IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

RSA-2530-1995 (O&M)
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UNITED INDIA INSURANCE CO. LTD., LUDHIANA
….Appellant

Vs

INDIAN OVERSEAS BANK AND OTHERS
...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Ms. Vandana Malhotra, Advocate
for the appellant (through Video Conferencing).

Mr. R. S. Bhatia, Advocate
for respondent No.1.

VIRINDER AGGARWAL, J. *(Oral)*

1. The appellant, an insurance company, has filed the present regular second appeal challenging the judgment and decree dated 13.06.1995. By the impugned judgment, the appeal preferred by the respondent/plaintiff-Bank against the trial court's judgment and decree dated 29.08.1992 was allowed. The learned First Appellate Court reversed the findings recorded on Issues No. 4-A and 4-B by the trial court and decreed the suit in favor of the respondent/plaintiff-Bank, thereby holding the appellant/Insurance Company liable. Aggrieved by this judgment and decree, the appellant has approached this Court seeking appropriate relief.

2. Briefly stated, the respondent/plaintiff-Bank filed a mortgage suit seeking recovery of Rs. 2,59,944.85, along with interest, by way of sale of the mortgaged property fully detailed in the plaint. The suit was instituted

on the grounds that Defendant No.1 had availed a loan from the Bank for the purchase of a truck and had mortgaged his land as security for repayment. The truck itself was hypothecated in favor of the Bank as additional security. Subsequently, the plaintiff-Bank procured insurance for the truck with the appellant/defendant No.4 (Insurance Company). It was alleged that the truck was destroyed during the riots of November 1984. Since the vehicle was insured with the appellant/defendant No.4, the Bank contended that the Insurance Company was liable to pay the compensation amount. Defendant No.1 had also filed a separate suit against the appellant/defendant No.4, in which the plaintiff-Bank was impleaded as a party. That suit was later settled between defendant No.1 and the appellant/defendant No.4, pursuant to which Rs. 1,50,000/- was paid to defendant No.1, and the suit was withdrawn. The Bank contended that the compensation amount was payable to it, and defendant No.1 had no right to receive the insurance proceeds. Accordingly, the plaintiff-Bank prayed for a decree for recovery of the loan amount by sale of the mortgaged property, with the right to recover any shortfall from other assets of the defendants. Defendant Nos. 1 to 3 contested the suit on multiple grounds, including that the suit was barred by limitation, was not property verified, and was filed by an unauthorized person. It was admitted that defendant No.1 had availed a loan of Rs.90,000/- for purchase of the truck. It was pleaded that he repaid approximately three-fourths of the loan amount, with the agreed interest at 18% per annum. However, it was denied that defendant No.3 had mortgaged the suit land as security, and the hypothecation of the truck in favour of the plaintiff-Bank was also denied. The defendants contended that the insurance

premium had been paid by them directly to the Insurance Company and that the truck was destroyed during the riots of November 1984. It was further alleged that the plaintiff-Bank did not lodge any claim for compensation with the Insurance Company. Defendant No.1 had previously filed a civil suit against the appellant/Insurance Company, impleading the plaintiff-Bank as a party, to claim compensation. In that suit, an amount of Rs. 1,50,000/- was paid to Defendant No.1, and the suit was subsequently withdrawn as fully satisfied. Defendant No.4/Insurance Company contended that there was no privity of contract between it and the plaintiff-Bank and that the Bank was estopped from initiating proceedings against it due to its own conduct. It was further submitted that the Bank's claim was barred by limitation, as the Insurance Company had been impleaded after about two years of pendency of the original suit, and that certain amendments made in paragraphs 8 and 9 of the plaint were unauthorized.

3. In response, the plaintiff-Bank filed a replication reiterating the circumstances and asserting its claim to the insurance proceeds. Issues were framed to determine the rights and liabilities of the parties, and both sides were granted the opportunity to lead evidence. The main disputes centered around the entitlement to the insurance compensation, the alleged privity of contract, and whether the suit was barred by limitation or otherwise defective in law. Issues framed are as follows:

> *1. Whether the suit has been filed by a duly authorised person? OPP.*
>
> *2. Whether defendant no, 3 executed an equitable mortgage of the property detailed in para no.3 of the plaint as a colleteral security for repayment of the loan amount ?OPP.*
>
> *3. Whether the suit is within limitation ?OPP*

4. To what amount and at what rate of interest, the plaintiff bank is entitled to recover? OPP

4-A. Whether the plaintiff is estopped by his act and conduct from filing the suit? OPP.

4-B. Whether defendant no.4 is liable to pay insurance amount to plaintiff?OPP.

4.C. Whether the plaintiff made, unauthorised amendment in the plaintiff so its effect: OPD.

5. Relief.

4. The learned trial Court, while adjudicating the suit, dismissed the plaintiff-Bank's claim against defendant No.4/Insurance Company. However, a preliminary decree was passed in favor of the plaintiff-Bank and against defendant Nos. 1 to 3 for recovery of the suit amount through the sale of the mortgaged land. Aggrieved by the trial court's findings on Issues No. 4-A and 4-B, the plaintiff-Bank filed an appeal. The learned First Appellate Court, upon consideration of the appeal, reversed the trial court's findings on Issues No. 4-A and 4-B and allowed the appeal. It was held that the appellant/Insurance Company (defendant No.4 in the trial) was liable to pay Rs. 1,50,000/- to the plaintiff-Bank. The Court further directed that this payment would be adjusted towards the decretal amount for which defendant Nos. 1 to 3 had already been held liable by the trial court. The liability of defendant Nos. 1 to 3 to pay the original decretal amount was expressly held to remain intact as per the judgment and decree dated 29.03.1991. Additionally, the liability of defendant No.1 was enhanced to the extent of Rs. 1,50,000/-, corresponding to the amount recoverable from the Insurance Company. Aggrieved by the judgment and decree passed by the learned First Appellate Court, the appellant/Insurance Company has filed the present second appeal challenging the findings and contending that it

was not liable to make payment to the plaintiff-Bank under the insurance policy or otherwise. The appeal was admitted for hearing vide order dated 28.02.1997. Respondent No.1-plaintiff Bank contested the appeal. Record was requisitioned.

5. I have heard counsel for the parties and have gone through the file carefully.

6. The learned counsel appearing on behalf of the appellant–Company vehemently contended that the findings recorded by the learned First Appellate Court on Issue Nos. 4-A and 4-B are unsustainable in law, as they are based merely on surmises and conjectures rather than on cogent evidence. It was argued that such findings are perverse, arbitrary, and liable to be set aside.

7. It was further submitted that the respondent/plaintiff–Bank is estopped, by virtue of its own conduct, from claiming any amount under the insurance policy. In support of this contention, learned counsel pointed out that in a separate suit, the respondent/plaintiff–Bank had expressly declined to pursue or claim any compensation arising out of the insurance policy. In light of this prior stance, it was argued that the Bank cannot now be permitted to take a contradictory position and seek recovery of the insurance amount. On this basis, it was asserted that the learned Trial Court had rightly concluded that the respondent/plaintiff–Bank is barred by the principle of estoppel from maintaining such a claim. Additionally, it was contended that there is no specific relief or prayer in the plaint seeking recovery of the insurance amount from the appellant/defendant–Insurance Company. It is a settled principle of law that a court cannot grant relief beyond the pleadings

of the parties. Therefore, the First Appellate Court, in granting such relief, exceeded its jurisdiction and committed a manifest error of law. Learned counsel for the appellant also argued that the suit, insofar as it is directed against the appellant/Insurance Company, is barred by limitation. Hence, any claim for recovery against the appellant is legally untenable and ought to have been rejected.

8. It was contended by respondent that the learned First Appellate Court has recorded its findings upon a proper and judicious appreciation of the pleadings as well as the evidence available on record. It stands admitted that, in terms of the conditions stipulated in the insurance policy (Ex. P-14), the compensation amount was payable to the mortgagee or pledgee. Consequently, the appellant/Insurance Company could not have lawfully disbursed the insured amount to defendant No. 1, who was the plaintiff in the earlier suit. It was further contended that the present suit is essentially one for recovery founded upon a mortgage deed. Accordingly, the applicable period of limitation is twelve years. It is a settled principle of law that in cases involving composite reliefs, where different reliefs may attract different periods of limitation, the limitation applicable to the primary or substantive relief governs the suit. In the present case, the primary relief being enforcement of the mortgage, the longer limitation period would apply. In view of the above, it was submitted that the suit has been instituted well within the prescribed period of limitation. Accordingly, no illegality or infirmity can be attributed to the findings of the learned First Appellate Court, and the present appeal, being devoid of merit, deserves to be dismissed.

9. The learned Trial Court recorded a finding that in a prior suit instituted on 01.02.1985 by defendant No. 1 of the present suit, a claim was made for recovery of ₹2,00,000/- as compensation on account of the destruction of a truck during riots. In the said proceedings, the respondent/plaintiff-Bank (arrayed as a defendant therein) filed its written statement, wherein, in paragraph No. 10 (Ex. D-2), it was specifically pleaded that the answering defendant had already instituted a mortgage suit against the plaintiff and had no concern whatsoever with the Insurance Company. On the basis of this categorical stand taken by the plaintiff–Bank in Ex. D-2, the appellant/Insurance Company proceeded to enter into a compromise with the plaintiff of that suit (who is defendant No. 1 in the present proceedings) and paid a sum of ₹1,50,000/- towards full and final settlement. Consequently, the said suit was withdrawn. From these circumstances, the learned Trial Court concluded that the respondent/plaintiff-Bank had, by its conduct, permitted and acquiesced in the payment of compensation by the appellant/Insurance Company to defendant No. 1 (and defendant No. 3 in the present suit), and was therefore estopped from subsequently claiming the said insurance amount. However, the aforesaid finding of the learned Trial Court was reversed by the learned First Appellate Court. The Appellate Court held that there was no material on record to establish that any official of the plaintiff-Bank had consented to, or authorized, the payment of the insurance amount by the Insurance Company to defendant No. 1. It was further observed that the Insurance Company (respondent No. 4 therein) had made the payment unilaterally, without the knowledge or consent of the plaintiff-Bank. Notably, such

payment was effected on a date when the suit was not even fixed for hearing, and the withdrawal of the suit by defendant No. 1 was secured in the absence of any representation on behalf of the plaintiff-Bank. In view of these findings, the learned First Appellate Court held that the principle of estoppel was not attracted against the plaintiff–Bank.

10. The principal question that arises for adjudication in the present appeal is whether the finding of estoppel recorded by the learned Trial Court was rightly reversed by the learned First Appellate Court, or whether such reversal is itself based on surmises and conjectures. It is not in dispute that the appellant/defendant–Insurance Company paid a sum of ₹1,50,000/- as compensation to defendant No. 1 in a prior suit instituted by him. The said payment was made and the suit was withdrawn in the absence of any representation on behalf of the plaintiff-Bank, and without any express consent on its part at the relevant time. However, the learned First Appellate Court proceeded to hold that, notwithstanding the averment made by the plaintiff-Bank in its written statement (Ex. D-2) in the earlier suit, wherein it was stated that the Bank had no concern with the Insurance Company, having already instituted proceedings against defendant No. 1 and his guarantors for recovery of the outstanding dues, the said statement could not be construed as a waiver of its rights against the Insurance Company. Learned First Appellate Court, in doing so, ignored the fact that in Ex. D-2, written statement in the earlier proceedings, no claim had been asserted by the plaintiff-Bank against the appellant/Insurance Company, nor was the Insurance Company impleaded as a party in the present suit. It was observed that, at that stage, the plaintiff-Bank was not even aware of the fact that the

insured truck had been destroyed in the riots, and therefore, no claim could have been contemplated or asserted against the Insurance Company. The appellant, however, contends that such interpretation of Ex. D-2 by the learned First Appellate Court is erroneous and contrary to the record, and that the reversal of the Trial Court's finding on estoppel is not based on a proper appreciation of evidence.

11. In the present suit, the plaintiff-Bank has sought recovery of its dues from defendant Nos. 1 to 3, primarily through the sale of the mortgaged property and, in the event of any shortfall, from their other assets. Significantly, however, no specific relief has been claimed against the appellant/defendant-Insurance Company on the basis of the insurance policy. In contrast, in the earlier suit instituted by defendant No. 1 for claiming compensation on account of the destruction of the insured truck during riots, the respondent/plaintiff-Bank, while filing its written statement (Ex. D-2), categorically stated that it had no concern with the Insurance Company. By taking such a clear and unequivocal stand, the plaintiff–Bank effectively disclaimed any interest in the insurance claim. Acting upon this representation, the appellant/Insurance Company entered into a compromise with defendant No. 1 and paid a sum of ₹1,50,000/- towards full and final settlement of the claim. The plaintiff-Bank, despite having a right under the terms of the insurance policy (Ex. P-14) to receive the compensation as mortgagee, has not asserted its claim in the said proceedings. It was after Bank came to know that truck which was hypothecated with it has been destroyed in riots. Even thereafter, Bank filed written statement Ex. D2 stating that it has nothing to do with insurance company. This conduct

clearly indicates that the plaintiff-Bank had waived or abandoned its rights under the policy. In such circumstances, the learned Trial Court rightly held that the plaintiff-Bank is estopped, by its own conduct and representations made in Ex. D-2, from subsequently claiming the insurance amount from the appellant/Insurance Company. However, the learned First Appellate Court, in reversing the findings on Issue Nos. 4-A and 4-B, failed to properly appreciate the material evidence on record, particularly the effect and legal implications of the written statement (Ex. D-2). The reversal, therefore, suffers from misappreciation of evidence and warrants interference in the present appeal.

12. As regards the question of limitation, the suit, even qua the appellant/defendant-Insurance Company, would be deemed to be within the prescribed period. The primary relief sought in the suit is recovery through the sale of mortgaged property, for which the limitation period is twelve years. It is a well-settled principle that in cases involving composite reliefs, the limitation applicable to the principal or substantive relief governs the suit as a whole. Accordingly, the suit cannot be said to be barred by limitation insofar as the appellant/defendant is concerned. However, in view of the categorical and unequivocal stand taken by the plaintiff–Bank in its written statement (Ex. D-2) in the earlier proceedings, wherein it disclaimed any concern with the Insurance Company, which representation led the appellant/Insurance Company to settle the claim and disburse the insurance amount to defendant No. 1, the plaintiff-Bank is clearly estopped from subsequently asserting any claim to the said amount. Consequently, the findings recorded by the learned First Appellate Court on Issue Nos. 1 and 4

cannot be sustained, as they are based on a misappreciation of the evidence on record. The said findings are hereby set aside, and those recorded by the learned Trial Court are restored.

13. In view of the above, the appeal preferred by the appellant/defendant No. 4 is allowed. The relief granted against the appellant/Insurance Company in favour of the respondent/plaintiff-Bank is set aside, and the suit, insofar as it relates to the appellant/Insurance Company, stands dismissed.

14. Pending applications, if any, shall stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

10.04.2026
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No