

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-696-2014 (O&M)

Decided on 01.04.2025

Chander Bhan through LRs

... Appellant

VS.

The Radhana Co-op.Credit and
Services Society Ltd. & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Namit Gautam, Advocate for the appellant

Mr. Munish Kumar Garg, Advocate and
Mr. Tanuj Goyal Tohana, Advocate for the respondents

Sandeep Moudgil, J.

(1). The present regular second appeal has been preferred assailing the judgment and decree dated 06.08.2013 passed by the Addl. District Judge, Jind vide which the civil appeal against the judgment and decree dated 14.12.2010 passed by the Court of Addl. Civil Judge (Senior Division), Jind has been set aside vide which the suit for declaration filed by appellant/plaintiff was decreed.

(2). Briefly stated that the appellant/plaintiff was appointed on 5.5.1984 as Salesman-cum-Clerk by respondent No.1/defendant and retired w.e.f. 31.1.2002. Respondent No.1/defendant threatened to revert the appellant/plaintiff from the post of Salesman to Chowkidar against which a suit for permanent injunction restraining the respondent No.1 from reverting the appellant from the post of Salesman-cum-Clerk to Chowkidar was filed by the appellant which was accepted by the Court of Addl District Judge, Jind vide judgment and decree dated 11.09.1998 and the appeal filed by

respondent No.1 thereagainst was dismissed by this Court vide judgment dated 18.02.199 passed in RSA No.3372 of 1998.

(3). Even thereafter, the respondent No.1/defendant marked absence of the appellant/plaintiff as Chowkidar but not as Salesman-cum-clerk and the Board of Administrator passed resolution dated 3.11.1999 showing the appellant/plaintiff to be absent from duty and as such, the appellant/plaintiff remained present throughout the period in the office of respondent No.1/defendant and also worked for recovery of loan etc. but the Society did not allow him to mark his presence. Despite many representations to the Assistant Registrar to the Co-operative Society, the appellant/plaintiff was constrained to file appeal to the Registrar but the Board of Administrator passed impugned resolution without giving any hearing to the appellant/plaintiff. The appellant/plaintiff even filed CWP No.3715 of 2007, inter alia, challenging the resolution dated 03.01.1999 passed by the Board of Administrators of respondent/Society vide which the pay and allowances of the appellant was withheld for the period from 01.10.1997 to 19.10.1998 and 28.10.1998 to 13.05.1999. The said writ petition was dismissed as withdrawn and since disputed questions of facts were involved, this Court granted liberty to the appellant/plaintiff to approach the Civil Court.

(4). Resultantly, the civil suit was filed by the appellant/plaintiff bearing No.243 of 2007 which was decreed vide judgment and decree dated 14.12.2010 in favour of the appellant/plaintiff holding him entitled for pay and allowances from the period of 01.10.1997 to 19.10.1998 and 28.10.1998 to 13.05.1999 along with simple interest @ 9% per annum till its realisation. The respondent No.1 preferred Civil Appeal No.92 of 30.07.2012 against the

above-said judgment and decree of the Civil Court, however, the Addl. Sessions Judge, Jind, vide its impugned judgment and decree dated 06.08.2013 set aside the judgment and decree dated 14.12.2010 in favour of respondent No.1. And hence this regular second appeal has been preferred by the appellant.

(5). It was the case of the respondent No.1 before the trial court that the appellant/plaintiff was never appointed as Salesman in 1984 but was appointed as Salesman and as such, he has been rightly reverted to the post of Chowkidar as he did not fulfill the qualification as also the fact that he remained absent from duty willfully and intentionally which led to passing of the resolution dated 3.11.1999 passed by the Board of Administrator.

(6). The trial court framed the following issues based on the pleadings of the parties:-

- 1. Whether resolution dated 3.11.1999 passed by the Board of Administrator of respondent No.1 society and the orders passed in revision dated 15.1.2004 and 14.12.2004 and 11.10.2006 are illegal, null and void and against the principle of natural justice?OPP*
- 2. Whether the plaintiff is entitled for the decree as prayed For? OPD.*
- 3. Whether the plaintiff is entitled to consequential relief if issues No.1 and 2 goes in his favour?OPP*
- 4. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 5. Whether the plaintiff is estopped by his own act and conduct?OPD*
- 6. Relief.*

(7). While dealing with issues No.1 to 3, the trial court placed reliance of judgment Ex.P1 of the Addl. District Judge vide which the defendant/respondent No.1 had been restrained from reverting the appellant/plaintiff from the post of Salesman to the post of Chowkidar despite the fact that the appeal against the above said injunction was also dismissed by this Court. The trial court drew inference that the respondent No.1 remained adamant on treating the appellant as a Chowkidar and did not allow him to mark his presence as Salesman-cum-Clerk which is apparent from the affidavit of PW2 Ishwar Singh – the Clerk of the respondent-Society. This is further corroborated from the fact that the respondent No.1 refused to prove and produce on record the attendance register on the pretext that the same is not traceable. Consequently, the civil suit was decreed in favour of the appellant.

(8). Before the appellate Court, the respondent No.1 took plea that the trial court fell in error in not considering the fact that the plaintiff failed to prove by any reliable evidence that he attended any work of any post for the relevant period and further the appellant has failed to produce the certified copies of orders passed by the revision petition and that the suit is time barred which too has been wrongly preferred as according to the case law **Jang Singh & Anr. State of Punjab 2010(2) CCC 222** it has been held by this Court that the appellant should have filed suit for recovery instead of filing suit for mandatory injunction in cases where there arises dispute for payment of gratuity, provident fund and other service benefits.

(9). The appellate Court observed that the appellant was required to exhibit certified copies of all the orders challenged by him which he has

failed to do so and since the appellant has already challenged the resolution dated 03.11.1999 before the appropriate authorities under the Cooperative Societies Act and there is nothing on record to prove otherwise that the authorities before whom the resolution dated 03.11.1999 stood challenged have acted not in accordance with law, the suit ought not to have been decreed in favour of the appellant. The appellate Court thus set aside the judgment of the trial court observed as under:-

*12. Further more, the plaintiff has filed suit seeking direction of mandatory injunction by claiming salary of the period of 1.10.1997 to 19.10.1998 and thereafter from 28.10.1998 to 15.5.1999. The plaintiff was required to file suit for recovery for period of withholding of his salary and his instant suit seeking relief of mandatory injunction is not maintainable. Ration of aforesaid authorities **Jang Singh and another vs. State of Punjab and others, 2010(2) Civil Court Cases 222, M/S Ashok Kumar vs. State of Haryana and another, 2010(2) Civil Court Cases 265 and State of Haryana vs. Dr. Prem Singh 1996(3) PLR 799** relied upon by learned counsel for the appellant is fully applicable to the present case. The learned court below fell into error while going through only the photocopy of order of Joint Secretary that it was passed in perfunctory manner. In this view of the matter, it is observed that learned court below fell into error while deciding issue no. 1 in favour of plaintiff, despite the fact that orders dated 15.1.2004, 14.12.2004 and 11.10.2006 were not exhibited on the case file nor it could be shown that these were passed in violation of principles of natural justice. Issues no. 2 and 3 are based upon the finding of issue no. 1 hence findings of learned court below on issue no. 2 and 3 are also unsustainable. As regards issue no. 4, as already observed, present suit is not maintainable in the present form to seek relief*

of mandatory injunction as only suit for recovery was maintainable after affixing requisite court fee for quantified amount of salary statedly withheld by the defendants. Learned court below fell into error while deciding issues no. 1 to 4 in favour of the plaintiff and against the defendants. The findings on these issues are reversed and these issues are decided against the plaintiff and in favour of the defendants. Learned court below failed to appreciate the evidence and documents brought on record in its right perspective and fell into error while 2013 decreeing the suit of the plaintiff.”

(10). Having heard learned counsel for the parties, this Court is of the considered view that the trial court fell into error in its evaluation of the Joint Secretary's order, basing its conclusion on a photocopy without adequate consideration of the relevant facts. The court's decision on Issue No. 1 in favor of the plaintiff is also flawed, as the orders dated January 15, 2004, December 14, 2004, and October 11, 2006, were not properly exhibited, particularly, when there is nothing on record to show that these orders contravened the principles of natural justice.

(11). It is all the more pertinent to point out that the appellant has already availed efficacious remedy before the authorities under the Cooperative Societies Act and has been pursuing against the resolution dated 03.11.1999. The appellate Court has rightly observed that in order to be successful in the civil suit proceedings, the appellate has to prove that there was any violation or transgression of the procedure of law by the authorities. Sans such averments, no adverse inference could be drawn until and unless the findings to be returned by the quasi-judicial authorities are otherwise against the appellant.

(12). In the light of the above discussion, there is no illegality or perversity in the judgment and decree dated 06.08.2013 passed by the appellate Court. Hence, dismissed.

01.04.2025

V.Vishal

- 1. Whether speaking/reasoned?*
- 2. Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No