But instead of filing any review application for review of the final order passed in OJC No.4391 of 1991, the matter was raised before the State Consumer Redressal Commissioner, which had absolutely no jurisdiction. Thereafter, the Plaintiff filed writ application i.e. WP(C) 8017 of 2015 in stating all those acts of forgery said to have been committed by the Bank-Authority. That writ application has been dismissed by order dated 23.06.2015 by putting an end to the said claim. But then very interestingly, the Plaintiff having filed another writ application, i.e., W.P.(C) No.16836 of 2015, the Court at the initial stage has disposed of the same by order dated 04.11.2015 granting the liberty to the Petitioner to prove/establish the fact of forgery and claim of compensation before the appropriate forum, if so advised. This order does not reveal that the earlier dismissal of the writ application i.e. WP(C) No.8017 of 2015 passed on 23.06.2015 had been placed in course of hearing from the side of the Petitioner. This writ application has been disposed of only on hearing the Petitioner in person

and there was no appearance from the side of the Defendant-Bank therein. In my considered view, the matter having been finally set at rest having travelled up the Apex Court and after so-called unearthing of fraud as stated again by an order dated 23.06.2015 in W.P.(C) No.8017 of 2015, the present suit basing upon the liberty as has been ordered in W.P.(C) No.16836 of 2015 is not saved from being hit under the principle of res judicata as well as being barred under the provision of Order 2 Rule 2 of the Code nor by that order granting liberty, it can be said that the application of the principle of res-judicata and provision of Order 2 Rule 2 of the Code stood exchanged. Therefore, the First Appellate Court in my view having said above has rightly given the seal of approval to the dismissal of the suit. Therefore, I do not find the necessity to further dwell upon the other substantial question of law as has been pressed by the learned counsel for the Appellant since with the above conclusion, the fate of this Appeal stands sealed. Thus, I find that there arises no substantial question of law to be answered, meriting admission of this Appeal.

10. In the result, the Appeal stands dismissed. No order as to cost.

***(D. Dash),
Judge.***