

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-3829-2018 (O&M)****Date of decision: 24.07.2025****Smt. Promila Kapoor****...Appellant(s)****Vs.****Satyawati Oswal Trust and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vishal Gupta, Advocate for the appellant.

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**NIDHI GUPTA, J.**

The defendant is in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit for recovery filed by the plaintiffs/respondents herein, has been decreed by both the Courts below.

2. At the very outset, it is pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as the matter has been adjourned since 2019 either at the repeated requests or due to non-appearance of learned counsel for the appellant.

3. The only ground on which the appellant lays challenge to the impugned judgments and decrees is that she was not an employee of the plaintiff-Trust or even of the Satyawati Oswal Educational Society. It is submitted that from the Letter of Appointment Ex.P29 issued to the appellant, it is clear that appellant was appointed as Principal with Smt. Satyawati Oswal Vidya Mandir Senior Secondary School. It is contended



that therefore, the plaintiff-Trust has no concern with the school where the appellant was working. As such plaintiff had no authority/locus to file the suit. The suit was bad for mis-joinder/non-joinder of parties and decree could not have been issued in favour of the plaintiff-Trust, which had nothing to do with the present dispute.

4. Learned counsel further submits that the appellant has been held liable to pay the decretal amount on the evidence led by witnesses PW4 and PW5, who were employees of the Oswal Spinning and Weaving Mills Limited; and had no connection with the plaintiff-Trust. It is submitted that therefore, said evidence could not have been relied upon by the learned Courts below in holding the appellant liable. It is also submitted that Oswal Spinning and Weaving Mills Limited is a corporate entity and has no relation or connection with the plaintiff-Trust.

5. It is lastly submitted by the appellant that in respect of the incident in question, in the criminal complaint filed against the appellant by the Management, the appellant has been acquitted by the learned Judicial Magistrate 1<sup>st</sup> Class, Ludhiana vide judgment dated 25.02.2014, a certified copy of which was placed on record by the appellant as Ex.D1. However, even the said factor has not been taken into consideration by the learned Courts below in holding the appellant liable.

6. In support, learned counsel for the appellant places reliance upon the judgment passed by Hon'ble Supreme Court in "**State Bank of Travancore vs. M/s. Kingston Computers (I) P. Ltd., Law Finder Doc Id # 252613**" wherein it is held that "*Civil Procedure Code - Suit by a company -*



*Who can file the suit on behalf of company -Suit for recovery of money filed by Plaintiff who claimed himself to be a Director of Company - No evidence produced that he was Director and no resolution of Board of Directors produced authorising him to file the Suit - Suit filed on basis of authority letter issued by Chief Executive Officer of Company who had no such power - Suit rightly dismissed by trial Court.”*

7. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

8. No other argument is raised on behalf of the appellant.

9. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

10. Brief facts of the case are that the plaintiff is a charitable Trust which is operating Schools, including the Smt. Satyawati Oswal Vidya Mandir Senior Secondary school where the appellant/defendant was appointed as a Principal on 01.10.1982. The appellant was responsible for the academic and financial duties including fee collection. In July 1999, the Management suspected misappropriation of funds by the appellant to the tune of Rs.2,09,185/-. This amount which has been collected by the appellant. However, instead of utilizing the said fund, the appellant had demanded a further sum of Rs. 42,861/- to meet the day-to-day expenses. After accounting all submitted Bills, an amount of Rs.2,08,364/- still remained outstanding. In this manner, several misappropriations were found against the appellant as a result of which her services were



terminated on 26.12.2011. The plaintiff-Trust further claimed that the appellant was liable to repay the embezzlement sum with interest @ 15% per annum. Accordingly, the plaintiff-Trust had filed a Civil Suit for recovery of Rs. 3,47,000/- (Rs.2,45,523/- as Principal and Rs. 1,01,477 as interest thereupon along with future interest @ 15% from the date of suit till date of realisation), on dated 02.02.2002.

11. Vide judgment and decree dated 03.04.2014, the learned Civil Judge (Junior Division), Ludhiana had partly decreed the suit of the plaintiffs holding the plaintiffs entitled to recover Rs.2,08,364/- and Rs.2,360/- and interest @ 6% per annum. The appeal filed by the appellant was dismissed by the learned Additional District Judge, Ludhiana vide judgment and decree dated 17.01.2018. Hence, present 2<sup>nd</sup> Appeal by the defendant.

12. It It has been submitted on behalf of the appellant that the plaintiff-Trust was not competent to file the present suit as appellant was an employee of the School; and the plaintiff-Trust had no connection with the said school. I find no merit in the said argument. It is an admitted fact on record that funds to operate the School were being provided by the plaintiff-Trust, which was a charitable Trust. As such, the school was being run on the funds provided by the plaintiff. Thus, plaintiff was entitled to and competent to file the suit in respect of all affairs of the school.

13. It has secondly been argued on behalf of the appellant that the appellant has been held liable on the evidence produced by the witnesses who were not employees of the School but were employees of



Oswal Spinning and Weaving Mills which has no connection with the present plaintiff let alone the School where the defendant was employed. It has been contended that the account books of the school were produced by PW4 and PW5, who were not competent to do so. However, even the said argument is misconceived. PW4 is the Senior Manager (Accountant of M/s. Oswal Spinning and Weaving Mills Ltd.), who had submitted his affidavit Ex.PD and has stated that he used to supervise the accounts of the plaintiff-Trust which was also running Smt. Satyawati Oswal Vidya Mandir Senior Secondary School. PW4 has also proved the documents, Ex.P8 to P25. Ex.P8 is voucher dated 30.06.2009 for Rs. 2,09,185/-, Ex.P9 is a Writing/detail given by the defendant regarding the said amount of Rs. 2,09,185/-, Ex.P10 is class wise detail of the said amount, Ex.P11 is copy of lodger, Ex.P12 is copy of the register for the month of February, 1998, Ex.P13 to Ex.P15 are the debit vouchers, whereby the defendant claimed Rs. 33,599/-, Ex.P16 is details of amount so collected from the students, Ex.P17 to Ex.P22 are demand drafts of the amounts sent to the Punjab School Education Board, Ex.P23 is the receipt issued by the Punjab School Education Board, Ex.P24 is a deposit voucher of amount of Rs. 26,065/- with the Punjab National Bank, Ex. P25 is copy of Inquiry Report dated 24.12.2001. Nothing has been shown by the appellant to the Court controvert the assertion of PW4 in his affidavit Ex.PD that he was supervising the accounts of the plaintiff, which was running the school. Thus, there is no reason as to why PW4 was not competent to lead evidence on behalf of the plaintiff.



14. Similarly, PW5 had tendered his affidavit Ex. PW5/A stating that he had been authorized by the plaintiff-Trust to institute and prosecute the suit and to depose in Court vide Resolution dated 28.12.2009 Ex.P26. PW5 had proved the documents, Ex.P1 to Ex. P41. The appellant did not deny that PW5 had been looking after the affairs of the School and Trust; or that PW4 had been looking after the accounts of the School.

15. Moreover, the Inquiry against the appellant regarding the embezzlement of funds was conducted by the Additional District and Sessions Judge (Retired) and allegations levelled against her as per charge sheet Ex.P32 were held proved by the Inquiry Report Ex.P25 whereby she was guilty of the charges. Moreover, PW1 Rakesh Kumari, Acting Principal of the School and PW2 and PW3 Teachers of the School had proved the documents Ex.P1 to Ex.P7 corroborating the plea of the plaintiff. In fact, even the appellant in her cross-examination as DW1 has admitted regarding receipt of Rs.2,09,185/- in June 1999. Thus, acquittal of the appellant from the criminal case cannot be made the basis for holding that plaintiff is not entitled to recovery against her in civil proceedings.

16. Appellant can derive no benefit from the relied-upon judgment as the same is distinguishable on facts and law. Moreover, it is established position in law that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. In this regard, reference may be made to the



judgment *M/s Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id #2034559*

17. Further, the Hon'ble Supreme Court, in the case of *Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71*, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:

*"16. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."*

18. In view of the above factual and legal position, no ground to interfere in the concurrent findings of the Id. Courts below is made out.

19. The present Regular Second Appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

24.07.2025

Divyanshi

(NIDHI GUPTA)  
JUDGE

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