IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA-1962-1992 (O&M)
Date of decision: 24.04.2024

M.C. Amritsar ...Appellant

VERSUS

Shri Sekar ...Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Karanjit Singh, Advocate for the appellant.

Respondent- ex-parte.

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VINOD S. BHARDWAJ, J. (Oral)

1. The defendant-Municipal Corporation, Amritsar, is in appeal against the judgment and decree passed by the Subordinate Judge 1st Class, Amritsar, in Civil Suit No.123 of 1984 decided vide judgment dated 04.12.1987 allowing the suit filed by respondent-plaintiff as well as against the subsequent dismissal of Civil Appeal No. 06 of 1988 by the Additional District Judge, Amritsar, vide his judgment dated 24.03.1990.

2. Since no one entered appearance on behalf of respondent-plaintiff despite service by way of proclamation, he is ordered to be proceeded against ex-parte.

3. Brief facts of the case are that the respondent-plaintiff was driver of truck No.TDL-888 and he had come to Amritsar on 26.09.1984 to bring two auto clave vessels from M/s. Ralluonu Company, Bombay for M/s Amritsar Oil Works, Amritsar. It is stated that when he reached Amritsar, it was dark and in the absence of any signal at the Octroi Post, he crossed the said post without payment of the Octroi charges. He was hauled at a distance

of about three Kms of the Octroi Post and all the papers including the bill, G.R./R.C. etc. were taken into possession and the truck was impounded. Even though he informed the officials that the same occurred as a result of his ignorance and failure to notice Octroi being new to the city, the same was of no use. The officials of the appellant-Corporation insisted for payment of penalty to the extent of 20 times of the Octroi Charge. The said penalty was challenged by the respondent-plaintiff by institution of the present suit for mandatory injunction averring that the action was illegal and unsustainable.

4. The appellant-defendant/Municipal Corporation entered appearance and filed its response specifically to the effect that the suit was not maintainable as the penalty had been levied on the basis of application submitted by the respondent-plaintiff seeking compounding of the offence after payment of actual Octroi tax and composition charges in terms of provisions of Section 396 of the Punjab Municipal Corporation Act, 1976. It was averred that the levy being as per law, the suit was liable to be dismissed.

5. On completion of pleading issues were framed and evidence were led by the parties. On consideration of the evidence, the Sub-Judge 1st Class, Amritsar, recorded a finding that it could not be established that the respondent-plaintiff was conversant with Urdu and that he was made to understand the contents of the application on the basis whereof the statement of DW-1 could be relied upon or it could be accepted that compounding was requested by the plaintiff. It was held that the issue of composition did not arise in the said case and that the matter could only be decided with by the

Court since the authority was not authorized to do the same.

6. The suit of the respondent-plaintiff was accordingly decreed and it was held that the notice dated 26.09.1984 served by the appellant-Municipal Corporation claiming 20 times penalty of the actual Octroi duty as penalty was illegal and it directed immediate release of the goods, truck as well as the papers including the bill, invoices etc. pertaining to the goods. The said order was without prejudice to the rights of the appellant to prosecute the respondent-plaintiff under Section 116 of the Punjab Municipal Corporation Act, 1976.

7. Aggrieved thereof an appeal was filed by the appellant before the District Judge, Amritsar, bearing Civil Appeal No.6 of 1988. On consideration of the appeal, the Additional District Judge, Amritsar, dismissed the same and affirmed the judgment dated 04.12.1987 of Sub-Judge 1st Class, Amritsar, vide judgment dated 24.03.1990. Aggrieved thereof, the present second appeal has been filed.

8. Learned counsel for the appellant has reiterated that no penalty was levied upon the respondent-plaintiff and the composition money was being demanded on an application submitted by the respondent-plaintiff seeking compounding of the offence.

9. I have heard the learned counsel appearing on behalf of the appellant and have gone through the judgments passed by the learned Additional District Judge, Amritsar.

10. While dealing with the arguments raised by the appellant on issue nos. 1 and 5, the Additional District Judge, has observed as under:

> ***" 7. The learned counsel for the appellant has argued that***

Rs. 18,000/- has been imposed as a composition money and not as a penalty and the Commissioner, Municipal Corporation, Amritsar has no right to compound the same under Section 394(b) of the Act. He pointed out that on 26.9.1984 Sekhar made an application Ex. D1 for compounding the same and vide endorsement Ex. DY, Rs. 18000/- was imposed as a composition fee. So the findings of the trial court on issues No. 1 and 5 are incorrect and he referred to M/s Parkash Road Lines Vs. Union of India, AIR 1989 S.C. 1962.

8. The counsel for the respondent argued that the case in hand cannot be covered under Section 394 (b) of the Act and the application had been made for compounding the same. The appellant should have informed the respondent that it was going to impose Rs.18000/- as a composition fee and then it should have got a statement from the respondent that he accepted the imposition of the composition fee. One sided imposition of composition fee cannot be held to be legal and he referred to 1985 Municipal Committees and Corporation Cases 118, Brij Mohan Vs. Municipal Corporation, Amritsar and others.

9. It has been observed by Hon'ble Mr. Justice S. P. Goyal in Brij Mohan Vs. Municipal Corporation(supra) that "moreover, even the provisions of this section don't entitle the Commissioner unilaterally to determine and impose

composition fee. By virtue of the provisions of Section 394-B the Commissioner and the other Officers mentioned therein have been authorised to compound the offence relating to the Act but this provision no where authorise them to determine composition fee unilaterally which could bind the offender". As such it is apparent that the composition fee unilaterally imposed and there is no acceptance of the same by the respondent-plaintiff. As such the findings of the trial court on issues No. 1 and 5 are correct and the same stand affirmed.

10. No arguments on any other issue have been addressed before me. But I have gone through the record and finding of the trial court on the remaining issues are correct and the same also stand affirmed.".

11. It is evident from a perusal of the above that as per the judgment in the matter of '**Brij Mohan** Vs. **Municipal Corporation, Amritsar and other**', relied by the Additional Sessions Judge, Amritsar, the Commissioner did not have any power to determine and impose any composition fee and that the said aspect could only be dealt by a Court. Further, it was also noticed that the respondent-plaintiff was incapable of understanding the documents on which his signatures/impressions were obtained.

12. The factual aspects have already been noticed by both the Courts and finding has been returned against the appellant-Municipal Corporation. No judgment or law has been cited by the counsel for the appellant on the basis whereof the said findings, concurrently recorded by

both the Courts, can be said to be unsustainable and liable to be set aside being misplaced or based on mis-interpretation.

13. Finding no substantial question of law or any illegality, perversity or impropriety in the judgments concurrently passed by both the Courts, I find that the present appeal deserves dismissal.

14. Ordered accordingly.

(VINOD S. BHARDWAJ)
JUDGE

24.04.2024
Mangal Singh

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