

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

RSA-963-1996 (O&M)

Date of Decision : 02.04.2024

MANAGER THE UCHANA PRIMARY CO-OP
AGRI. DEV. BANK SAMITI

.... Appellant

VERSUS

JOG RAJ (SINCE DECEASED) THR LRS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kuldeep Sharma, Advocate for
Mr. R.N. Lohan, Advocate for the appellant.

None for the respondents.

ALKA SARIN, J. (ORAL)

1. Vide order dated 06.12.2023 notices were issued to the legal heirs of the deceased respondent. As per the Office report, legal heirs of the deceased respondent stand duly served. However, no one has appeared on their behalf despite service.

2. The present Regular Second Appeal has been preferred by the defendant-appellant challenging the judgments and decrees dated 29.10.1992 and 15.11.1995 passed by the Trial Court and the First Appellate Court respectively.

3. The brief facts relevant to the present *lis* are that Jog Raj (the deceased plaintiff-respondent) had filed the present suit for declaration alleging therein that he had taken a loan from the defendant-appellant Bank for the purchase of a tractor and he had been repaying the said loan regularly in installments. It was pleaded that an amount of Rs.21,600/- was due towards the Bank. On 31.03.1988 defendant-appellant sent a notice

regarding the balance of loan amount of Rs.21,600/- and stated in the said notice that the Government of Haryana had decided to waive the tractor loan to the extent of Rs.10,000/- and the plaintiff-respondent was directed to deposit the remaining amount of Rs.11,600/- with the defendant-appellant Bank. The plaintiff-respondent deposited Rs.13,000/- on 25.05.1988. Thereafter, the impugned notice dated 08.04.1989 was sent by the defendant-appellant Bank stating that an amount of Rs.18,610/- was due towards it. The present suit was filed challenging the impugned notice dated 08.04.1989 whereby an amount of Rs.18,610/- was demanded. The defendant-appellant Bank filed written statement admitting the factum of deposit of the earlier amount. It was, however, pleaded that when the plaintiff-respondent went to deposit Rs.13,000/- in the defendant-appellant Bank, the defendant-appellant Bank had asked him to deposit the penal interest which he did not deposit and therefore the impugned notice was issued. Objections were also taken regarding cause of action and jurisdiction. Replication was filed reiterating the pleas taken in the plaint and denying those made in the written statement.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the notice dated 08.04.1989 is illegal against the law and null and void ? OPP
2. Whether the civil court has no jurisdiction to try and entertain the present suit ? OPD

3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Relief.

5. The Trial Court decided issue No.1 in favour of the plaintiff-respondent holding that the impugned notice dated 08.04.1989 was illegal, null and void and without jurisdiction. On issue No.2, which was regarding jurisdiction and the onus of which was on the defendant-appellant Bank, the defendant-appellant Bank did not produce any evidence in the form of oral or documentary and hence the same was decided against it. Resultantly the suit was decreed by the Trial Court vide judgment and decree dated 29.10.1992. Aggrieved by the same an appeal was preferred by the defendant-appellant Bank which appeal was dismissed by the First Appellate Court vide judgment and decree dated 15.11.1995. Hence, the present Regular Second Appeal.

6. Learned counsel for the defendant-appellant Bank would contend that the civil court had no jurisdiction to try the present case. It is further the contention that this issue was argued before both the Courts, however, the Trial Court and the First Appellate Court rejected the same. It is further contended that penal interest was earlier not calculated and therefore the impugned notice was sent qua the penal interest.

7. Heard.

8. In the present case a specific issue regarding jurisdiction was framed, being issue No.2, the onus of which was cast upon the defendant-appellant Bank. The Trial Court has specifically noticed that no evidence was led by the defendant-appellant Bank qua issue No.2 and the same was accordingly decided against the defendant-appellant Bank. Before the First Appellate Court it has categorically been observed in para No.21 of the judgment that barring issue No.1 no other issues were pressed or agitated and hence the findings of the Trial Court on the remaining issues were affirmed. In view thereof, the argument of the learned counsel for the defendant-appellant Bank deserves to be rejected.

9. The next argument of the learned counsel for the defendant-appellant Bank is that earlier penal interest was not calculated and hence the impugned notice dated 08.04.1989 was valid. It is an admitted case that an amount of Rs.21,600/- was due towards the defendant-appellant Bank. Vide Ex.P-A dated 11.03.1988 the plaintiff-respondent was called upon to avail the facility of waiver of the loan to the extent of Rs.10,000/- as announced by the Government of Haryana and to deposit the balance amount of Rs.11,600/-. Pursuant to the said notice an amount of Rs.13,000/- was deposited by the plaintiff-respondent on 25.05.1988. The statements of account Ex.D-2 and Ex.D-3 show entries where the balance is stated to be 'nil' after the payment of Rs.13,000/- on 25.05.1988. There is no other document which had been produced by the defendant-appellant Bank to show as to how the penal interest was calculated. Both the Courts below

