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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-2430-2024(O&M)
Date of decision:-04.10.2024**

The Patiala Central Cooperative Bank Ltd.

...Appellant

Versus

Sh. Bodh Raj and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr.Naginder Singh Vashist, Advocate
for the appellant.

SUVIR SEHGAL, J.(ORAL)**CM-10058-C-2024**

1. For the reasons given in the application, it is allowed.
2. Delay of 259 days in the re-filing of the appeal is condoned.

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3. Appellant – defendant is in second appeal before this Court challenging the judgment and decree dated 31.08.2023 passed by the First Appellate Court.

4. Brief facts, leading to the filing of the appeal are that the respondent – plaintiff, who retired from the post of Assistant Manager on 29.02.2012, was facing four departmental inquiries at the time of superannuation. All the four departmental proceedings were ultimately ordered to be closed and no adverse order was passed against him. He



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was released an amount of Rs.19,00,075/- without interest towards the gratuity, leave encashment and arrears of revised pay scale due from 2006 to 2012. Claiming that the amount was due to him immediately on his retirement, he filed a suit for declaration to the effect that he is entitled to get interest @ 24% p.a. on the delayed payment.

5. Upon notice, suit was contested by the appellant - defendant by taking various preliminary objections. On merits, it was submitted that the plaintiff had given an affidavit dated 22.02.2014, Ex.D1 whereby he had undertaken that he will not initiate any legal proceedings against the appellant. After considering the affidavit and by taking a lenient view, the charge-sheets were dropped. An additional plea was taken that the plaintiff has deliberately suppressed that he had given any such affidavit. Plaintiff filed a replication reasserting the claim and submitted that the affidavit had been given by him under pressure as he did not have any source of income and was entirely dependent upon the funds, which had been withheld by the appellant. The Trial Court framed issues on the basis of the pleadings of the parties and after they led evidence, by judgment and decree dated 22.09.2022, suit was dismissed. Respondent – plaintiff preferred a first appeal, which was partly accepted by the learned Additional District Judge, Patiala to the effect that he is entitled to interest @ 9% p.a. on the delayed payment after two months from the date of retirement. Appellant - defendant is before this Court in this second appeal in the above backdrop.

6. Counsel for the appellant has argued that the First Appellate



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Court has erred in partly decreeing the suit and awarding interest on the delayed payment despite the fact that departmental proceedings were dropped on the basis of affidavit, Ex.D1, executed by the respondent whereby he foreclosed his right to challenge any decision taken by the appellant in a Court of law. It has been argued that the respondent withheld the execution of the affidavit, Ex.D1, from the Court.

7. I have heard counsel for the appellant and considered his submissions.

8. Undisputedly, the respondent – plaintiff had retired from the post of Assistant Manager on 29.02.2012 after rendering decades of service. Four charge-sheets were pending against him on the date of his retirement and by decisions taken on 10.09.2012, 11.02.2014 and 05.03.2014, except for one charge-sheet, all the three departmental proceedings were dropped before the respondent – plaintiff executed an affidavit dated 22.02.2014 Ex.D1. Therefore it does not lie in the mouth of the counsel for the appellant to contend that the proceedings in all four cases were dropped keeping in view the affidavit, Ex.D1.

9. In any case, such an affidavit would not debar the respondent – plaintiff from invoking the remedy available to him under the law. The legal position as explained by the Supreme Court in **P.R. Deshpande Versus Maruti Balaram Haibatti (1998) 6 SCC 507** is that the principle of estoppel has no application when statutory rights and liabilities are concerned and such an affidavit cannot scuttle the right of appeal. A corollary of the principle laid down by the Supreme Court is that a person cannot be debarred from taking recourse to the legal



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remedy, if it is available to him in accordance with law. Mere fact that the affidavit had been furnished by the respondent – plaintiff that he will not challenge any action taken by the departmental authorities, does not preclude him from filing a suit to claim interest on the delayed payment of retiral benefits, which in any case is a right vested in him under the law. Although the plaintiff had not disclosed affidavit, Ex.D1, in the plaint, but in his replication, he had admitted the execution of the affidavit and explained the circumstances in which it had been executed. It is his categoric stand that as the financial benefits, which were to be granted to him on his retirement were his sole source of income, under the compelling circumstances he was impelled to submit the affidavit. Therefore, both the arguments raised by the counsel for the appellant do not deserve any serious consideration. There is no infirmity in the impugned judgment passed by the learned Additional District Judge, Patiala, which is affirmed.

10. Appeal being bereft of merit, is dismissed with no order as to costs.

11. Pending application, if any, is disposed of.

04.10.2024

Brij

(SUVIR SEHGAL)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No