HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
RSA-6105-2015 (O&M)
Decided on 19.11.2024
****

PUNSUP & Anr. ... Appellants

VS.

Deep Chand Garg ... Respondent
****

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL
****

Present: Mr. HS Randhawa, Advocate for the appellants

Mr. Arun Jindal, Advocate with
Mr. Kanish Jindal, Advocate for the respondent
****

Sandeep Moudgil, J.

(1). The present regular second appeal has been preferred with a prayer to modify the judgment and decree dated 14.10.2014 passed by Addl. Civil Judge (Sr.Divn.), Faridkot by decreeing the suit of the appellant-plaintiff and to set aside, in toto, the judgment dated 19.05.2015 passed by District Judge, Faridkot.

(2). The appellant-plaintiffs have filed the present suit on the ground that PUNSUP is a company duly registered under the Company Act and is having its District Office at Faridkot headed by District Manager, Faridkot i.e appellant/plaintiff No.2 to conduct the business on its behalf. The appellant-Corporation is engaged in the activities of the purchase of wheat under the Price Support Scheme, its storage, maintenance of health stocks and delivery of the same to the Food Corporation of India for the Central Pool. During the crop years 1995-96, 1996-97 and 1997-98, the respondent-respondent was posted as Field Officer at Moga Sub Division under the District Office, Faridkot and remained posted as such there upto 15.04.1998. During this period, Sushil Kumar was posted as Sub Inspector Gr-Il and Janak Raj was posted as PDC at Baghapurana Centre. Both Sushil Kumar and Janak Raj had double lock and key of the stock of the wheat crops for the year 1995-96, 1996-97 and 1997-98. They were the joint custodian of the stock. Respondent-respondent was to discharge his Supervisory duties over these officials and to inspect the stock i.e wheat and other articles and its physical condition from time to time. During this period, neither the respondent-respondent nor his subordinate staff i.e. Sushil Kumar and Janak Raj discharged their duties properly and failed to take proper steps to maintain the health and condition of the wheat and other stock stored at Baghapurana centre despite the fact that sufficient quantity of insecticides and pesticides, wooden crates and polythene covers were provided. Due to their negligence, appellants' corporation suffered huge financial loss. The respondent-respondent and his subordinate staff were served separate charge sheets vide order dated 14.01.2002 levelling the allegations of less excess, delayed submission of documents and thereby causing financial loss to the corporation and in the departmental enquiry, the respondent was held responsible for negligence of duties and guilty of causing financial loss of Rs.50,462/- vide order dated 30.01.2007. The appellant-Corporation filed a suit for recovery of Rs.1,17,542/- along with future interest @ 15% p.a. till realization.

(3). Upon notice, respondent contested the suit on the grounds of maintainability, competence of District Manager to file the suit, limitation, cause of action, concealment of material facts and non-joinder and misjoinder of necessary parties and also pleaded that because the matter relates to the stocks of the year 1995-96, 1996-97 and 1997-98, the suit is not within the period of limitation. No liability of any kind can be fixed upon any employee merely on the report of the Audit or statement of accountant without any proof. The alleged losses, if any, have been caused to the Corporation is due to its own negligence. The plaintiff's Corporation failed to perform its own duties to maintain the health of stocks. The storage stock requires aeration twice in a month, but the appellants failed to provide aeration facility to the wheat stocks despite various requests made by the respondent. Moreover, they failed to provide scientifically safe and sound storage structure for the storage of the wheat in question. Storage structure provided by them was open, unscientific and temporary. It was not meant for longer period of storage. The appellants failed to despatch the wheat within six months, though it was required to do so. The respondent has retired from service on 31.08.2002 and now the appellants have got no right to file the present suit. In compliance of the orders of the Hon'ble High Court dated 17.01.2006, the Managing Director PUNSUP passed the order on 16.03.2006.The Managing Director has admitted that the PUNSUP does not have any control either on the quantum of the wheat/food grain to be procured or on the period in which the same will remain in storage as the movement of what stocks is exclusively in the hands of FCI being Central Pool Stocks. Due to longer storage of wheat and in absence of any definite policy for wheat movement framed by the government or department, the wheat stock invariably gets deteriorated. When the Managing Director himself admitted these hard facts and realities, then the respondent may not be made liable for the loss in dispute. Rest of the averments in the plaint were denied and dismissal of the suit was prayed by alleging that the appellants have no cause of action to file the suit. Replication was filed by the appellants wherein the averments of the written statement were denied and averments of suit were reiterated.

(4). On the basis of the pleadings of the parties, the trial Court framed following issues for determining the controversy involved in the suit:

1. Whether the appellants are entitled for recovery of the suit amount? OPP
2. Whether the appellants are entitled for interest, if so at what rate? OPP
3. Whether suit is not maintainable? OPD
4. Whether suit is time barred? OPD
5. Relief.

Decision of the trial Court:

(5). After framing issues, trial Court called upon the parties to adduce their respective evidence in support of their pleadings and after parties adduced their respective evidence and their respective counsel argued the matter in accordance with their pleadings, the trial Court, vide judgment and decree dated 14.10.2014 dismissed the suit with costs by observing that the impugned orders i.e. Ex.P76 and Ex.P78 are dated 26.12.2006 and 22.11.2006 respectively. But the present suit have been filed on 04.01.2010 is barred by the law of limitation. While controverting theses contentions, learned counsel for the plaintiff referred to the dates of endorsements i.e. 08.02.1997 and 03.01.1997 on the orders Ex.P76 and Ex.P78 respectively and submitted that the appellants' suit is well within the period of limitation from the passing of these orders. A perusal of both these orders reveals that these were passed on 26.12.2006 and 22.12.2006 respectively. By no stretch of imagination, can limitation be computed from the dates of endorsement on these orders. Not only this, it is invariably admitted by the appellants' witnesses that the loss came to be known in the year 1998-99. In the given circumstances, the Court is of the opinion that he suit for recovery of amount on the basis of these orders is beyond period of limitation. Not only this, it is also proved by the respondent through his own testimony as well as through the cross examination of plaintiff's witnesses that he was not the custodian of the wheat or articles. His duty was merely to supervise the stock. The statements of replacement of stock are prepared by the custodian. These statements are to be verified by the Field Officer. But in the present case, statements were not got verified by the custodian from the Field Officer. As such, in the opinion of the Court, the liability of the respondent in causing financial loss to the appellants' Corporation is also barred by limitation for which appellants' Corporation is not entitled to the recovery of the suit amount. Hence, the suit was dismissed.

Grounds of appeal before Ist Appellate Court:

(6). Aggrieved against the judgement and decree passed by the learned trial Court, dated 14.10.2014, appellants preferred appeal (Civil Appeal No.52 dated 01.12.2004) before the District Judge, Faridkot, to challenge the said judgment and decree on the grounds that after inquiry conducted by the Inquiry Officer, in regard to the allegations levelled against the respondent/respondent in the charge-sheetserved upon him, the allegations were proved and the respondent/appellant was found guilty and accordingly, the Managing Director passed the order (08.02.2007) to recover the amount of loss suffered by the appellants' Corporation i.e. 20% of the total loss caused to the appellants' Corporation i.e. Rs.1,07,449.60. The respondent was further found guilty of causing loss of Rs.50,462/- to the plaintiff Corporation because as against the replacement of 1058 empty bags, as per norms of the plaintiff Corporation, respondent alongwith Joga Singh made excess replacement of empty bags to the tune of 2222 bags and in this regard, plaintiff Corporation served show cause notice upon the respondent vide memo No. Admn/Fdk/239/02/22801 dated 25.01.2002 and after giving opportunity of personal hearing, respondent and Joga Singh were found guilty of causing financial loss to the tune of Rs.50,642/- to the Corporation and the respondent was held liable to the tune of Rs.10,092/- being 20% of the total amount and accordingly, plaintiff Corporation is entitled to recover an amount of Rs.1,17,542/- from the respondent, alongwith interest @ 15% per annum, for respondent's failure to perform his official duties properly and also his failure to maintain the health and quantity of the wheat in his custody and also to submit the requisite documents in time. The respondent has admitted his posting order, Ex.P62, and joining report Ex.P63, therefore, the allegations against the respondent/respondent for being negligent in performance of his official duties become prima facie proved and he becomes liable to make good the financial loss suffered by the plaintiff Corporation on account of his negligence. In such a situation, the impugned judgment and decree is liable to be set aside.

<u>Decision of the lower Appellate Court</u>:

(7). The lower Appellate Court after hearing both the sides, vide judgement and decree dated 19.05.2015, dismissed the appeal filed by the appellants/appellants and held in the same manner as was held by the learned trial Court.

Grounds in Regular Second Appeal:

(8). Feeling aggrieved against the judgments of both the Courts below, the plaintiffs/appellants have preferred the present Regular Second Appeal on the ground that both the Courts below have erred in dismissing the suit and appeal preferred by the present appellants holding the suit being beyond the period of limitation, which is absolutely illegal and erroneous approach. The suit was well within the period of limitation from the date of endorsements made in the year 2007 on the orders passed in the year 2006 because there were certain official procedural formalities to be completed and things were to be got verified before serving the orders upon the respondent. The learned Courts below have given undue weightage to the fact that respondent was merely supervisor and thus not responsible for the loss which is a fact contrary to the record and that supervision means making sure that the junior staff performs duties well. Once, the loss was caused on account thereof, the respondent ought to have been held liable for the same as the supervisor had failed to perform his supervisory duties diligently because of which the loss was caused. The learned Courts below have erred in ignoring the fact that the appellant is a Corporation dealing with public money and takes loan also from financial institutions for procuring wheat/paddy and getting the paddy milled and then supplying the rice to FCI being Central Pool Stocks. As such a loss caused on account of negligence of staff in performance of their duties results in loss to public, therefore, the loss so caused has to be made good by effecting recovery from such employees.Therefore, the judgements and decrees passed by the learned Courts below are liable to be set aside and suit is liable to be allowed and decreed in favour of the appellants/plaintiffs.

Contention on behalf of the appellants/plaintiffs:

(9). It is contended by the learned State Counsel that the respondent had been negligent in performing his official duties due to which he is liable to make good the financial losses caused to the appellant-Corporation, which is 20% of the total financial loss suffered by the Corporation, with interest. The learned Courts below have gravely erred in dismissing the suit and the appeal filed by the appellants because the loss was noticed and determined after the date of retirement of the respondent but his retirement cannot absolve him from his misconduct and misdeed which resulted into causing financial loss to the Corporation.

(10). It is argued that the Courts below have wrongly dismissed the suit and the appeal by holding the suit is beyond the period of limitation which is totally illegal and erroneous approach because once the loss is determined and the respondent is found guilty, his retirement or the delay in filing the suit cannot be fatal to the case of the plaintiffs/appellants on the point of period of limitation because the matter involves loss of public property/stocks and as such, the judgments and decree of the both the Courts below are liable to be set aside with costs.

(11). Learned State counsel has relied upon ***Assistant Transport Commissioner, Lucknow and others Versus Nand Singh" AIR 1980 SC 15*** and judgment dated 25.10.2019 delivered by the High Court of Judicature at Bombay at Nagpur ***Mukesh Ramdevji Agarwal v. Balmukund***

Dhruvanarayan Lohiya, 2019 SCC OnLine Bom 9294 to contend that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes and that Courts to compute the limitation on the basis of endorsement as contained in the certified copy.

Contention on behalf of respondent:

(12). Learned counsel appearing on behalf of respondent contends that the judgements and decree passed by the learned Courts below are absolutely just and proper because the suit of the plaintiffs/appellants was hit by the period of limitation as the same was filed after stipulated period of three years from the date of retirement of the respondent/respondent. He submits that the Courts below have rightly held that the limitation cannot be computed from the date of endorsement of the year 2007 because the Corporation took one year to make endorsement on the orders of 2006, which shows that the story of loss is fabricated and manipulated. As such, the present appeal is liable to be dismissed and the judgements and decree of the learned Courts below are liable to be upheld.

(13). He vehemently argued that no recovery suit by the corporation against its employee for alleged loss caused due to him is maintainable as the negligence in the performance of duty under a contract of employment may give rise to disciplinary proceedings but it would not give rise to a cause of action for recovery of money for goods lost. He submits that the appellant may be entitled to recovery of money by way of disciplinary proceedings by imposing punishment and not by initiating suit proceedings. Reliance has been placed on the judgment of this Court in ***Kirpal Singh vs. Punjab State Civil Supplies Corp.Ltd. & ors. 2012 (4) SCT 164***.

(14). Heard both the sides through their counsel and case file also perused with their able assistance.

Analysis by this Court:

(15). After hearing both the sides and on perusal of the case file, it has come forth that the controversy between the parties is for effecting recovery of Rs.1,17,542/- alongwith future interest @ 15% p.a. from the respondent due to causing financial loss to the appellant-Corporation for being negligent in discharge of his official duties and as a result, the stocks of wheat were damaged. The respondent was posted as Field Officer and his duty was to supervise the wheat stocks and he had two subordinates under him to maintain the stocks. However, he allegedly remained negligent in discharge of his official duties as he statedly neither supervised the stocks nor let his subordinates to do so. The appellant-Corporation served notice upon the respondent to effect recovery of the above amount of Rs.1,17,542/- alongwith future interest @ 15% p.a. from him and as such filed the suit for recovery of the said amount alongwith future interest.

(16). The respondent contested the suit mainly the ground of limitation and the said plea was accepted by the trial Court and as such dismissed the suit of the appellant-corporation being time barred and the appeal filed by the Corporation also met the same fate.

(17). It is settled law that a genuine claim of the appellant-Corporation cannot be thrown away by the trial Court on technical issues including the point of limitation as such this Court deems it fit and proper to interfere with the judgements and decrees passed by the learned Courts below.

(18). Though there are concurrent findings by the Courts below yet before parting with the file and this order, this Court feels it necessary to refer to few facts of the present case.

(19). According to the case of the appellants – Corporation, the wheat stocks were of the crop years 1995-96, 1996-97 and 1997-98. The respondent was posted as Field Officer on 12.08.1995 at Moga Sub Division under the District Office, Faridkot and he remained posted there uptil 15.04.1998.Therefore, both the dates relate to the abovementioned crop years. Two officials namely Sushil Kumar and Janak Raj were custodian of the stocks and the respondent was to supervise them. Even though the respondent was not custodian of the stocks but his duty was to supervise the officials under him and the stocks properly. If the officials under him were negligent in discharge of their duties, then the respondent in the capacity of Supervisor was supposed to pull them to perform their duties in a proper manner so that no loss is caused to the Corporation. As such, the respondent has been negligent in discharge of his official duties because even if stocks were not in his custody, it does not mean that he, as a Supervisor, will shut his eyes so that condition of the stocks is deteriorated. Thereafter, the respondent was, subjected to the inquiry and also, given personal hearing twice by the Managing Director i.e. plaintiff No.1, he failed to produce his defence satisfactorily. Moreso, the charge-sheets were served upon the respondent vide order dated 14.01.2002, i.e., before his retirement date being 31.08.2002. All this apart, order dated 16.03.2006 came to be passed by the Managing

Director- plaintiff No.1, in compliance of the order of this Court dated 17.01.2006, as such, it will be absolutely wrong and incorrect to say that the suit was filed by the appellants' Corporation beyond the period of limitation. Certainly, there are departmental procedure to proceed with the matter to initiate proceedings against the respondent, in compliance of the order of this Court dated 17.01.2006, which cannot be fatal to the case of the plaintiff merely on the ground of limitation. Therefore, the present case is squarely covered by the ratio of judgements of the Hon'ble Supreme Court relied upon by the appellants as the limitation is computed on the basis of endorsement and from the date the order is made known either directly or constructively to the party affected by the order. There is no averment by the respondent that at any stage, he challenged the departmental proceedings against him before any Court or Forum as such the respondent is estopped from taking the plea of suit being time barred as he himself has been negligent to take such plea at the appropriate stage. However, the contention raised by the respondent/respondent at no point be accepted that cannot be affected from the erring official.

Conclusion:

(20). In view of what has been discussed hereinabove, this Court finds it to be a fit case to interfere with the judgments of the learned Courts below and holds that the judgement and decree dated 14.10.2014 passed by the Additional Civil Judge (Senior Division) Faridkot, dismissing the suit of the Appellants and the judgement and decree dated 19.05.2015 passed by the District Judge, Faridkot, dismissing the appeal of the appellants/plaintiffs are illegal and perverse and are hereby set aside.

(21). Accordingly, the present Regular Second Appeal is allowed and the suit of the appellants is hereby decreed with costs. The appellants are allowed to recover the suit amount with interest @ 6% per annum from the respondent but in accordance with law. The respondent will be at liberty to either pay the suit amount in lumpsum or in instalments.

(22). Pending application, if any, stands disposed of with the final disposal of this appeal.

19.11.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*