

(2016) 07 SHI CK 0056
High Court of Himachal Pradesh
Case No: R.S.A. No. 474 of 2006

Life Insurance Corporation of
India

APPELLANT

Vs

Smt. Shakuntla Sharma

RESPONDENT

Date of Decision: July 7, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Limitation Act, 1963 - Article 55

Citation: (2016) 3 SimLC 1337

Hon'ble Judges: Mr. Ajay Mohan Goel, J.

Bench: Single Bench

Advocate: Mr. Ashwani K. Sharma, Senior Advocate with Mr. Nishant Verma, Advocate, for the Appellant; Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of the present appeal, the appellants have challenged the judgment and decree passed by the Court of learned District Judge, Kangra at Dharamshala, dated 01.09.2006, in Civil Appeal No. 123-N/XIII/05, vide which, learned Appellate Court has allowed the appeal by setting aside the judgment and decree dated 31.12.2004 passed by the Court of learned Civil Judge (Junior Division)-II, Nurpur, in Civil Suit No. 57/99.

2. The present appeal has been admitted on the following substantial questions of law:-

1. Whether the impugned judgment passed by Ld. First Appellate Judge is the result of total misreading and misappreciation of pleadings, materials and evidence adduced on record by the parties and misinterpretation of the stipulations of Circulars Ex. PA and Ex. DW1/B and thus, the resultant findings and conclusions

drawn by Ld. First Appellate Judge are wrong and perverse?

2. Whether the suit filed by the plaintiff seeking decree of declaration was time barred under Article: 55 of the Schedule of Limitation Act and the same did not deserve to be entertained on this count?

3. Brief facts necessary for the purpose of adjudication of the present appeal are that Rakesh Sharma, hereinafter referred to as the plaintiff, filed a suit for declaration with consequential relief of mandatory injunction for directing defendants No. 1 and 2 to place defendant No. 3 under the organisation of the plaintiff and to give to the plaintiff all the incentives of the insurance business done by defendant No. 3 as detailed and described in the head note. The case of the plaintiff was that he was a Development Officer of Life Insurance Corporation of India and was posted with defendant No. 2 at Nurpur. Plaintiff had appointed Smt. Suman Sharma, daughter-in-law of defendant No. 3, resident of Lubh, P.O. Makrahan, Tehsil Jawali, District Kangra, as his agent with Code No. 0152-15B on 31.05.1991 to enhance his insurance business within the area falling in his jurisdiction. According to the plaintiff, there was a circular dated 24.04.1980 (Ext. PA) issued by defendant No. 1 Corporation, Para-3 of which provided as under:-

"When a near relative of an agent working under a Development Officer is recruited as an agent, then the new agent should also be placed under the same Development Officer. The new agent should not be placed under any other Development Officer nor should he/she be placed direct."

4. The defendant organisation appointed defendant No. 3 as direct agent on 15.08.1994 with Code No. 0315-15B by ignoring Para-3 of the Memo dated 24.04.1980. According to the plaintiff, defendant No. 3 was a close relative of Smt. Suman Sharma, therefore, defendant No. 3 should have been placed under the organisation of the plaintiff and he could not have been appointed as a direct agent. According to the plaintiff, the cause of action arose on 15.08.1994 when the defendant Corporation illegally and arbitrarily appointed defendant No. 3 as direct agent in the area of jurisdiction of the plaintiff. According to him, the cause of action also accrued in January, 1997 when the plaintiff served notice to the defendant. It is in these circumstances, the plaintiff filed the suit.

5. A joint written statement was filed by the defendants. Amongst other preliminary objections, one of the objections taken by the defendants was that the suit was hopelessly time barred. On merit, the stand of the defendant was that prior to the appointment of Suman Sharma, her sister-in-law, Raj Sharma daughter of defendant No. 3 was also agent of defendant Corporation. It was further the case of the defendant that circular relied upon by the plaintiff was not applicable and in fact defendant No. 3 was granted the agency as it was a case of re-appointment of the terminated agency and it was not as if defendant No.3 was granted a fresh agency. As per defendants, defendant No. 3 had worked as an agent with the defendant

Corporation from 1963 to 1982 in Branch Office, Dharamshala under agency Code No. 684145 which was a direct agency. Case of defendant No. 3 was covered vide circular of the defendant Corporation dated 09.07.1968, (Ext.DW1/B) relevant para of which is reproduced herein below:-

"Agents, whose services have been terminated for any reasons whatsoever, should not be reappointed. If the Divisional Manager feels that some person has to be reappointed, he should refer the matter to the Zonal Manager concerned whose decision in this regard shall be final. The agency, if granted, in any such case, will be treated as "Direct".

6. On these basis, the defendant stated that the plaintiff was not entitled to any relief. It was further averred that the agency of daughter-in-law of defendant No. 3 was terminated in the year 1997 and, therefore, the question of diverting the business does not arise.

7. On the basis of the pleadings on record, learned trial Court framed the following issues:-

1. Whether the appointment of defendant No. 3 as direct agent in the defendant corporation, is illegal, null and void, as alleged? ♦ OPP

2. Whether the plaintiff is entitled to all the benefits/incentives accruing through the insurance business done by the defendant No. 3 as an agent of LIC, as alleged? ...
OPP

3. Whether the plaintiff is entitled for relief of permanent injunction as prayed for?
♦ OPP

4. Whether the suit is not maintainable in the present form? ♦ OPD

5. Whether the plaintiff has no cause of action against the defendants? ♦ OPD

6. Whether the plaintiff is estopped by his act and conduct from filing the present suit? ♦ OPD

7. Whether the civil court has got no jurisdiction to entertain and try the present suit? ♦ OPD

8. Relief.

8. The issues so framed by the learned trial Court were answered as under:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes.

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No.

Relief    : Suit is dismissed as per operative part of the judgment.

9. Feeling aggrieved of the said judgment passed by the learned trial Court, the plaintiff filed an appeal. The appeal so filed by the plaintiff was allowed by learned Appellate Court vide judgment and decree dated 01.09.2008.

10. Learned Appellate Court held that the provisions of both the Memos have to be read harmoniously. It further held that Baldev Raj Sharma was appointed under the provisions of Ext.DW1/B as direct agent and his appointment could not have been direct keeping in view the provisions of Ext. PA as his daughter-in-law had been appointed as an agent under the plaintiff. Accordingly, learned Appellate Court held that the provisions contained in Ext.DW1/B were subjugate to the provisions contained in Ext. PA and when a near relative of an agent is sought to be reappointed also, he cannot be appointed as a direct agent and he has to be placed under the same Development Officer under whom the earlier agent being a near relative has been appointed. In this view of the matter, the learned Appellate Court further held that the plaintiff was entitled to all consequential benefits on account of insurance business done by Baldev Raj Sharma.

11. Mr. Ashwani K. Sharma, learned Senior Advocate appearing for the appellants has challenged the said findings returned by the learned Appellate Court on the ground that the same are result of mis-interpretation of two circulars and further that the relief granted by the learned Appellate Court was beyond the pleadings and the learned Appellate Court has failed to appreciate that deceased Baldev Raj Sharma was not directly appointed but it was a case of re-engagement.

12. Mr. G.D. Verma, learned Senior Advocate appearing for the respondents on the other hand argued that there was no infirmity with the judgment and decree passed by the learned Appellate Court, which had rightly decreed the suit of the plaintiff. He further argued that Baldev Raj Sharma was not re-appointed but his appointment was a fresh and direct appointment. According to him, the plea of the appellants based on the assumption that deceased Baldev Raj Sharma was reappointed without any genesis and was based on conjectures rather than the records. Mr. Verma also submitted that it was incorrect that the relief granted in favour of the plaintiff by the learned Appellate Court was beyond the pleadings.

13. I have heard learned counsel for the parties and have also gone through the records of the case as well as the judgments passed by the learned Courts below.

14. I will deal with both the substantial questions of law separately.

(a) Substantial Question of Law No. 1: Whether the impugned judgment passed by Ld. First Appellate Judge is the result of total misreading and mis-appreciation of pleadings, materials and evidence adduced on record by the parties and misinterpretation of the stipulations of Circulars Ex. PA and Ex. DW1/B and thus, the resultant findings and conclusions drawn by Ld. First Appellate Judge are wrong and perverse?

15. Ext. DW1/C communication dated 19.08.1994 is the document vide which late Baldev Raj Sharma was granted agency by the Branch Manager of Life Insurance Corporation of India, Nurpur, contents of the same are quoted herein below:-

"Reference your letter dated 17.8.94 on the above subject. We are pleased to inform you that the competent authority has allowed the granting of the agency to Sh. Baldev Raj Sharma on DIRECT Agency. The agency papers are also returned herewith."

16. A perusal of the same demonstrates that late Baldev Raj Sharma was granted a "direct agency". Now in this background I will discuss the relevant contents of Memos Ext. PA dated 24.04.1980 and Ext. DW1/A dated 09.07.1968.

17. The relevant extract of Ext. PA circulated on 24.04.1980 is quoted herein below:-

"When a near relative of an agent working under a Development Officer is recruited as an agent, then the new agent should also be placed under the same Development Officer. The new agent should not be placed under any other Development Officer nor should he/she be placed direct."

18. The relevant extract of Ext. DW1/B dated 09.07.1968 is quoted herein below:-

"Agents, whose services have been terminated for any reasons whatsoever, should not be reappointed. If the Divisional Manager feels that some person has to be reappointed, he should refer the matter to the Zonal Manager concerned whose decision in this regard shall be final. The agency, if granted, in any such case, will be treated as "Direct".

19. It is apparent from the contents of circular dated 24.04.1980 that when a near relative of an agent working under a Development Officer is recruited as an agent, then the new agent has to be under the same Development Officer. Further, a perusal of the relevant extract of circular dated 09.07.1968 demonstrates that it is clearly provided therein that agents, whose services have been terminated for any reasons whatsoever, should not be reappointed. It further mentions that if the Divisional Manager feels that some person has to be reappointed, he should refer the matter to the Zonal Manager concerned whose decision in this regard shall be final. It is further mentioned that the agency, if granted, in any such case, will be treated as "Direct".

20. In my considered view, a harmonious reading of communication Ext. DW1/C and relevant extracts of Ext. PA and Ext. DW1/B leaves no room for any doubt whatsoever that the agency granted to late Baldev Raj Sharma was not by way of reappointment but it was a direct agency allotted to him and in this view of the matter keeping in view the fact that it is not disputed that daughter-in-law of deceased Baldev Raj Sharma was working under the plaintiff in 1994, the new agent i.e. Baldev Raj Sharma also had to be placed under the same Development Officer i.e. the plaintiff.

21. Therefore, in my considered view that the findings returned by the learned Appellate Court to the effect that Baldev Raj Sharma was appointed as direct agent and because his daughter-in-law was already appointed as an agent under the plaintiff, therefore, Baldev Raj Sharma could not have been appointed as direct agent and he should have been appointed as an agent under the plaintiff i.e. the Development Officer under whom the near relative of Baldev Raj Sharma was recorded as an agent are absolutely correct.

22. In the present case, it is clear from a perusal of Ext. DW1/C that Baldev Raj Sharma was granted a direct agency by the appellant Corporation. At the time when he was granted direct agency his daughter-in-law stood recruited as the agent under the plaintiff who was a Development Officer. The contention of the learned counsel for the appellant that deceased Baldev Raj Sharma was reappointed and not granted a direct agency is not only in contrast to the contents of communication dated 19.08.1994 Ext. DW1/C but his contention is also contrary to what is contained in circular dated 09.07.1968 Ext. DW1/B because as per the said circular an agent whose services have been terminated cannot be reappointed and if he again is to be granted an agency then the same can be done only by way of treating him as a direct agent. Therefore, subsequent appointment of Baldev Raj Sharma for all intents and purposes was direct appointment. This direct appointment of Baldev Raj Sharma was bad because as per circular dated 24.04.1980, no new agent could be placed as a direct agent whose near relative was working under a Development Officer. Therefore, it was incumbent upon the appellant to have had placed deceased Baldev Raj Sharma under the plaintiff when he was appointed afresh on 19.08.1994 by the appellant. This substantial question of law is answered accordingly.

(b) Substantial Question of Law No. 2: Whether the suit filed by the plaintiff seeking decree of declaration was time barred under Article: 55 of the Schedule of Limitation Act and the same did not deserve to be entertained on this count?

23. Mr. Ashwani K. Sharma, learned Senior Counsel for the appellants argued that the claim of the plaintiff was hopelessly time barred under Article 55 of the Schedule of Limitation Act and this very important aspect of the matter has been ignored by the learned Appellate court while decreeing the suit. According to Mr. Sharma, the appointment of deceased Baldev Raj Sharma as a direct agent vide Ext. DW1/C

communication dated 19.08.1994. However, the suit has been filed by the plaintiff in March,1999. He has argued that under Article 55 of the Schedule of Limitation Act, the period of limitation within which the suit was to be filed by the plaintiff was three years.

24. Mr. G.D. Verma, learned Senior Advocate, appearing for the respondents has argued that neither the suit filed by the plaintiff was barred by limitation nor was there any issue framed in this regard by the learned trial Court. According to him, this plea cannot be raised for the first time in the Regular Second Appeal.

25. In order to substantiate his contention, Mr. Verma has relied upon the following judgments:-

1. Dudh Nath Pandey (dead by L.R's.) v. Suresh Chandra Bhattasali (dead by L.R's.), reported in AIR 1986 Supreme Court 1509.

2. Krishnapasuba Rao Kundapur (dead) after him his L.R. and another v. Dattatraya Krishnaji Karani, reported in AIR 1966 Supreme Court 1024.

3. Babu Ram alias Durga Prasad v. Indra Pal Singh (Dead) by LRS., reported in (1998) 6 Supreme Court Cases 358.

4. Satya Gupta (Smt.) alias Madhu Gupta v. Brijesh Kumar, reported in (1998) 6 Supreme Court Cases 423.

26. In order to meet the said objections raised by Mr. G.D. Verma, Mr. Ashwani K. Sharma has argued that as the plea of limitation is a legal plea, therefore, the same can be raised at any time.

27. A perusal of the record of the present case will demonstrate that the suit was presented on 19.03.1999. It has been averred by the plaintiff in Para-6 of the plaint that cause of action arose to the plaintiff against the defendants on 15.08.1994 when the defendant-Corporation illegally and arbitrarily appointed defendant No. 3 as a direct agent. He has further averred in this para of the plaint that cause of action also accrued on various subsequent dates when the plaintiff approached the officials of defendant-Corporation and also in the year 1997 when the plaintiff served notices in this regard upon defendants No. 1 and 2.

28. The plaintiff has placed on record Ext. PW2/B and Ext. PW2/F, copies of registered legal notices sent on behalf of the plaintiff to the defendants, wherein he had raised the issue of the wrong appointment of deceased Baldev Raj Sharma as direct agent. The acknowledgement receipts of the said legal notices are also exhibited on record. The receipt of said legal notices has not been denied by the defendants. The plaintiff has also placed on record Ext. PW2/H, copy of communication addressed by him to the defendants dated 13.05.1998.

29. In my considered view, it stands duly proved on record that the appointment of deceased Baldev Raj Sharma as a direct agent by the defendant-Corporation was in

contravention of the provisions of the circular of the defendant-Corporation. As a result of the wrong appointment of Baldev Raj Sharma as a direct agent, the plaintiff was suffering continuing wrong. He served legal notices in this regard upon the defendants which are dated 19.02.1997. Before this also, he had raised the issue with the defendants vide communication dated 28.07.1996 Ext. PW2/A. After the issuance of the above mentioned legal notices, he has again raised the issue with the defendants vide Ext. PW2/H dated 13.05.1998.

30. Therefore, keeping in view the fact that appointment of Baldev Raj Sharma as direct agent was a continuing wrong inflicted upon the plaintiff by the defendant-Corporation as it was resulting in recurring loss to the plaintiff. It cannot be said that the suit filed by the plaintiff was time barred. Each business transaction conducted by Baldev Raj Sharma on account of his having been appointed as direct agent gave a fresh cause of action to the plaintiff. It is not the case of the defendants that no business was procured by Baldev Raj Sharma as a direct agent within three years prior to the filing of the suit by the plaintiff. In this view of the matter, there is no merit in the submissions made on behalf of the appellants that the judgment passed by the learned Appellate Court is not sustainable as the suit was time barred. Even otherwise, it is a matter of record that no issue was framed in this regard by the learned trial Court. The only inference which can be drawn is that the point of limitation was not pressed by the defendants before the learned trial Court.

31. The Hon"ble Supreme Court of India in **Dudh Nath Pandey (dead by L.R"s.) v. Suresh Chandra Bhattasali (dead by L.R"s.), reported in AIR 1986 Supreme Court 1509.** has held as under:-

"This plea was however negated by the High Court as it has never been taken when the case was remanded to the First Appellate Court by judgment dated 8th February, 1961. Besides the question requires investigation into certain facts which was not possible in the Second Appeal. The High Court however reversed the finding of the First Appellate Court on the question of limitation relying on the so called admission of the defendant in the written statement and the evidence of the witnesses produced on behalf of the defendant. Virtually, the High Court has made a fresh appraisal of the evidence and has come to a different finding contrary to the finding recorded by the First Appellate Court which the High Court could not do in the exercise of power under Section 100 of the Civil Procedure Code Even on merits, if the High Court had to rely upon the alleged admission in the written statement, the admission must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other. The High Court, in our opinion, has erred in making a fresh appraisal of the evidence to come to a different conclusion. Even otherwise, the plaintiff has to stand on his own strength.

32. The Hon"ble Supreme Court of India in **Krishnapasuba Rao Kundapur v. Dattatraya Krishnaji Karani, reported in AIR 1966 Supreme Court 1024,** has held

that a plea which had not been taken by a party in the Courts below is no longer open to it to be raised before the High Court.

33. The Hon"ble Supreme Court of India in **Babu Ram alias Durga Prasad v. Indra Pal Singh (Dead) by LRS., reported in (1998) 6 Supreme Court Cases 358**, has held that the High Court in second appeal exceeded its jurisdiction under Section 100 in giving a finding on an issue which was not pressed in the trial Court.

34. The Hon"ble Supreme Court of India in **Satya Gupta (Smt.) alias Madhu Gupta v. Brijesh Kumar, reported in (1998) 6 Supreme Court Cases 423**, has held in Para-16 as under:-

"At the outset, we would like to point out that the findings on facts by the Lower Appellate Court as a final Court on facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after re-appreciating the evidence and without finding that the conclusions reached by the lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100, C.P.C., cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible.

35. Thus, the arguments raised by the learned counsel for the appellants that the suit was hopelessly time barred and this aspect of the matter has also not been looked into by the learned Appellate Court, is without any merit. The substantial question of law is answered accordingly.

36. Therefore, in view of the findings returned by me on both the substantial questions of law, there is no merit in the present appeal and the same is dismissed with cost. Miscellaneous application(s) pending, if any, also stand disposed of.