2023:PHHC:079830

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103 **RSA No.4579 of 2019 (O&M)**
Reserved on : 03.05.2023
Date of Decision : 01.06.2023

Shakshi Gram Udyog Mandal Regd. ....Appellant

VERSUS

Haryana Khadi and Village Industries Board & Anr. ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Kumar Jain, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred against the judgments and decrees dated 07.04.2014 and 19.08.2019 passed by the Courts below dismissing the suit filed by the plaintiff-appellant.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction against the defendant-respondents for restraining them from charging/ recovering/claiming any kind of interest on the loan w.e.f. 21.07.1995 for Rs.3,24,000/- and w.e.f. 17.11.1997 for Rs.62,000/- up to date and further restraining the defendant-respondents from in any way effecting recovery of any kind of amount from

the plaintiff-appellant by way of his physical arrest or detention or attachment and auction of his property and factory building forcibly and illegally. It was claimed that the plaintiff-appellant had applied for a loan to the defendant-respondent no.2 for fiber industries at village Ahirka and the defendant-respondents had sanctioned a loan of Rs.4,70,456/- on 25.03.1994 for construction of building, purchase of machinery and for working capital. On 31.03.1994 the defendant-respondents issued a cheque for Rs.3,24,000/- for construction of building of the factory. The plaintiff-appellant constructed the factory building and submitted utilization certificate and the same was accepted by the defendant-respondents on 20.06.1995. It was averred that as per the rules and regulations, the defendant-respondents were bound to release the next installment of loan for purchase of machinery within one month from the date of acceptance of the utilization certificate i.e. by 19.07.1995 but the defendant-respondents failed to do so and released the next installment vide cheque dated 30.03.1997 for a sum of Rs.86,000/- i.e. Rs.62,000/- for purchase of machinery and Rs.24,000/- towards margin money. It was the case set-up that the defendant-respondents were not entitled to charge interest on the amount of the first installment of Rs.3,24,000/- for the period from 21.07.1995 upto date as they had failed to release the second installment within the time period of one month from the date of acceptance of the utilization certificate on 20.06.1995. It was pleaded that the plaintiff-appellant submitted the utilization certificate of the amount for purchase of machinery and the same was accepted by the defendant-respondents on 17.11.1997 and that the defendant-respondents were bound to release the next installment of Rs.50,000/- for working capital within a period of one month i.e. by 16.12.1997 but they failed to release the installment of working capital till today. Thus, the defendant-respondents were not entitled to charge any interest on this amount of Rs.62,000/- w.e.f. 17.11.1997 up to date. According to the plaintiff-appellant, due to non release of the working capital installment till date, the plaintiff-appellant was unable to start his factory but was bound to pay the electricity bills and had suffered financial loss on account of the illegal acts of the defendant-respondents. Hence, the present suit for permanent injunction was filed. In the written statement the defendant-respondents raised preliminary objections regarding maintainability, res judicata, limitation, non-joinder of necessary parties, cause of action, locus standi and jurisdiction. On merits the defendant-respondents admitted the sanction of the loan amount of Rs.4,70,456/- on 25.03.1994, payment of Rs.3,24,000/- by cheque dated 31.03.1994, acceptance of utilization certificate on 20.06.1995. However, the claim of the plaintiff-appellant was denied. It was averred that the firm did not exist now as its assets had been sold by the plaintiff-appellant. The remaining amount of loan was to be released to the plaintiff-appellant as and when money became available with the defendant-respondents and that there was no unnecessary delay in payment on the part of the defendant-respondents. It was averred that the defendant-respondents had every right to charge interest from the plaintiff-appellant. The plaintiff-appellant had mis-utilized the loan amount and disposed off the assets created from the loan amount as therefore the defendant-respondents had the right to recover the loan amount and charges with penal interest. According to the defendant-respondents, a sum of Rs.8,82,995/- as on 31.12.2011 was due and outstanding against the plaintiff-appellant. The plaintiff-appellant filed a replication denying the contents of the written statement and reiterating the contents of the plaint.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to relief of permanent injunction on the grounds as mentioned in the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
4. Whether the suit of the plaintiff is hit by principle of resjudicata ? OPD
5. Whether the suit of the plaintiff is barred by limitation ? OPD
6. Whether this court has got no territorial jurisdiction to entertain and try the present suit ? OPD
7. Whether the plaintiff has not come in the court with clean hands and has suppressed true and material facts from the court ? OPD
8. Whether the suit of the plaintiff is bad for non-joinder of necessary party ? OPD

9. Whether the suit of the plaintiff is false and frivolous ? OPD
10. Relief.

4. On the basis of the pleadings of the parties and the evidence on the record, the Trial Court dismissed the suit of the plaintiff-appellant vide judgment and decree dated 07.04.2014. The Trial Court *inter-alia* found that the plaintiff-appellant had failed to prove that the defendant-respondents were bound to release the next instalment of the loan amount within one month of submission of the utilization certificate. No rules and regulations of the defendant-respondents in this respect were placed on the record by the plaintiff-appellant. The suit was also held to be barred by *res judicata*. Aggrieved by the decision of the Trial Court, an appeal was preferred which appeal was also dismissed vide judgment and decree dated 19.08.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the Courts below have erred in dismissing his suit for permanent injunction and that the present suit was not barred by *res judicata*.

6. I have heard learned counsel for the plaintiff-appellant.

7. In the present case both the Courts below have concurrently found that the suit of the plaintiff-appellant was barred by *res judicata*. In 1999 the plaintiff-appellant had filed a suit against the defendant-respondents seeking mandatory injunction directing/ordering the defendant-respondents to pay/release the amount of working capital of Rs.2,50,000/-

and also directing them not to charge any interest on the amount of Rs.3,24,000/- and Rs.86,000/- on account of building and machinery advanced to plaintiff-appellant till realization of the amount of working capital of Rs.2,50,000/- with a consequential relief of permanent injunction restraining the respondents-defendants from recovering any amount of installments and interest on the already advanced amount for building and machinery by way of attachment and sale of property or by way of arrears of land revenue. The said suit was dismissed vide judgement and decree dated 28.01.2005 (Ex.D18 and Ex.D19). The appeal of the plaintiff-appellant against the said decision was dismissed by the First Appellate Court on 12.05.2007 (Ex.D20 and Ex.D21). The plaintiff-appellant has sought the same relief in the present suit which relief already stands declined in the earlier suit. The present suit is clearly barred by *res judicata*. The First Appellate Court has also detailed the multifarious litigations initiated by the plaintiff-appellant against the defendant-respondents. Learned counsel for the plaintiff-appellant has not been able to point out as to how the present suit was different from the earlier suit already decided against the plaintiff-appellant on 28.01.2005. In the present case, once the suit is barred by *res judicata*, there is no occasion for grant of any injunction in favour of the plaintiff-appellant. No other point was argued.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not call for any interference by this Court. No question of law, much less any substantial

question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.06.2023 **(ALKA SARIN)**
parkash **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO