IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-3278-2023 (O&M)
Reserved on: 31.10.2023
Date of decision: 07.11.2023

JASPAL SINGH **..Appellant**

Versus

THE DISTRICT MANAGER AND OTHERS **..Respondents**

2. RSA-3276-2023 (O&M)

JASPAL SINGH **..Appellant**

Versus

THE DISTRICT MANAGER AND ANOTHER **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. These two regular second appeals filed by the same appellant through a common counsel have come up for hearing. Though, both the suits were separately filed and decided, however, both the suits are connected.

2. With the consent of the learned counsel representing the appellant, these two appeals are being disposed of by a common order.

3. In RSA-3278-2023, the plaintiff has assailed the correctness of the judgment and decree passed by the First Appellate Court on 12.07.2023. The plaintiff's suit for grant of decree of declaration to the effect that non-payment of admissible service as well as retiral benefits to the plaintiff accrued on account of retirement of the plaintiff from service is illegal, malacious, factitious and unconstitutional and the petitioner is entitled to all the service as well as retiral benefits along with interest at the rate of 18%

per annum from the date of retirement till regularization was decreed by the trial Court, however, in appeal, the judgment and decree was reversed.

4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

5. The plaintiff (appellant herein) claims that he has joined the Gurdaspur Central Cooperative Bank on 29.11.1979 as a clerk. On attaining the age of superannuation he has retired on 30.06.2012. He filed a suit on 07.09.2016 complaining that his service as well as retiral benefits have not been paid to him even after 4 years of his retirement. The defendants while contesting the suit has asserted that the Civil Court has no jurisdiction to entertain this matter. On merits, it was denied by the plaintiff that he has not been paid service and retiral benefits. It was stated that Rs.10,00,000/- and Rs.3,89,168.52/- were released on 27.06.2013, as gratuity and leave encashment, respectively. Thereafter, Rs.2,21,506/- was released as arrears of revised scale with effect from 01.06.2006. This payment was also made on 27.06.2013. Pension fund of Rs.1,02,864/- was released on 01.07.2013, whereas, provident fund of Rs.15,19,392/- was released on 06.08.2012. Thus, the plaintiff has been paid the amount of Rs.32,32,930.52/-.

6. The trial Court decreed the suit while observing that the defendants have only placed on record photocopies of the advises and the vouchers to prove the payment of retiral benefits. The Court drew an adverse inference against the bank and directed the defendant-bank to pay the amount along with interest at the rate of 12% per annum.

7. The concluding part of the judgment of the trial Court reads as under:-

> *"In view of the detailed discussion held under aforesaid issues and guided by aforesaid law, suit of plaintiff stands decreed with costs to the effect that the act of defendants of not providing statement of account in respect of Joint Bank account bearing ledger Folio No. 98/40 and non-payment of the amount in the above-said account to the plaintiff by the defendants is illegal, null and void, cryptic, unconstitutional, against law and principles of natural justice and the plaintiff is entitled to withdraw the amount along-with interest @ 12% P.A. upto date from the above-mentioned account. Defendants are directed to issue statement of account of the above-mentioned account and to make payment of the amount standing deposited in the above-mentioned account along-with interest @ 12% P.A. upto date within two months of passing of the judgment. Decree-sheet be prepared accordingly and file be consigned to judicial record-room, Gurdaspur."*

8. The defendant-bank filed first appeal along with an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

9. Though, The learned First Appellate Court dismissed the application for additional evidence, however, allowed the appeal.

10. This Bench has heard the learned counsel representing the appellant and with his able assistance perused the paperbook.

11. The learned counsel representing the appellant submits that the First Appellate Court has erred in reversing the judgment of the trial Court as the bank failed to prove that the plaintiff had paid the entire retiral dues. He submits that only photocopies were produced and therefore, the First Appellate Court committed an error in reversing the judgment of the learned trial Court.

12. This Court has considered the submissions of the learned counsel representing the appellant.

13. Firstly, the plaintiff has failed to disclose about the balance payment, if any, from the retiral dues. The plaintiff came to the Court while

asserting that all his admissible service benefits as well as the retiral benefits have not been paid. Whereas, the defendants while filing the written statement has disclosed that the plaintiff has been paid Rs.32,32,930.52/- on various dates. The defendants in order to prove the payment produced photocopies of advises/vouchers showing the payment of the amount. The bank also produced Ex.D-1, D-2 & D-3, the cheques drawn towards self by the wife of the appellant, who withdrew Rs.17,13,500/- from her joint account along with the appellant. It was the plaintiff, who had to stand on his own legs to prove his case. It is upon the plaintiff to prove that the payment already made is not sufficient or inadequate and he is entitled to an additional amount than what has already been paid to him. The plaintiff did not lead any evidence. The plaintiff retired as an Assistant Manager from the bank. First of all, he was required to specifically plead the relief claimed by him. Order VII Rule 7 of the Code of Civil Procedure, 1908, provides that the relief sought in the plaint by the plaintiff either simply or in the alternative is required to be specifically stated. However, general or other relief, which may always be given as the Court may think just can be awarded even though not asked for. However, in the given facts of the case the plaintiff was required to plead and prove as to how much amount was payable. The learned counsel representing the appellant has been repeatedly requested to disclose the details of the balance amount, however, he insisted that only photocopies of documents were produced and therefore, the trial Court correctly drew an adverse inference.

14. In ***R.V.E. Venkatachala Gounder Vs. Arun Migo Vishwasree, 2003(8) SCC 752***, the Supreme Court explained the difference between the

documents, which are inadmissible in evidence and the documents, which though admissible in evidence but could not be admitted in evidence because the primary document was not produced. In that eventuality, the Supreme Court held that once the document has been admitted and sufficient evidence is led, then subsequently the party cannot object to its admissibility. It is evident that the defendant examined Sh. Dheeraj Mahajan, Branch Manager of the bank, who tendered vouchers and advises. Sh. Jitender Singh, Accountant, Head Office was also examined as DW-2. He proved attested copies of advises Ex.D-5, D-7, D-9, D-11 and D-13.

15. The plaintiff on the other hand, stepped into the witness box and produced copy of notice, postal receipt and newspaper cutting. The copy of the judgment dated 22.10.2018, cashbook receipt and ledger was also produced.

16. The civil cases are required to be decided on preponderance of probabilities. The defendant *prima facie* discharged his onus. Now, it was for the plaintiff to prove that the amount already paid was incomplete and some more amount was due. However, the plaintiff failed. Hence, this Court does not find it appropriate to interfere in the findings of fact arrived at by the trial Court.

17. In RSA-3276-2023, the same plaintiff filed a suit for grant of decree of declaration to the effect that the act of the defendants in failing to provide the statement of account in respect of joint bank account bearing ledger Folio No.98/40 and non-payment of the amount in the said account is illegal, null and void. In the aforesaid case, the trial Court decreed the suit, however, the First Appellate Court on reappreciation of evidence found that

the judgment passed by the trial Court is erroneous. It is the case of the plaintiff that he along with his wife was having a joint account with ledger Folio No.98/40. In the year 2012, the computerization of accounts in the bank was carried out. The plaintiff wants statement of account before computerization. It has also been claimed that the plaintiff and his wife had deposited approximately Rs.1 crore, which is not getting paid.

18. On the other hand, the bank has stated that upto the year 2012, the accounts were being maintained manually, and thereafter, computerization of bank account was carried out nationally. In reference to the bank account, the first holder is appellant's wife. She availed the loan of Rs.1,00,000/- but defaulted in repayment of the same. The appellant's son has also taken loan from the bank amounting to Rs.24,50,000/-. A criminal complaint was also pending regarding the same. It was submitted that the plaintiff never deposited Rs.1 crore as is being claimed by him.

19. In the evidence, the respondent-bank produced account statement Ex.D-1 from the year 2013. The loan documents Ex.D-2 to Ex.D-14 were also produced. The trial Court decreed the suit by drawing an adverse inference against the bank as the statement of account before 2012 has not been produced before the Court. It is evident from the factual matrix that the trial Court passed a vague decree.

20. The bank has filed first appeal. On reappreciation of the evidence, the bank found that the plaintiff has withdrawn Rs.1,20,00,000/- approximately on the basis of forged vouchers in between 08.06.2006 to 09.06.2012. It was also found that when the computerization was completed, the plaintiff's account showed a balance of Rs.38,243/-, which was reduced

to Rs.73/- on 31.08.2019. The plaintiff was required to prove that he has deposited Rs.1 crore. He was required to lead some evidence to prove the same. He could not shift the burden of proof by merely taking a stand that he is unable to trace the old passbook of his bank account.

21. The learned counsel representing the appellant contends that the bank being a public institution is dealing with the public money and hence discharging a public function. By virtue of bank discharging a public function, they were required to produce and prove the defence taken by them.

22. In this case, at the first instance, the prayer of the petitioner is ingenuity of the counsel. The plaintiff without specifying the remaining amount wants direction from the Court to the respondent-bank to pay the amount which certainly does not go in line with Order VII Rule 7 of the Code of Civil Procedure, 1908. The plaintiff has not filed a suit for recovery. The plaintiff has also not produce any material to prove the amount lying in the account before computerization of the bank record. From the year 2013, the statement of account has been produced and the plaintiff has failed to draw the attention of the Court to any error in the account statement. Moreover, the First Appellate Court has concluded that the appellant's wife as well as son defaulted in the repayment of the loan amount.

23. In these circumstances, the First Appellate Court has concluded that the plaintiff has failed to make out his case.

24. The standard of proof required to decide the civil cases is on preponderance of probabilities. In this case, the defendant has produced material which were in their possession to prove their defence. At the cost of

repetition, the amount payable for the joint account is Rs.73/- in the year 31.08.2019. It would not be appropriate to burden respondent-bank only because the plaintiff has asserted certain facts, which have not been proved.

25. Keeping in view the aforesaid facts and discussion, the result is inevitable. The appeals filed by the appellant are dismissed.

26. All the pending miscellaneous applications, if any, are also disposed of.

November 07th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No