

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(120)

RSA-814-2023 (O&M)

Date of Decision : March 23, 2023

The Jind Central Cooperative Bank Limited

.. Appellant

Versus

Lakhmi Dass and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajvir Singh Sihag, Advocate, for the appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-3048-C-2023

As prayed for, the application is allowed.

RSA-814-2023

In the present Regular Second Appeal, the judgment and decree of the lower Appellate Court dated 09.09.2022 is under challenge by which, the judgment and decree of the trial Court dated 02.02.2017 has been set aside and the suit filed by the respondents-plaintiffs has been allowed.

It may be noticed that this suit was filed by the respondent-plaintiff seeking the release of the pensionary benefits such as leave encashment after he retired from service on attaining the age of superannuation on 31.01.2005. The leave encashment was not being released in favour of the employee on the ground that there were criminal proceedings, which were going on in respect of FIR No.379 dated 08.06.1997 registered at Police Station City Jind. In the said FIR, the

respondent-plaintiff was acquitted by the competent Court of law on 11.05.2009. Though the criminal proceedings came to an end but still the benefit of leave encashment was not released on the ground that there are certain civil proceedings, which are going by way of an arbitration case filed by the bank. The said arbitration proceedings also came to an end and the respondent-plaintiff was not held liable for any act so as to cause any financial loss to the bank concerned though the said decision of the arbitrator is pending consideration before the Civil Court. As all the proceedings due to which the pensionary benefits were withheld, came to an end but still the benefit of leave encashment was not being released, the suit was filed by the respondent-plaintiff seeking the declaration that respondent No.1-plaintiff is entitled for the release of leave encashment as admissible to him.

Keeping in view the evidence, which came on record and after appreciating the same, the trial Court held that the appellant/defendant is under obligation to release the leave encashment but the said benefit was denied to the respondent No.1-plaintiff and his suit was dismissed on the ground that the same was not maintainable keeping in view the proviso to Section 34 of the Specific Relief Act, 1963 as only a declaration was sought but the consequential relief of the arrears was not sought.

Feeling aggrieved against the decision of the trial Court, the respondent-plaintiff filed an appeal against the judgment and decree of the trial Court dated 02.02.2017. The said appeal came to be decided by the lower Appellate Court vide judgment and decree dated 09.09.2022. The lower Appellate Court had set aside the judgment and decree of the trial Court dated 02.02.2017 and allowed the suit filed by the respondent-

plaintiff so as to direct that the respondent-plaintiff is entitled for the release of leave encashment with arrears along with interest @ 6% from the date he retired till the payment of the same. Hence, the present Regular Second Appeal.

Learned counsel for the appellant-Bank submits that the findings which have been recorded by the lower Appellate Court qua the non-apprehending of proviso to Section 34 of the Specific Relief Act, 1963 are not correct as the consequential relief of arrears of the leave encashment was not sought in the suit, hence, the same has not been dealt in accordance with law and proviso to Section 34 of the Specific Relief Act, 1963 by the lower Appellate Court.

A bare perusal of the findings which have been recorded by the lower Appellate Court on the issue as to whether the proviso of Section 34 of the Specific Relief Act will be applicable qua the service benefits has been held in detail and the findings have been recorded by placing reliance upon the judgment of the Hon'ble Supreme Court of India in ***Ram Labaya vs. Municipal Corporation Amritsar, 1993 (3) PLR 362***, and the finding recorded therein has been taken into account wherein also, the suit was filed only for declaration without the prayer of the consequent relief of reinstatement and payment of back wages, it was held that for seeking service benefits, proviso to Section 34 of the Specific Relief Act will not be applicable.

The findings recorded by the lower Appellate Court are inconsonance with the settled principle of law noticed hereinbefore as the learned counsel for the appellant has not been able to distinguish any of the judgment which has been relied upon by the lower Appellate Court qua

applicability in the given facts and circumstances of the present case.

Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court of India in *State of Madhya Pradesh vs. Mangilal Sharma, 1998 (2) Supreme Court Cases 510*. The said judgment, in respectful submission, is not applicable in the present case for the reason that the judgment and decrees of the Court below in the said case had attained finality where only the declaration was given and not the consequential relief and the Executing Court had granted the relief not extended in the judgment and decree by the competent Court of law and it was under those circumstances, the findings were recorded, which will not be applicable in the present case as while granting the relief to the respondent-plaintiff of the leave encashment, a direction has already been given by the lower Appellate Court while passing the judgment and decree and that too by placing on reliance by the well settled principle of law.

Keeping in view the above, as no perversity in the facts or in the law has been pointed out by the learned counsel for the appellant, no interference is called for by this Court in the facts and circumstances of the present case.

Dismissed.

CM-3049-C-2023

As the main appeal has been dismissed, present application also stands dismissed.

March 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes