

CM-12947-C-2013;
CM-12949-C-2013 in/and
RSA-4811-2013

2024:PHHC:046896

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208) CM-12947-C-2013;
CM-12949-C-2013 in/and
RSA-4811-2013
Date of Decision : 05.04.2024

Bhupinder Kumar Sharma

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harsh Aggarwal, Advocate for the appellant.
Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-12947-C-2013

Present application has been filed for seeking condonation of
delay of 853 days in re-filing the appeal.

Keeping in view the averments made in the application,
which are duly supported by an affidavit, the application is allowed and
delay of 853 days in re-filing the appeal is condoned.

RSA-4811-2013

1. In the present appeal, the challenge is to the judgments and
decrees of the lower appellate court by which, the judgment and decree of

the trial court dated 17.12.2004 has been set-aside and the suit filed by the respondents-plaintiffs qua recovery of the principle amount of ₹8,26,075/- as well as interest of ₹6,74,622/- calculated @ 12% per annum, has been allowed.

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

3. The appellant-defendant was working with the respondents-plaintiffs and was posted as Incharge of the Procuring Centre at Mehal Kalan. Under the charge of the appellant-defendant, the wheat and other articles were stored by the respondents-plaintiffs-department. The appellant-defendant absented himself from duty w.e.f. 10.10.1983 without any intimation to the department and thereafter, the respondents-plaintiffs came to know that certain quantity of wheat and other articles, which were stored under the custody of the appellant-defendant, was missing and the keys of the storage facility had also been taken by the appellant-defendant.

4. Thereafter, a Committee was formed of one Sh. Atma Singh Gill, the then Assistant Food and Supplies Officer, Mehal Kalan, who looked into the aspect of the shortage of wheat and other stocks and in order to find out the actual items present in the storage store, the lock was broke open and ultimately, it was found that the wheat and other articles to the tune of ₹14,91,718.41 paise were missing. Thereafter, the stock

was verified again by the Committee and a revised report was submitted to the department, wherein, the shortage of wheat and other missing stock was found to the tune of ₹8,26,074.73 paise. The said shortage was put upon the appellant-defendant to be recovered.

5. In order to recover the loss caused, the suit was filed by the respondents-plaintiffs against the appellant-defendant, which was dismissed by the trial court vide judgment and decree dated 17.12.2004 against which an appeal was preferred before the lower appellate court. The lower appellate court after examining the evidence as well as the fact, set-aside the judgment and decree of the trial court dated 17.12.2004 and allowed the suit filed by the respondents-plaintiffs qua the amount claimed i.e. the principle as well as interest. The interest on the amount claimed was allowed in favour of the respondents-plaintiffs @ 12% per annum from the date it accrued till the actual payment. The said judgment and decree of the lower appellate court dated 30.11.2010 is under challenge in the present appeal.

6. Learned counsel for the appellant-defendant submits that the judgment and decree of the lower appellate court is perverse to the evidence, which has come on record. Learned counsel for the appellant-defendant submits that PW2, namely, Darshan Singh, who was the auditor with the respondents-plaintiffs-department, has conceded in his statement that he never visited the godown, where the items were stored hence, the

question as to how, the shortages qua the material were ascertained, has not come on record, hence, the allowing of the suit of recovery filed by the respondents-plaintiffs by the lower appellate court is perverse to the evidence on record.

7. The next argument, which has been raised by the learned counsel for the appellant-defendant is that the appellant-defendant was Co-incharge of the Storage Facility and an amount of more than ₹7 lacs has already been recovered from one Chamkaur Singh, hence, allowing the said amount to be recovered from the appellant-defendant will amount to undue enrichment and the said aspect has not been considered by the lower appellate court while passing the judgment and decree dated 30.11.2010, hence, the same is liable to be set-aside.

8. The last argument, which has been raised by the learned counsel for the appellant-defendant is that while awarding the interest, the interest @ 12% per annum has been granted on an amount of ₹11,23,462/-, which amount also includes the interest, hence, interest on interest has been granted, which is not permissible and even the rate of interest granted in favour of the respondent-plaintiff is higher and is liable to be reduced.

9. Learned counsel appearing on behalf of the respondents-plaintiffs submits that the judgment and decree of the court below is perfectly valid and legal. Learned counsel submits that it has already

come on record that a Committee of the Officers was constituted to find out the missing stock items, which were in the custody of the appellant-defendant and the said Committee visited the Storage Facility and broke open the lock and then found as to which items were missing so as to seek the remedial action. Learned counsel for the respondents-plaintiffs further submits that the items, which were missing, were brought to the notice of the auditor to find out the actual amount of loss caused by the appellant-defendant, hence, those auditors need not have gone to the Storage Facility to find out whether, those items were missing, especially when the report qua the missing items was given by the Committee inspecting the Storage Facility, which evidence is already on record.

10. Learned counsel for the respondents-plaintiffs further submits that the question whether the amount in question, sought to be recovered from the appellant-defendant has been recovered from Chamkaur Singh, nothing has come on record that Chamkaur Singh was made liable for the said loss caused and rather, no such argument has been raised before the courts below for consideration, hence, in the absence of any evidence, which has come on record that the amount sought to be recovered from the appellant-defendant qua the loss caused has already been recovered from Chamkaur Singh, the appeal is liable to be rejected.

11. Learned counsel for the respondents-plaintiffs further submits that keeping in view the facts and circumstances of the case, the

amount of shortage has rightly been allowed along with interest @ 12% per annum, which need not be modified on the asking of the appellant-defendant.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. Qua the first argument, which has been raised by the learned counsel for the appellant-defendant that Auditors did not go to the Storage Facility to find out whether there was actual shortage of the items or not, hence, the judgment and decree of the lower appellate court is liable to be set-aside. It may be noticed that the said argument has already been dealt with in paragraph Nos. 18 and 19 of the judgment of the lower appellate court. The lower appellate court has already recorded a finding that in order to find out the shortages qua the material, a Committee was constituted under the Chairmanship of the then Additional District Food and Supplies Controller, namely, Karnail Singh. Karnail Singh also appeared as a witness and supported his report qua the shortages found at the Storage Facility. Once, the said evidence has already come on record, the same has rightly been taken into account by the lower appellate court to record the finding that there were shortage qua the material, which was entrusted to the appellant-defendant. The Auditors were only required to ascertain the amount of the items, which were found sought so as to find out actual loss caused in terms of finances. Those Auditors, who were to

access the amount of loss caused keeping in view the missing articles, need not to go to the Storage Facility to record the amount of loss caused, hence, the argument of the learned counsel for the appellant-defendant that the testimony of PW-2, namely, Darshan Singh has been ignored, is incorrect and cannot be accepted.

14. The second argument of the learned counsel for the appellant-defendant is that loss caused to the respondents-plaintiffs-department, which is sought to be recovered from the appellant-defendant, has already been recovered from Chamkaur Singh. On being asked to point out the evidence, which has come on record that for the same shortage attributed to Chamkaur Singh, the loss is being recovered from the appellant-defendant, no such document/evidence has been brought to the notice of this Court. Even otherwise, no such argument was raised before the lower appellate court for consideration.

15. In the regular second appeal only the perversity is to be seen keeping in view the evidence, which has come on record. Once, no such evidence that the amount sought to be recovered from the appellant-defendant is for the same loss which Chamkaur Singh was made liable, the said argument cannot be allowed so as to set-aside the judgment and decree of the lower appellate court.

16. The last argument, which has been raised by the learned counsel for the appellant-defendant is that while awarding the amount, the

interest upon interest has been directed to be paid by the appellant-defendant, which is not correct and even the rate of interest fixed by the lower appellate court @ 12% per annum is exorbitant. It may be noticed that the interest can be granted by the courts below keeping in view Section 34 of the CPC. As per Section 34 CPC, the interest can be granted on a bank rate prevalent at the time.

17. Nothing has been brought to the notice of this Court by the learned counsel for the respondents-plaintiffs that at the time when the loss was caused by the appellant-defendant, the bank rate admissible was 12%/. Rather, no such evidence has been brought on record to support that the loss caused should be returned with interest @ 12% per annum, which was the bank rate. Even otherwise, the principle amount sought to be recovered was ₹8,26,075/- along with interest, which was being claimed upto the date of filing of the suit. Interest has been directed to be paid on principle amount as well interest i.e. ₹11,23,462/- which actually means that the appellant-defendant is being asked to pay interest on interest, which is not permissible, hence, the judgment of the lower appellate court needs to be modified to the said extent that the suit filed by the respondents-plaintiffs qua the principle amount of ₹8,26,075/- is allowed along with interest @ 6% per annum, which is the bank rate admissible keeping in view Section 34 of CPC. The interest will be paid

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from the date amount became due till the discharge of the liability by the
appellant-defendant.

18. The judgment and decree of the lower appellate court is
accordingly modified.

Pending miscellaneous application, if any, also stands
disposed of.

April 5th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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