

(1988) 02 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 570 of 1978

Amarjit Singh Gandhi

APPELLANT

Vs

Baldev Singh

RESPONDENT

Date of Decision: Feb. 3, 1988

Acts Referred:

- Punjab Agricultural Indebtedness (Relief) Act, 1975 - Section 4

Hon'ble Judges: Harbans Singh Rai, J

Bench: Single Bench

Advocate: H.L. Sarin, with Miss Ritu Bahri, for the Appellant; Vijay Jhanji with Mr. O.P. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Harbans Singh Rai, J.

Amarjit Singh Gandhi defendant appellant had borrowed Rs. 15000/- from Baldev Singh plaintiff-respondent on February 8, 1974. A pronote was executed. As defendant did not pay, Baldev Singh plaintiff brought this suit for the recovery of the amount. The Subordinate Judge 1st Class, Muktsar, vide his order dated April 20, 1978, decreed the suit of the plaintiff for Rs. 15000/- as principal and Rs. 4237.50 as interest and also ordered that defendant will pay future interest on the said principal amount at the rate of 6 per cent per annum till the final realization of the decretal amount. Feeling aggrieved, Amarjit Singh Gandhi defendant has filed this appeal.

2. On the pleadings of the parties, the following issues were framed:-

1. Whether the defendant executed the pronote and receipt in dispute in favour of the plaintiff for consideration?

2. Whether the plaintiff is entitled to any interest? If so, how much?

3. Whether the plaintiff is not entitled to any decree as alleged in para No. 1 of the preliminary objection in the written statement?
4. Whether the plaintiff is a money lender? If so, Its effect?
5. Relief.

The learned trial Court decided issue Nos. 1 and 2 in favour of the plaintiff and issues Nos. 3 and 4 against the defendant.

3. The finding on issues Nos. 1, 2 and 4 have not been challenged before me. The learned counsel for the appellant has challenged the finding on issue No 3 and has argued that as defendant appellant is a small farmer, so in view of the provisions of Punjab Agricultural Indebtedness (Relief) Act, 1975, (hereinafter referred to as the Act), the debt shall be deemed to be wholly discharged. He has referred to section 4 of the Act which reads as under:-

4. Consequences of commencement of this Act:- Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having force by virtue of any such law, and save as otherwise expressly provided in this Act, the consequences as hereinafter set forth shall ensue with effect from the date of commencement of this Act or as the context may require, namely:-

(a) every debt owned on the commencement of this Act by a debtor, together with any interest payable thereon shall be deemed to be wholly discharged;

(b) every debt owned to any person by a small farmer shall be deemed to be wholly discharged if-

(i) the small farmer has, in the discharge of his debt, paid a sum exceeding or equivalent to one and a half times of the amount of the debt at any time before the commencement of this Act;

(ii) the small farmer in the discharge of his debt, pays after the commencement of this this Act, a sum which together with any sum already paid in the such debt is equivalent to one and a half times the amount of the debt;

(c) every debtor or small farmer undergoing detention in a civil prison in execution of any decree for money passed against him by a civil Court in respect of any debt deemed to be discharged under clause (a) or (b) shall be released;

(d) every property pledged or mortgaged by debtor or a small farmer whose debt is deemed to be discharged under clause (a) or (b) shall, as and when such debt is deemed to be discharged, stand released in favour of such debtor or as the case may be, such small farmer and the creditor shall, if he is in possession thereof, return the same to the debtor or as the case may be to the small farmer for with;

(e) There shall be a memorandum on the repayment of a debt or of interest, if any, by debtor or a small farmer for a period of two years and no interest shall be payable by the debtor or the small farmer for the aforesaid period of moratorium.

4. I have considered the argument and find myself in disagreement with the same.

5. The definition of "Small Farmer" as given in Section 2(vii) of the Act reads as under:-

"Small farmer" means a person who owes a debt and who earns his livelihood mainly by agriculture land-

(a) who owns agricultural land not exceeding two hectares; or

(b) whose total assets do not exceed rupees fifty thousand in value.

6. The defendant appellant, who takes advantage of section 4, must prove that he earns his livelihood mainly by agricultural land and does not possess agricultural land not exceeding two hectares or if; he has more than two hectares of land, his total assets do not exceed Rs. 50,000/- in value. According to the Act, small farmer will only be that person who earns his livelihood mainly by agriculture and if this requisite condition is proved, only then it is to be seen how much land he owns or as to whether his assets exceeds Rs. 50,000/- or not Amarjit Singh Gandhi defendant appellant, when examined as D.W.1, has nowhere stated that he earns his livelihood by agriculture land nor has he led any evidence to that effect. In the absence of any evidence to show that Amarjit Singh Gandhi is earning livelihood mainly by agriculture land, it cannot be held that he is a small farmer and if he is not a small farmer then the subsequent condition of owning less than two hectares of land or assets less than Rs. 50,000/- is not applicable. The trial Court also decided this issue against the defendant, although giving different reasons Taking the evidence as it is on the file the defendant is not covered by the definition of "small farmer" and hence is not covered by the protection given by the Act to small farmers. This issue was correctly decided by the trial Court and I endorse the same

7. No other point has been pressed nor arises in the case

8. Consequently, this appeal is dismissed. There will be no order as to costs.