

(2004) 05 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 856 of 1984

Marula Co-op. Agricultural Services Society

APPELLANT

Vs

Sakhi Chand

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Citation : (2005) 2 BC 355

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : Harinder Kumar Arora, for the Appellant; G.S. Jaswal, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Challenge in the present Regular Second Appeal is to the judgment and decree, passed by the District Judge, Hoshiarpur, dated 27.10.1983, whereby the appeal, filed by Sakhi Chand-respondent, was accepted, judgment and decree of the Trial Court dated 18.12.1981 set aside and the suit for recovery of a sum of Rs. 6,320/-with future interest @ 6% per annum decreed.

2. Sakhi Chand-respondent, admittedly, opened an account with the appellant-Society and deposited a sum of Rs. 4,000/- on 27.6.1970. The appellant-Society refused to pay back the aforesaid amount to the respondent, on the plea that he had withdrawn it. The respondent filed a suit for recovery in the Court of Sub-Judge, 1st Class, Hoshiarpur.

3. The Trial Court found, as a matter of fact, that a sum of Rs. 6,320/- was due to the respondent but dismissed the suit on the ground that the same had been filed beyond the period of limitation i.e. 3 years.

4. The aforementioned judgment and decree was set aside by the first Appellate Court. It was held that the appellant, vide its resolution dated 29.9.1979, Ex. P 13, had acknowledged the liability and, therefore, the suit filed on 4.3.1980 was

within limitation.

5. Counsel for the appellant contends, that as held by the Trial Court, the demand, for the amount deposited was made for the first time in the year 1970-71 and, therefore, the suit filed in the year 1980 was hopelessly barred by limitation.

6. Counsel for respondent No. 1, on the other hand, argues that in the year 1970-71, the respondent presented the passbook for making entries with respect to interest. Vide resolution, passed by the appellant, dated 29.9.1979, Ex. PI 3, the appellant acknowledged its liability for a sum of Rs. 1652.35 only, giving rise to the cause of action to file a suit and therefore the suit was within limitation.

7. I have heard the learned Counsel for the parties, perused the judgments and decrees of the Courts below and examined the record.

8. The suit in the present case was filed on 4.3.1980. The appellant has not referred to any admission/evidence that would suggest that before serving of notice, dated 3.10.1979, the respondent raised any demand regarding payment. It is also not denied that on the basis of the said notice, the Society conducted an inquiry, pursuant whereunto, one Joginder Singh, Secretary of the Society was found to have embezzled the amount, lying in the account of the respondent to extent of Rs. 1652.35. This admission/acknowledgement was reflected in the resolution of the Society dated 29.9.1979. It is, thus, apparent that for the first time on 29.9.1979, the Society accepted the claim of the respondent to the extent of Rs. 1652.35 and, thus, declined the claim with respect to the balance amount.

9. In this view of the matter the cause of action, to claim the balance amount, namely, the amount claimed in the present suit and also the amount decreed by the first appellate Court, arose on the denial of the appellant to pay the aforementioned amount to the respondent. As referred to above, the said denial, whether by specific or by implication, is dated 29.9.1979. The suit, admittedly, was instituted on 4.3.1980 i.e. well within the limitation of three years. Therefore, the first Appellate Court rightly reversed the judgment of the Trial Court and decreed the suit, filed by the respondent. The findings, returned by the first Appellate Court, are legal and valid.

10. Counsel for the appellant has failed to raise any question of law, much less a substantial question of law that would persuade this Court to interfere in the judgment and decree of the first Appellate Court. Consequently, the judgment and decree of the first Appellate Court is affirmed and the Regular Second Appeal dismissed, with no Order as to costs.