



**CM-5935-C-2021 in/and
RSA-311-2006**

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

(205)

**CM-5935-C-2021 in/and
RSA-311-2006
Date of Decision : May 16, 2024**

Haryana State Electricity Board

.. Appellant

Versus

Bachna Ram

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Madhur Singh, Advocate, for applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

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Present application has been filed for fixing the actual date of hearing of the main appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed and the main appeal is taken up for hearing today itself.

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1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 27.10.2005 by which, the judgment and decree of the trial Court dated 31.07.2001 allowing the suit



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filed by the appellant-plaintiff, has been set aside and the suit filed by the appellant-plaintiff seeking the recovery of embezzled amount has been dismissed.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. In the present case, it was alleged that the respondent-defendant had embezzled the amount of Rs.1,15,929.97/- paisa, which fact was admitted by the respondent-defendant before the authorities concerned in writing and agreed to return the said amount. Out of the total embezzled amount of Rs.1,15,929/-, the respondent-defendant deposited Rs.35,000/- and undertook to deposit the remaining amount in installment but thereafter, did not deposit the remaining amount due to which, the suit was filed by the appellant-plaintiff for the recovery of the embezzled amount along with interest. The trial Court, allowed the suit filed by the appellant-plaintiff for the recovery of the amount.

4. Feeling aggrieved against the judgment and decree of the trial Court dated 31.07.2001, an appeal was preferred by the respondent-defendant, which appeal came to be decided vide judgment and decree dated 27.10.2005 and the appeal was allowed and judgment and decree of the trial Court dated 31.07.2001 was set aside and the suit filed by the appellant-plaintiff for recovery of the amount was also dismissed hence, the present regular second appeal.

5. Learned counsel for the appellant-plaintiff argues that in the present case, the respondent-defendant not only admitted in writing about



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the embezzlement but also undertook to deposit the amount in question and an FIR was also registered against him for the same offence in which, he was convicted by the competent Court of law and even the appeal filed against conviction was dismissed.

6. Learned counsel for the appellant-plaintiff submits that the trial Court rightly concluded that once the respondent-defendant conceded his guilt before the authorities concerned and undertook to refund the amount, he was under an obligation to comply with the same especially when in the criminal Court, the guilt of the respondent-defendant stood proved qua the said embezzlement but the lower Appellate Court has failed to accept the judgment of the competent Court of law on the ground that the said judgment is not binding upon the Civil Court.

7. Learned counsel for the appellant-plaintiff further submits that once the embezzlement was accepted in writing before the authorities concerned by the respondent-defendant and out of the embezzled amount of Rs.1,15,929/-, a sum of Rs.35,000/- was also deposited by him and the remaining amount was undertaken to be deposited in installment, there was no further requirement of proving the embezzlement against the respondent-defendant, which fact has totally been ignored by the lower Appellate Court while passing the judgment and decree dated 27.10.2005.

8. I have heard learned counsel for the appellant-plaintiff and have gone through the record with his able assistance.

9. It may be noticed that the respondent-defendant was being represented by a counsel and as nobody was appearing on behalf of



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respondent-defendant, fresh notices were issued to him and as per the report of the office, the fresh notices have been received by the respondent-defendant and the report is “duly served” but no one has put in appearance on behalf of the respondent to defend the present appeal.

10. The question of law which arise in the present appeal is whether, once before the Department, the respondent-defendant had accepted the guilt of embezzlement and agreed to deposit the same with the Department and out of the total embezzled amount, Rs.35,000/- was deposited by him, whether, the Department was again liable to prove the allegations of embezzlement upon the respondent-defendant before the Civil Court or not.

11. It is a settled principle of law where in the departmental proceedings, an employee has accepted the guilt, the Department is not liable to prove the same again before the Civil Court in order to recover the amount of loss which has been caused by the employee concerned.

12. The lower Appellate Court has not considered the fact that the respondent-defendant has not only conceded his guilt before the authorities concerned but has also deposited Rs.35,000/- out of the embezzled amount. That being so, the respondent-defendant was undertaken to deposit the remaining amount and as he failed to do so, the suit filed by the appellant-plaintiff was rightly allowed by the trial Court.

13. Even otherwise, the guilt i.e. embezzlement has been proved in the criminal proceedings wherein, the respondent-defendant has already been held guilty of the allegations alleged against him and even punishment



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has been imposed. That being the factual position, the lower Appellate Court should have given due consideration to the said fact. Once the guilt has been proved against the respondent-defendant beyond reasonable doubt in the criminal proceedings whereas the evidence required to prove the assertion in the Civil Court is at much lesser footing, ignoring the judgment of the Criminal Court coupled with the fact that respondent-defendant had also accepted his guilt in writing before the authorities concerned, which has also come on record, the judgment and decree of the lower Appellate Court dated 27.10.2005 is perverse to the facts/evidence which has already come on record and cannot be sustained. The judgment and decree of the lower Appellate Court dated 27.10.2005 is accordingly set aside and the judgment and decree of the trial Court dated 31.07.2001 is revived.

14. The present appeal is allowed in above terms.

May 16, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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