

CM-5835-C-2017 in/and
RSA-2406-2017

2024:PHHC:052534

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(213)

CM-5835-C-2017 in/and
RSA-2406-2017
Date of Decision : 19.04.2024

Government of Punjab

...Appellant

Versus

Ramesh Kumar Malhotra

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab
for the appellant.

None for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-5835-C-2017

Present application has been filed for seeking condonation of
delay of 51 days in filing the appeal.

Keeping in view the averments made in the application,
which are duly supported by an affidavit, the application is allowed and
delay of 51 days in filing the appeal is condoned.

RSA-2406-2017

1. In the present appeal, the challenge is to the judgment and
decree of the trial court dated 08.08.2016 by which, the suit filed by the

appellant-plaintiff was dismissed as well as judgment and decree of the lower appellate court dated 26.10.2016 by which the judgment and decree of the trial court dated 08.08.2016 has been upheld.

2. Learned counsel for the appellant-plaintiff argues that the claim of the State has been dismissed on the ground of delay. Learned counsel submits that though the allegation of embezzlement upon the respondent-defendant surface in the year 1999 but the said allegation was only proved when the respondent-defendant was held guilty in the criminal case on 08.07.2008, hence, the limitation for recovering of the embezzled amount will only start from the date of conviction of the respondent-defendant and not from the date when the said embezzlement had come to the knowledge of the department after which, the FIR was registered against the respondent-defendant.

3. It may be noticed that the specific averment on the basis of which the FIR was registered against the respondent-defendant was that the embezzlement ₹10,000/- had come to the knowledge of the appellant-plaintiff in the year 1999. The appellant-plaintiff has not been able to dispute the same. Once, despite having knowledge of the embezzlement, the appellant-plaintiff did not initiate any action against the respondent-defendant upto the year 2011 i.e. for a period of 12 years, it cannot be said that the period of limitation to seek the recovery of the embezzled amount will only start from the date of conviction.

4. Even otherwise, the appellant-plaintiff never initiated any disciplinary proceedings against the respondent-defendant despite the allegations of embezzlement. Once, no such allegation was made against the respondent-defendant despite getting an FIR registered in the year so as to recover the said amount, the judgments and decrees of the courts below to hold that the suit filed by the appellant-plaintiff filed in the year 2011 is time barred, cannot be stated to be perverse in any manner.

5. Even otherwise, learned counsel for the appellant-plaintiff has been asked to show as to how the judgments and decrees of the courts below are perverse keeping in view the evidence and facts, which had come on record, learned counsel for the appellant-plaintiff has not been able to show any perversity. In the absence of any perversity, the findings of facts recorded by both the courts below, which are against the appellant-plaintiff, needs no interference at the end of this Court in the present regular second appeal.

6. Dismissed.

April 19th, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No