(2022) 10 TEL CK 0046

In the Telangana High Court

Case No : Second Appeal No. 25 Of 2013

Regional Provident Fund Commissioner, Barkatpura, HYD. APPELLANT

Vs

B.Vijaya Kumar RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:
Code Of Civil Procedure, 1908 — Section 100

Citation : (2022) 10 TEL CK 0046

Hon'ble Judges : G. Anupama Chakravarthy, J

Bench : Single Bench

Advocate : Raghuram Reddy Katangur, K Jithender Babu

Final Decision : Dismissed

Judgement

1. This Second Appeal is arising out of the judgment and decree dated 22.08.2007 in A.S.No.201 of 2005 on the file of XIII Additional Chief Judge (FTC) City Civil Court, Hyderabad, which is arising out of the judgment and decree dated 28.09.2004, passed in O.S.No.1197 of 1992 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court.

3. Heard learned Counsel for the appellant as well as the counsel for the respondents and perused the record.

4. The appellant is the plaintiff. The plaintiff is the Regional Provident Fund Commissioner. The brief facts of the case of the plaintiff is that Employee Fund Organization which is established under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') to maintain the Provident Fund Accounts and subscribers. The defendant was appointed as Lower Division Clerk in the year, 1982 in the office of plaintiff and he worked in the Accounts Section. One Sri Jose Mathews is an employee of M/s. Warner Hindustan Limited and was the member of EPF bearing A/c.No.AP/2756/166 and submitted his

claim in 1986 for refund of PF amount and his claim was settled for Rs.60,209/- which was sent to Cash Section on 26.11.1986 and the same was received by the defendant and entered in the inward registered vide Sl.No.642 at pg.No.194 on the same day. But the defendant altered SB A/c.No.73 to 173 in the claim form and not knowing the same, a cheque bearing No.632094 dated 28.11.1986 was sent to Federal Bank, Mettada Brach, Trivendrum. It is the further case of the plaintiff that the defendant having knowledge that the cheque will be returned, he opened SB A/c.No.1627 in Central Bank of India on 17.12.1986 by forging signature of Mr.Mathews by giving false address and the defendant submitted a letter on 17.12.1986 to the plaintiff's office in the name of Mathews with a request to credit the amount into A/c.No.1627 treating the said letter as genuine. Further, the plaintiff prepared another cheque bearing No.635357 dated 09.02.1987 and sent it to Central Bank of India and the amount was withdrawn by the defendant through Andhra Bank, Chikkadpally, another through SBH, Chikkadpally and finally through Syndicate Bank, Nallakunta. Further, one Mr. Sharma, an employee of Transport Corporation of India claimed his provident fund in 1986 and plaintiff settled his claim for Rs.68,762/-. The defendant on receiving the said claim on 17.12.1986 entered in inward register and altered SB A/c.No.3450 in the claim form as 184500 and the said cheque was returned. Further, the defendant opened SB A/c.No.1756 by forging the signature of the said Mr.Sharma and withdrew the said amount through Central Bank of India and Andhra Bank. Likewise, the defendant also withdrew the amounts of one Dr.Srinivas Deshmukh on 17.03.1987, 18.03.1987 and 19.03.1987 of Rs.3,000/-, Rs.6,000/- and Rs.1800/- respectively, totally misappropriating an amount of Rs.1,39,765/- for which he is liable to return the said amount with interest. Basing on the complaint of the plaintiff, the matter was referred to Deputy Director (Vigilance) and on investigation, the above facts were revealed. Further, the plaintiff handed over the case to CBI, Hyderabad and the defendant was removed from service for mis-conduct and suppressing his employment in Army before joining in the plaintiff's organization. Therefore, the suit is filed for recovery of amount with interest.

5. On the other hand, the defendant filed a detailed written statement contending that there is no cause of action and the suit is barred by limitation and is not maintainable.

6. It is the specific case of the defendant that he worked in Cash Section in plaintiff's office for reconciliation work from 1.08.86 to 17.03.87 and from 17.03.87 to till his removal from service, he worked in the Insurance Section. Further, though CBI investigated about misappropriation of funds in the plaintiff's office from November, 1987 to August, 1990, no charge sheet was filed against the defendant and the present suit was filed on 19.08.1992 and the same is barred by limitation. It is the further case of the defendant that the plaintiff demanded bribe of Rs.20,000/- for his promotion, because of which plaintiff bore grudge and filed the present suit and prayed for dismissal of the suit.

7. Basing on the pleadings on record, the trial Court has framed the following issues:-

“1. Whether the defendant while working with the plaintiff organization misappropriated the amounts?

2. Whether the suit is within limitation?

3. Whether the plaintiff is entitled for suit claim?

4. To what relief?”

8. During the course of the trial, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A-1 to Ex.A-24 were marked and on behalf of the defendants DW.1 was examined and Exs.B-1 to Ex.B-4 were marked.

9. The trial Court after considering the oral and documentary evidence dismissed the suit with a finding that evidence of PWs.1 and 2 disclose that misappropriation of amounts by altering the SB Account numbers in the claim forms of three P.F. claimants and withdrawing the amount from the banks relate to the year, 1986 and therefore, the suit is barred by limitation as it is not filed within three years from that date and was filed in the year, 1992 i.e., after lapse of more than 5 years after withdrawing the amounts.

10. Being aggrieved by the said judgment and decree of the trial Court, the plaintiff had filed an Appeal vide A.S.No.201 of 2005 on the file of XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad. The appellate Court after hearing the parties, framed the following points for consideration:-

“1. Whether the plaintiff is entitled for recovery of suit amount?

2. Whether the suit is barred by limitation?

3. Whether there is cause of action to file the suit?

4. To what relief?”

11. After considering the material on record, the appellate Court dismissed the appeal confirming the judgment and decree dated 28.09.2004 in O.S.No.1197 of 1992, on the file of IV Senior Civil Judge, City Civil Court, Hyderabad.

12. Being aggrieved by the said judgment and decree of the appellate Court, the unsuccessful plaintiff has filed the present Second Appeal with the following substantial questions of law:-

“2. Both the courts failed to take into consideration the fact that the amounts due to the employees i.e., Mr.Jose Mathews, an employee of M/s. Warner Hindustan Lt., Sri Ammilal Sharma, an employee of M/s. Transport Corporation of India, one Sri Srinivas Deshmukh, an employee of M/s. Warner Hindustan Ltd., in all Rs.2,76,036/- that is Rs.1,39,765/- principle amount and Rs.1,36,271/- interest as Employees Provident Fund Subscription, which was infact found deposited in the bogus accounts opened by the respondent. Hence, the burden of proof is on the respondent/defendant to prove how those amounts came to that account opened respectively in S.B.Acccount No.1627 of Central Bank of Inida, Warner Hindustan Extension Counter, Secunderabad on 17-12-1986 in the name of Mr.Jose Mathew's by forging his signature and giving false address and other acoutns in Andhra Bank, Chikkadpally and S.B.H., chikkadpally and finally in Syndicate Bank, Nallakunta.

3. Both the lower courts ought to have seen that when it was proved that the respondent alone has access to alter S.B.Account Nos., of those employees and accordingly in all the 3 instances he changed S.B.Account Nos., he has to prove that he has not misappropriated the funds.

4. Both the lower courts ought to have seen that it is not possible to plaintiff/ appellant to produce the forged cheques which were created by the defendant.

5. Both the lower courts ought to have seen that the respondent's removal from service on the report of the CBI and copy of the FIR and charge sheet is nothing to do with the claim of the plaintiff/appellant against the defendant/respondent.

6. Both the lower courts have laid much stress on the report given by CBI in respect of three provident fund claimants which is not relevant for the purpose of plaintiff/appellants claim.

7. The approach of both the lower courts is wrong as they failed to evolve and appreciate evidence both oral and documentary independently without any reference to CBI enquiry and other proceedings.

8. Finding of both the lower courts that suit is barred by limitation on the ground that it was filed after 3 years is not valid as the suit was filed within 3 years from the detection of misappropriation of funds. Hence, it is within 3 years."

13. On perusal of the substantial questions of law raised by the appellant, they are all related to the fact findings of the Court below, except the substantial question of law raised in ground No.8, which disclose that the suit is filed within 3 years from the date of detection of misappropriation of funds.

14. On perusal of the record, it is evident that Exs.A-1 to A- 3 relate to Mr.Jose Mathews and of the year, 1986 and Exs.A-3 relate to cheques which are alleged to be cancelled, Ex.A-7 and Ex.A-11 relate to year, 1986 and 1987 and Ex.A-9 disclose that the defendant was removed from service basing on the memorandum dated 19.09.1989 and after entire investigation, CBI has filed final report on 20.08.1990. Though the evidence of PWs.1 and 2 reveal that the defendant has misappropriated the funds, they are the persons who have seen the defendant altering the SB Account Nos. in the claim forms. Apart from that, the suspension order under Exs.B-3 and B-4 dated 06.07.1987 and 09.07.1987 do not contain the allegations made in the plaint for which the defendant was suspended.

15. On the other hand, it is the specific evidence of PWs.1 and 2 that there are 7 staff members who handle claim forms before dispatching the cheques and the report of the CBI do not disclose that the defendant have opened bank Accounts in the name of 3 P.F. claimants. There is no incriminating evidence against the plaintiff to prove that the defendant have opened the Bank Accounts. Therefore, the trial Court as well as the Appellate Court have rightly held that the defendant shall not be liable for misappropriation of amounts of plaintiff's organization and in the absence of proper evidence against the defendant for misappropriation of amounts, the said amount cannot be recovered from the defendant. Moreover, both the Courts rightly held that the suit is barred by limitation as the last transaction alleged to have done by the defendant was on 19.03.1987. Even as per the evidence and averments of the plaintiff, if limitation is calculated from 19.03.1987, the plaintiff organization ought to have to filed the suit against the defendant for recovery of alleged amounts on or before 19.03.1990. Admittedly, the suit is filed in the year, 1992 i.e., on 19.08.1992. Therefore, the suit is barred by limitation and the other grounds do not relate to any substantial question of law.

16. It is pertinent to mention that there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, this Court can interfere with the orders of the Courts below. On perusal of the entire material on record, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore in the absence of substantial question of law, it is not proper to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

17. In the result, the Second Appeal is dismissed at the stage of admission confirming the judgment dated 22.08.2007 in A.S.No.201 of 2005 on the file of XIII Additional Chief Judge (FTC) City Civil Court, Hyderabad. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

