

**(2010) 03 P&H CK 0325**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2789 of 1987

Bank of Baroda

APPELLANT

Vs

A.K. Sharma and Others

RESPONDENT

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**Date of Decision:** March 17, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Contract Act, 1872 - Section 72
- Limitation Act, 1963 - Article 113, 4, 17(1)

**Citation:** (2010) 4 LLJ 423

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Advocate:** Ashok Gupta, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Alok Singh, J.

Present second appeal has been filed by the Plaintiff-Bank u/s 100 CPC challenging the judgment and decree dated April 4, 1987 passed by First Appellate Court/District Judge, Gurdaspur thereby allowing first appeal and dismissing the suit of the Plaintiff-Bank on the ground, suit is barred by limitation.

2. The brief facts of the case are that the suit was brought by Bank of Baroda against A.K. Sharma, Ex. Accountant of the Bank and Ms. Anita Rani wife of A.K. Sharma, alleging inter alia that A.K. Sharma-Defendant worked as Accountant in the Bank. During this period he committed breach of trust by misappropriating the amounts entrusted to him as Accountant by various clients of the Plaintiff-Bank; in this way he caused wrongful gain to himself and wrongful loss to the Plaintiff-Bank; fictitious entries in the account of the Bank were made; documents were forged; receipts were issued by A.K. Sharma Defendant No. 1, to the clients; however, amounts were not credited.

3. Defendants contested the suit and preliminary objections were taken. The suit was barred by time; it was bad for misjoinder of parties; it was also denied that the Plaintiff-Bank was a corporate body and R.S. Kapur was competent to file the suit; on merits, all the allegations were denied; there was no wrongful loss to the Bank; there was no breach of trust; all the allegations of fraud alleged in the plaint were specifically denied; Defendant No. 1 was not informed of any inquiry; Civil Court at Panchkula had not jurisdiction to try the suit.

4. In the replication the Plaintiff-Bank controverted the allegations of the Defendants.

5. Learned trial Court framed following issues:

1. Whether the Plaintiff-Bank is a corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act No. 5 of 1970)? OPP.

2. Whether Sh. R.S Kapoor is competent to file the present suit? OPP

3. Whether the Plaintiff is entitled to recover the disputed amount from the Defendants alleged in the plaint? OPP.

4. Whether the suit is time barred? OPD.

4(A) Whether the suit is bad for misjoinder of Defendant No. 2? OPD.

6. Issue No. 1 and 2 were decided together in favour of the Plaintiff-Bank. It was held that the Plaintiff-Bank was a corporate body and R.S. Kapoor was competent to file the present suit. Issue No. 3 was decided in favour of the Plaintiff. The Plaintiff-Bank was held entitled to recover the disputed amounts from the Defendants. Issue No. 4 was decided against the Defendants. It was held that the suit was not time barred. Issue No. 4-A was decided against the Defendants. The suit was not bad for misjoinder of parties. In the result the suit was decreed as stated above.

7. First Appellate Court reversed findings of learned trial Court on the question of limitation and has held that limitation for recovery of amount of loss caused to the Bank by misconduct of the Bank employee would lie within three years from the date, misconduct becomes known to the Plaintiff-Bank. First Appellate Court's judgment is being assailed in the present appeal.

8. I have heard learned Counsel for the Plaintiff-Bank and perused the record.

9. Findings of the trial Court on issues No. 1, 2, and 4-A have not been challenged in appeal. The same are therefore affirmed.

10. Undisputedly, suit of the Plaintiff/ Bank was dismissed on the ground of limitation. Learned Counsel for the Appellant, while placing reliance on the judgment of the Hon'ble Apex Court in the matter of [Mahabir Kishore and others Vs. State of Madhya Pradesh](#), has argued that limitation would start running from

the date mistake was found proved either by the Court or in departmental proceedings. He further argued, that in the present case limitation would start running from the date Defendant-employee was found guilty in the departmental enquiry and not from any date prior to enquiry report.

11. None is appearing for the Respondent, hence, for the purpose of fair decision of this appeal following substantial question of law is being formulated. What would be the date of commencement of the period of limitation in a suit for recovery of amount of loss caused to the Bank due to misconduct of its employee?

12. Learned Counsel for the Appellant argued that no limitation period is prescribed, hence, present case would be governed by Article 113 of the Limitation Act and in view of Section 17(1)(a) of the Limitation Act, limitation shall begin to run only when employee is held guilty in the departmental enquiry and not to any earlier date.

13. Hon"ble Apex Court in the matter of Mahabir Kishore v. State of M.P. (supra) in paragraph No. 28 thereof has held as under:

It is thus a settled law that in a suit for refund of money paid by mistake of law, Section 72 of the Contract Act is applicable and the period of limitation is three year as prescribed by Article 113 of the Scheduled to the Indian Limitation Act, 1963 and the provisions of Section 17(1)(c) of that Act will be applicable so that the period will begin to run from the date of knowledge of the particular law, whereunder the money was paid, being declared void; and this could be the date of the judgment of a competent Court declaring that law void.

14. I have carefully examined judgment of the Hon"ble Apex Court in the case of Mahabir Kishore v. State of M.P. (supra). There is no doubt about the ratio of the judgment of the Hon"ble Supreme Court in the matter of Mahabir Kishore v. State of M.P. (supra). Hon"ble Apex Court in the peculiar facts and circumstances of that case held that limitation will begin to run from the date of knowledge of law, whereunder money was paid, declared void. In the present case, Plaintiff has not paid anything to the Defendant either by mistake or pursuant to any fraudulent action of the Defendant. In the present case, Defendant/Bank's employee having collected money from the clients, did not deposit the same in the account, hence, present case is of misconduct by the employee. In my humble opinion, case of Mahabir Kishore v. State of MP. (supra) has no application in the present case.

15. In the present case, Plaintiff-Appellant in paragraph No. 3,4 and 7 of the plaint, has stated as under:

3. That while performing his duties as an Accountant of the branch at Dalhousie Road, Pathankot the Defendant No. 1 did not discharge his duties with utmost integrity and committed breach of trust and misappropriated the amount mentioned in the heading of the plaint on different dates and the amounts which were entrusted to him by the various clients of the Plaintiff bank for depositing the

same in the bank in their accounts. The Defendant No. 1 with full knowledge to cause wrongful loss to the Plaintiff bank and wrongful gain to himself never deposited the amounts entrusted to him in the respective bank accounts of clients of the bank. The Defendant No. 1 misused his position as an accountant of the branch and made false and fictitious entries in the ledgers and other books of the bank and thus falsified the accounts of the bank and also forged the bank accounts. However, the Defendant No. 1 issued receipts to the clients of the bank from whom he did receive the amounts on various dates which amounts he misappropriated and converted the same to his own use.

4. That fraud and forgery committed by the Defendants was not known earlier and came to the light on the audit of the branch and then an inquiry was appointed by the bank to find out the truth who after verification and after giving opportunities to the Defendants conducted the inquiry in which the Defendant participated and the report of the inquiry officer dated July 24, 1980 was submitted to the bank and acting on that inquiry report, the competent authority dismissed the Defendants from service on September 20, 1981 and as such the suit of the Plaintiff claiming Rs. 59847.85 NP is well within time as the loss was caused by fraud played by the Defendants and limitation for the recovery starts from the date of knowledge of fraud when it came into light and loss caused to the Plaintiff bank by the Defendants against him after an inquiry i.e. July 24, 1980 and September 20, 1981 when final order on the basis of inquiry report was made against the Defendants and as such the suit of the Plaintiff bank is within time. The photostat copy of the inquiry report is attached herewith the plaint.

16. From the perusal of the contents of the plaint, it can safely be said that the present case is by the principal against its agent/employee for recovery of amount of loss caused to the Bank by the misconduct of employee of the Bank. In my humble opinion, present case is covered by Article 4 of the Limitation Act which is being reproduced herein as under:

Description of suit	Period of limitation	Time from which period begins to run
4. Other suits by principals against agents for neglect or misconduct	Three years	When the neglect or misconduct becomes known to the Plaintiff.

17. To my mind, misappropriation or embezzlement by an employee amount to misconduct. Hence, period would start running to file the suit as per Article 4 of the Limitation Act from the date when misconduct becomes known to the Plaintiff.

18. From the perusal of the material on record, it can be said that misconduct of the Defendant came into the knowledge of the Bank in the year 1977 when Audit report came and in any case, in 1978 when chargesheet was served upon the Defendant on August 18, 1978. Date of knowledge of misconduct cannot be extended to the date when Defendant was dismissed from the service on the basis of inquiry report.

19. Undisputedly present suit was filed on May 16, 1983. It is thus, beyond the period of limitation prescribed in Article 4 of the Limitation Act. This is also settled position of law that against an employee for his misconduct, departmental proceeding, criminal prosecution and civil suit for recovery of the loss for the misconduct of an employee can be initiated simultaneously. It is also well settled principle of law even if misconduct or criminal offence is not found to be proved in departmental inquiry and found to be proved in civil or criminal proceedings appropriate orders can be passed by the Court likewise even if offence is not proved in a Court of law, employee can be dealt with in departmental proceedings.

20. In view of the above, I find learned first Appellate Court committed no illegality or jurisdictional error while allowing appeal consequently dismissing the suit of the Plaintiff-Bank on the ground of limitation. Argument of learned Counsel for the Appellant that civil suit can only be filed after an employee is found guilty of misconduct in a departmental inquiry is not acceptable in the above circumstances. Consequently, appeal fails and is dismissed. Since Respondent has not put appearance in the appeal, there would be no order as to costs.