

RSA-501 of 1989

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

RSA-501 of 1989 (O&M)  
Reserved on: 02.04.2024  
Pronounced on: 15.04.2024

Union of India and another

.....Appellants

Versus

Shri Dharmvir Singh (died) through LRs

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Argued by: -Mr. Aseem Aggarwal, Advocate,  
for the appellants.

Mr. Ishaan Bhardwaj, Advocate,  
for the respondents No1(i) to 1(iv).

**NAMIT KUMAR, J.**

**CM-6432-C of 2007**

1. This application has been filed by the respondents-applicants for placing on record reply to CM-3294-C of 2007.

2. Allowed as prayed for subject to all just exceptions. Reply to CM-3294-C of 2007 is taken on record.

**CM-3294-C of 2007**

1. This application has been filed by appellants-applicants under Order 41 Rule 27 CPC for leading additional evidence in the present appeal.

2. Learned counsel for the applicants contended that applicants-appellants had relied upon Summary Security Force Court

proceedings which were conducted according to Border Security Force Act and Rules before the trial Court and some part of the proceedings was produced before the said Court as part of evidence. However, despite due diligence, the applicants could not produce the complete proceedings before the trial Court. Therefore, applicants may be permitted to place on record the typed copies of the said proceedings as additional evidence for proper adjudication of the appeal.

3. On the other hand, learned counsel for the respondents-non-applicants opposed the application by contending that the application has been filed by the appellants-applicants at a belated stage. The documents were not even produced before the Lower Appellate Court. Therefore, at this stage, appellants-applicants cannot be permitted to lead additional evidence. Respondents have filed reply to this application vide CM-6432-C of 2007. It has been averred that suit was filed in the year 1983 which stood dismissed in the year 1987. Aggrieved against the judgment of dismissal, respondent(s) filed appeal which was allowed in the year 1988. Respondent Dharamvir Singh has expired in the year 1994. Now in the year 2007, the said application has been moved after the death of respondent Dharamvir Singh, which cannot be cross-examined/rebutted.

4. I have heard learned counsel for the parties and perused the record.

5. The point for consideration in the present application is as to whether Summary Security Force Court was convened and proceedings had taken place as per law. During trial applicants-

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appellants produced some of the Summary Security Force Court proceedings before the trial Court, however, despite due diligence they could not produce the entire proceedings before the trial Court. This Court finds that documents sought to be placed on record by way of additional evidence by the applicants are necessary for the proper adjudication of the present appeal. The argument raised by learned counsel for the respondents for filing the present application at belated stage cannot be countenanced with. Initially vide CM-773-C of 1989 the applicant has moved application under Order 41 Rule 27 CPC for placing on record certain documents which found mention in the order dated 20.04.1989 which is reproduced as under: -

*“Present: Smt. Mohinder Gupta, Advocate, with  
Shri B.R. Mahajan, Advocate -  
counsel for the appellant – UOI.*

*Smt. Gupta has filed an application u/s 151  
read with Order 41 Rule 27 of the CPC, tendering various  
certified copies of the record relating to Summary Security  
Force Court with a view to showing that the observations  
of the first appellate Court are not correct and are  
falsified by the record.*

*Admitted.*

*The operation of the decree awarded by the  
first appellate Court is stayed.*

*Sd/-  
20.4.1989 Judge”*

6. Thereafter, vide order dated 27.01.2005, the following order was passed: -

*“Present: Shri Kamal Sehgal, Advocate for the  
appellants.  
Shri Girish Agnihotri, Advocate, for the  
respondent.*

*Shri Kamal Sehgal has framed substantial questions of law arising in the appeal. Copy of the statement containing the substantial questions of law has been supplied to Shri Girish Agnihotri, counsel for the respondent.*

*At the commencement of arguments, Shri Sehgal pointed out that an application under Order 41 Rule 27 of the Code of Civil Procedure was filed on behalf of the appellants, but the same has not been decided. At the same time, he made a request that the appellants may be permitted to file proper application for permission to lead additional evidence.*

*The request of Shri Sehgal is accepted and hearing of the appeal is adjourned to 14.2.2005.*

*Sd/-  
January 27, 2005 (G.S. Singhvi)  
Judge”*

7. In such circumstances, it cannot be said that the said application has been moved by the appellants at belated stage. Therefore, the application is allowed and documents are taken on record.

**RSA-501 of 1989 (O&M)**

1. This Regular Second Appeal is directed against the judgment and decree dated 17.02.1988 passed by the Court of learned Additional District Judge, Amritsar, whereby appeal preferred by respondent-plaintiff-Dharamvir Singh against the judgment and decree dated 16.07.1987 passed by the Court of learned Sub Judge Ist Class, Amritsar, has been allowed and his suit for declaration stands decreed.

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2. For convenience sake, reference to parties is being made as per their status in the civil suit. Plaintiff filed a suit for declaration to the effect that order dated 24.03.1982 passed by the Commandant 41<sup>st</sup> Battalion Border Security Force Khem Karan is illegal being against the provisions of law as contained in the B.S.F Act and Rules. It was pleaded that plaintiff was in service as Constable/Head constable in the Border Security Force. Inspector Sohan Singh under whom the plaintiff was serving made a false accusation against the plaintiff as a result of which the plaintiff made request for his transfer which was ordered but the aforesaid inspector threatened the plaintiff that he would take his revenge. On 23.01.1982, the plaintiff and Kartar Singh, who was plaintiff No.1 in the suit, intercepted one Abul Bashir resident of Rangoon (Burma) on Indo Pak Border and recovered from him Rs.1200/- and one Omex Wrist Watch which the plaintiffs were to produce before their superior officer. They were implicated in false case that they have misappropriated the amount and articles of the accused. Plaintiffs were then charge sheeted. The enquiry was not conducted against the plaintiffs as per provisions of Border Security Force Act. It was further pleaded that the plaintiffs were not heard by Commandant and they were sentenced to undergo six months rigorous imprisonment and were dismissed from service. The plaintiffs alleged that the commandant was not competent to act as summary Security Force Court. No witness was examined in presence of the plaintiffs. They were not given copies of the record of evidence. Summary Security Force Court was not

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conducted as per Rules 133 to 161 of the B.S.F. Rules and law applicable in the matter.

3. The suit was contested by the defendants. Factual position has been admitted in the written statement, however, the allegations levelled by the plaintiff against the defendants have been contested and controverted. It has been alleged by the defendants that the plaintiff(s) intercepted one Abul Bashar resident of Rangoon (Burma) on Indo Pak Border and they misappropriated Rs.1200/- and one wrist watch recovered from him. On the request of Abul Bashar they returned Rs.100/- and then Rs.400/-, in all Rs.500/- to Abul Bashar. The enquiry and trial of the case of the plaintiff(s) was conducted as provisions of Border Security Force Act and rules. The plaintiff(s) were provided full opportunities and they also examined one constable as defence witness. The entire trial took place in the presence of the plaintiff(s) and the defendants have supported order dated 24.03.1982 pleading that the same has been passed in accordance of provisions of law and rules.

4. From the pleadings of the parties followings issues were framed:-

1. Whether order dated 24.03.1982 passed by the commandant 41st Battalion, BSF is illegal and void? If so its effect? OPP.
2. Whether civil Courts at Amritsar have no jurisdiction to try the suit? OPD.
3. Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff(s) vide judgment and decree dated 08.05.1987.

7. Aggrieved against the judgment and decree of the trial Court, plaintiff-Dharamvir Singh preferred an appeal before the lower appellate Court, which has been allowed vide judgment and decree dated 17.02.1988.

8. Learned counsel for the appellant contended judgment and decree passed by the Lower Appellate Court is against law and facts, therefore, is not sustainable in the eyes of law. He further contended that plaintiff-respondent(s) failed to produce the impugned order without which the proceedings of enquiry/legality or illegality of the impugned order cannot be challenged. He further contended that plaintiff was given full opportunity to defend his case. He further contended that proper enquiry was conducted as per provisions of the BSF Act & Rules and plaintiff was rightly dismissed from service after following due procedure. Lower Appellate Court without considering the evidence on record decreed the suit and reversed the well-reasoned judgment of the trial Court. He further contended that the judgment of the Lower Appellate Court being perverse and against law is liable to be set aside.

9. On the other hand, learned counsel for the respondents supported the judgment of the Lower Appellate Court by contending that impugned order was not passed after following proper procedure,

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therefore, the same is against the BSF Act and Rules. Thus, the suit of the plaintiff has rightly been decreed by the Lower Appellate Court.

10. I have heard learned counsel for the parties and perused the record.

11. The appeal was admitted in the year 1989 and operation of the impugned decree of the lower appellate Court was stayed vide order dated 20.04.1989. Perusal of the record shows that on 28.01.1982 plaintiff along with Kartar Singh, who died during trial, intercepted one Abul Bashar resident of Rangoon and extorted Rs.1,700/- and one automatic Omax wrist watch from him. On request of Abul Bashar, they returned Rs.500/- but misappropriated the balance amount of Rs.1200/-. A charge-sheet was framed under Section 31 of the Border Security Force Act and record of evidence was also prepared in accordance with the Border Security Force Rules. The record was prepared in English in the presence of both the accused who were made to understand the same in the language they comprehended. It is further crystal clear that plaintiff was allowed to cross-examine each of the witnesses. Further, both the accused signed the record in token of having understood the proceedings. Rule 48 of the Border Security Act was complied with. Plaintiff was given chance to make statement but he did not avail the said chance. Plaintiff and Kartar Singh examined two constables and refused to call any other witness in defence. Summary Security Force Court was convened on 18.03.1982. After following due procedure, plaintiff was sentenced to six months imprisonment and was dismissed from service. Further, plaintiff filed

suit for declaration without producing on record the order impugned. Section 31 of the Border Security Force Act, 1968 provides that if any person commits extortion on conviction by the Security Force Court, he shall be liable to suffer imprisonment for a terms which may extend to ten years or such less punishment as mentioned in the said Act. Therefore, the punishment awarded to the plaintiff was proportionate to the offence committed by him. Lower Appellate Court cannot lightly interfere with the quantum of punishment while dealing with the paramilitary forces, which is one of the disciplined forces and guards the nation. On thoughtful consideration, this Court finds that Lower Appellate Court wrongly decreed the suit of the plaintiff.

12. In view of the above, appeal is allowed. Judgment and decree of the Lower Appellate Court is set aside and suit of the plaintiff is dismissed. Decree-sheet be prepared accordingly.

13. Pending application(s), if any, stand disposed of accordingly.

15.04.2024  
R.S.

(NAMIT KUMAR)  
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No