

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

**(210) RSA-3835-2014 (O&M)
Date of Decision : March 11, 2024**

**Punjab State Civil Supplies Corporation Ltd and another
.. Appellants**

Versus

Waryam Singh and others .. Respondents

(2) RSA-4748-2014 (O&M)

**Punjab State Civil Supplies Corporation Ltd and another
.. Appellants**

Versus

Rupinder Singh and others .. Respondents

(3) RSA-5263-2014 (O&M)

**Punjab State Civil Supplies Corporation Ltd and another
.. Appellants**

Versus

Sant Singh and others .. Respondents

(4) RSA-5907-2014 (O&M)

**Punjab State Civil Supplies Corporation Ltd and another
.. Appellants**

Versus

Adresh Kumar .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Anil Kumar Sharma, Advocate, for the appellants,
in all appeals.**

RSA-3835-2014 (O&M) & connected cases 2024:PHHC:034360 2

Mr. Abhishek Arora, Advocate for respondent-Waryam Singh in RSA Nos.3835, 5263, 4748 of 2014.

Mr. V.K. Shukla, Advocate, and
Mr. Ashish Gupta, Advocate for respondent-R.S Bedi in all appeals.

Ms. Chandanpreet Kaur Ahluwalia, Advocate and
Mr. Vipin Mahajan, Advocate, for the respondents in RSA No.5263 of 2014.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8917-C-2014 in RSA-3835-2014

As prayed for, the application is allowed.

Delay of 07 days in re-filing the appeal is condoned.

CM-11133-C-2014 in RSA-4748-2014

As prayed for, the application is allowed.

Delay of 42 days in re-filing the appeal is condoned.

CM-12408-C-2014 in RSA-5263-2014

As prayed for, the application is allowed.

Delay of 12 days in re-filing the appeal is condoned.

CM-14045-C-2014 in RSA-5907-2014

As prayed for, the application is allowed.

Delay of 74 days in re-filing the appeal is condoned.

CM-8918-C-2014 in RSA-3835-2014

CM-11134-C-2014 in RSA-4748-2014

CM-12409-C-2014 in RSA-5263-2014

CM-14046-C-2014 in RSA-5907-2014

As prayed for, the applications are allowed.

RSA-3835-2014 and connected cases

1. By this common order, four appeals, the details of which have been given in the heading of the order, are being decided as all the appeals involves the same question of law on similar facts.

2. The present four appeals, arise out of the same civil suit filed by the appellant-plaintiff seeking recovery of the amount from respondents No. 1 to 4.

3. The appellant-Corporation filed a civil suit for recovery alleging loss caused due to negligency, mismanagement etc. at the hands of defendants No. 1 to 4, which suit was decreed by the trial Court vide judgment and decree dated 23.07.2011. Against the said decree, all the respondents-defendants filed separate appeals, which appeals were allowed by the lower Appellate Court vide judgment and decree dated 09.12.2013 and the judgment and decree of the trial Court dated 23.07.2011 was set aside and the suit filed by the appellant-plaintiff had been dismissed. Hence, the present regular second appeals.

4. Learned counsel for the appellants argues that the judgment and decree of the lower Appellate Court dated 09.12.2013 is contrary to the findings which have been recorded in the judgment of the trial Court and the relief which has been given in paragraph 22 of the judgment dated 09.12.2013, is inconsistent with the findings which have been recorded in paragraph 16 of the said judgment.

5. Learned counsel for the appellants submits that despite the fact that respondent No.1 Waryam Singh was already held liable for the loss sought to be recovered in the departmental enquiry but the suit filed by the appellant-plaintiff qua Waryam Singh has still been dismissed by the lower Appellate Court on the ground that the suit was filed by a day's delay.

6. Learned counsel for the appellants further submits that the suit filed by the appellants against all the defendants was within limitation keeping in view the fact that the limitation period expired on Sunday and the suit was filed very next day hence, keeping in view the provisions of

Section 4 of the Limitation Act, wherever the period of limitation expires on a holiday, the suit can be filed on the very next day.

7. Learned counsel appearing on behalf of respondents No.2 to 4 submits that in paragraph 16 of the judgment of the lower Appellate Court, it has already come on record that these respondents-defendants were not posted at a particular station, where the loss was said to have been caused at the relevant time and further that before their transfer from the station in question, they had already handed over the charge to Waryam Singh, which was recorded in writing, which writing has already come on record hence, even in the departmental proceedings, defendants No. 2 to 4 had already been exonerated and only Waryam Singh was held liable for the loss caused to the Corporation hence, the findings which have been recorded by the lower Appellate Court is based upon actual facts, which has been supported by the evidence on record hence, the findings recorded by the lower Appellate Court qua the non-maintainability of the allegation of loss caused qua respondent-defendants No. 2 to 4, is liable to be upheld.

8. Learned counsel for respondents No. 2 to 4 further submits that qua the claim of the suit within limitation, they have no objection in case, the said finding is corrected by holding that the civil suit was within limitation.

9. Learned counsel appearing on behalf of respondent No.1-Waryam Singh submits that in the enquiry proceedings, which were conducted by the Department, which was made the basis for suit for recovery, respondent No.1 has only been held guilty to the tune of 40% of the loss caused, which fact has also come in paragraph 16 of the judgment of the lower Appellate Court hence, holding the respondent No.1 for all the loss, is totally arbitrary and illegal and at the most, respondent No.1 can

only be made liable for the loss to the tune of 40% as held in the departmental proceedings, on the basis of which, the lower Appellate Court has recorded findings in paragraph 16 of the judgment.

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

11. In order to find out whether the suit filed by the appellants was within limitation, certain facts needs to be noticed.

12. Learned counsel for the respondents submits that keeping in view the provisions of Section 4 of the Limitation Act, 1963, in case, the finding which has been recorded by the Courts below in paragraph 20 regarding issue No.12 is decided in favour of the appellant-plaintiff, the respondents-defendants will have no objection.

13. Even otherwise, it is a conceded position that the suit could have been filed upto 02.08.1999 and keeping in view the calender of the said year, 02.08.1999 was a holiday being a Sunday. That being so, keeping in view the provisions of Section 4 of the Limitation Act, if the period of limitation is expiring on a holiday, the suit can be filed very next day so as to be treated within limitation. That being the factual position, the lower Appellate Court failed to record the actual facts with regard to the expiry of limitation on a holiday and the suit being filed on the very next date. Keeping in view the said factual position, which is already on record, coupled with the fact that the defendants are also not opposing that the suit filed by the appellant-plaintiff was within limitation, the findings recorded in paragraph 20 of the judgment of the lower Appellate Court dated 09.12.2013 qua the suit being barred by limitation, are set aside and it is held that the suit filed by the appellant-plaintiff was within limitation.

14. Now the question arise as to what relief is to be granted to the

appellants-plaintiff qua the findings which have been recorded by the lower Appellate Court in paragraph 16 of the impugned judgment.

15. Learned counsel for the appellants has not been able to rebut that the factual position given therein, according to which the respondents No. 2 to 4 were not posted at a particular station where the loss was said to have been caused and prior to their transfer from the said station, they had already handed over the charge in favour of respondent No.1 hence, no loss/shortage caused could have been attributed upon them.

16. In the absence of rebuttal to the said factual aspect, the findings recorded by the lower Appellate Court that the suit for recovery was dismissed against respondents No. 2 to 4, needs no interference at the hands of this Court and the same are upheld especially when in the departmental proceedings also they were exonerated of the same allegations.

17. With regard to the question of recovery from respondent-defendant No.1, it may be noticed that as per the findings recorded by the Courts below, the appellant-plaintiff had conducted the departmental proceedings against all the respondents and had found that respondent No.1 namely Waryam Singh had caused loss but only to the extent of 40%. The said finding has already been recorded in paragraph 16 of the judgment of the lower Appellate Court. Once, the said finding is a matter of fact and has been supported by evidence on record, only the loss caused to the extent of 40% can be recovered from Waryam Singh i.e. respondent No.1 hence, the judgment and decree of the lower Appellate Court dated 09.12.2013 is accordingly modified to the extent that the suit filed by the appellant-plaintiff was within limitation and the suit is only allowed to the extent that only 40% of the loss caused can be recovered by the appellants-plaintiff and that too only from respondent No.1 Waryam Singh. The claim of recovery

against the other defendants, as already set aside, by the lower Appellate Court, is upheld.

18. As the recovery of the amount has been held valid against respondent No.1 and the trial Court had also given the interest on the amount to be recovered, the said grant of interest @ 6% per annum is also held maintainable against 40% amount, which the respondent No.1 is held liable to pay.

19. It is made clear that the said interest will start from the date the suit was filed till the actual payment by respondent No.1.

20. A photocopy of this order be placed on the file of other connected cases.

March 11, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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