

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT SRINAGAR**

Reserved on: 22.11.2022

Pronounced on:25.11.2022

**CFA No.86/2010**

**JAGDISH GIRI**

**... APPELLANT(S)**

*Through: - Mr. Prince Hamza, Advocate.*

Vs.

**TALIB HUSSAIN**

**...RESPONDENT(S)**

*Through: - Mr. T. H. Khawaja, Advocate.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1) The appellant has called into question judgment dated 29.07.2009 passed by learned 1<sup>st</sup> Additional District Judge, Srinagar, whereby suit of the appellant has been dismissed on the ground of maintainability.

2) It appears that the appellant (hereinafter referred to as the plaintiff) had filed a suit against the respondent (hereinafter referred to as the defendant) for recovery of an amount of Rs.6,42,730/ along with interest. The case set up by the plaintiff was that the defendant had engaged the services of the plaintiff for raising building of Central Office, J&K Bank, at Dalgate, and building for Agriculture

University, Alesteng Shamilar. The plaintiff is stated to have engaged a number of labourers for execution of the work and these workers were to be paid the labour charges. The plaintiff requested the defendant a number of times to pay the labour charges as well as other expenses incurred but the defendant did not pay the whole of the amount and an amount of Rs.59,441/ remained outstanding on account of unpaid wages. When the defendant did not make the payment of this amount, the plaintiff approached the Authority under the Payment of Wages Act for release of unpaid wages.

3) The Authority under the Payment of Wages Act in terms of its order dated 16<sup>th</sup> December, 2002, passed an exparte award directing the defendant to pay a sum of Rs.59,441/ within thirty days failing which the defendant was to pay interest/penalty. The defendant, instead of satisfying the award, filed an application before the Authority for setting aside of the exparte award but the said application was dismissed by the Authority in terms of the order dated 19.06.2002. Thereafter the defendant did not stop here but filed a revision petition before this Court which was also dismissed in terms of order dated 25.09.2004. An appeal came to be filed by the defendant

before the District Judge, Srinagar, who vide order dated 21.12.2004, dismissed the appeal.

4) After narrating the aforesaid sequence of events, the plaintiff had contended in the plaint that he has been unnecessarily dragged into false and vexatious litigation by the defendant, as a result of which he has suffered mental agony and financial loss and besides this, he has also incurred expenses on litigation and he has been deprived of earning his livelihood during the period of litigations as he had to remain present in different courts to attend the cases.

5) On the basis of above allegations, the plaintiff sought recovery of an amount of Rs.6,42,730/ from the defendant under the following heads:

1.	From 2.5.2000, plaintiff and his son were after defendant/respondent for demanding the amount for 25 days. Labour charges per day @ Rs. 250/- for the plaintiff and Rs. 200/- for his son.	Rs. 11,250.
II.	Representation filed before the Chairman J&K Bank. The plaintiff and his son remained processing the said representation for four days. Labour charges for four days.	Rs. 18,000
III	Representation filed before Vigilance Commissioner Srinagar by plaintiff. The plaintiff and his son remained and wasted time for processing the said presentation for five days in Srinagar and in Jammu for three days, labour charges for these days, transport charges, rent and meals and fair at Jammu	Rs. 36,00 Rs. 4100
IV	a) The plaintiff attended 10 hearings and 1 obtaining copy of the decree (3 days) given earlier by the Labour Court.	Rs. 5,850

	b) In preparing petition and in obtaining copy of order. c) Witnesses 4 (payment @ Rs. 250/- each)	Rs. 1,755 Rs. 1,000
V	Defendant/respondent filed an application 1 labour court and plaintiff had to bear expenses for attending hearings (10 hearings) Lamoure charges of plaintiff and his son @ 450/ payment made to the counsel and expenses on account of transport tea etc	Rs. 4,500 Rs. 3,600
VI	Defendant/respondent filed revision petition before the Hon'ble High Court ? the plaintiff attended 36 hearings till the revision petition was dismissed. Labour charges for 86 days @ Rs 450/- amount payable to counsel for attending 34 hearings by legal services department.  Transport and other misc. expenses to	Rs. 38,000 Rs. 17,000 Rs. 8218
VII	Appeal filed by the defendant/respondent in the court of District and Sessions Judge plaintiff attended five hearing I the court and spent six days for preparing documents and attending the office of the Counsel. Counsel fee, tea, transport etc.	Rs. 4,950 Rs. 7,587
VIII	Plaintiff spent in days in looking after the papers and its preparation for High Court to Labour Court.	Rs. 4,050
IX	Interest for non-payment of dues from 2.5.2000 till payment i.e. 4.1.2005 for four years and nine months i.e. 50% 9 of Rs 59,441/	Rs. 29,720
X	Damages on account of mental torture and no work was done by plaintiff and his son during the period from 2.5.2000 to 4.1.2005	Rs. 5,00,000

6) The suit was contested by the defendant by filing a written statement. In his written statement, the defendant denied having withheld the wages of the labourers and has submitted that he has satisfied the award of the Authority under the Payment of Wages Act and that it was his legal right to assail the award of the Authority in the higher fora. It was further submitted that the costs of litigation etc. have been declined to the plaintiff and he cannot now file separate proceedings for recovery of the same and, as

such, the suit is hit by the doctrine of estoppel. It has been further submitted that the plaintiff has no cause of action to file the suit.

7) The trial court, on the basis of the pleadings of the parties, framed the following issues:

- (1) *Whether plaintiff is entitled to recover Rs.6,42,730/- from the defendant, details whereof are given in para 13 of the pint? .... OPP*
- (2) *Whether interest at the rate of 18% per annum on the aforesaid amount of Rs.6,42,730/- is recoverable from the defendant and is payable to the plaintiff? ....OPP*
- (3) *Whether this court has no territorial jurisdiction to hear the present suit? ...OPD*
- (4) *Whether the suit valuation has been fixed wrongly and sufficient court fee has not been paid, if so, what is the correct valuation? ...OPD*
- (5) *Whether plaintiff has no cause of action to bring the present suit against the defendant? ...OPD*
- (6) *Whether the suit is hit by Doctrine of Estoppel? ...OPD*
- (7) *Whether the suit is not maintainable under law? ..OPD*
- (8) *Relief.*

(8) Out of the aforesaid issues, issues No.(3), (4) and (7) were treated as preliminary issues and the parties were heard on these issues. Regarding preliminary issue No.(3), the trial court held that it has jurisdiction to hear the suit. Similarly, issue No.(4) has also been decided in favour of the plaintiff. However, regarding issue No.(7), the learned trial court come to the conclusion that the suit is not

maintainable because the plaintiff having failed to claim or get the costs from the Authority under Payment of Wages Act cannot file separate suit for recovery of the same.

(9) The appellant/plaintiff has challenged the impugned judgment of the learned trial court on the grounds that the suit filed by him is not a suit for recovery of cost of previous litigation but it is a suit for recovery of compensation and damages for malicious prosecution which has resulted in mental agony and economic loss to the appellant.

(10) I have heard learned counsel for the parties and perused the record of the case.

(11) The primary contention of the appellant/plaintiff is that the suit that was filed by him before the trial court was not for recovery of costs of litigation in which the parties were engaged but it was for recovery of compensation for the malicious prosecution which the appellant had been subjected to, inasmuch as the respondent challenged the award of the Authority under the Payment of Wages Act right upto the High Court without any success, which caused great mental agony and financial loss to the appellant/plaintiff.

(12) It is an admitted case of the parties that the litigation in the instant case was initiated by the plaintiff and not by the defendant. It is the plaintiff who filed a petition before the Authority under Payment of Wages Act for recovery of unpaid wages, wherein an exparte award came to be passed against the defendant. It was the legal right of the defendant to seek annulment of the said award and when he failed in his attempt, he had statutory right to file an appeal before the District Judge, which he did. In these circumstances, it cannot be stated that the defendant had resorted to any frivolous litigation and, admittedly, he did not initiate litigation against the plaintiff.

(13) In order to succeed in a case for recovery of damages for malicious prosecution, it has to be first shown that it is the defendant who has initiated the prosecution. In the instant case, admittedly, the litigation was initiated by the plaintiff and not by the defendant. Next it has to be shown that the litigation was resorted to by the defendant without any reasonable cause. In the instant case, once an award was passed against the defendant, he had no choice but to challenge the same by way of appropriate proceedings. Therefore, it cannot be stated even on the basis of the

admitted facts that the defendant had filed these proceedings without any reasonable cause.

(14) Even otherwise, unlike in the cases of malicious prosecution relating to criminal proceedings no action can be brought as a general rule in the cases of civil proceedings even though the same are malicious and have been brought without any reasonable cause. I am supported in my aforesaid view by the judgment of the Patna High Court reported in **AIR 1917 Patna 460**. So, it is only in exceptional circumstances that a suit for damages on account of malicious prosecution in civil proceedings can be maintained. In the instant case, there are no such exceptional circumstances that would warrant maintaining such a suit against the defendant.

(15) Apart from the above, if we have a look at heads under which the plaintiff has claimed compensation from the defendant, it is revealed that he has not only sought compensation for mental agony etc. but he has also sought compensation on account of litigation expenses and allied matters. Once the plaintiff did not claim litigation expenses before the Authority under the Payment of Wages Act and the District Judge or the High



Court or even if he did claim but the same was not granted in his favour, it is not open to him to file a separate suit for recovery of compensation under these heads. In my aforesaid view I am supported by the ratio laid down by Lahore High Court in the case of **(Hafiz) Abdullah vs. Mangal Sain**, AIR 1932 Lah. 257 and by the Andhra Pradesh High Court in the case of **Lala Bhagwati Deen vs. Mohammad Ismail**, AIR 1959 AP 601.

(16) For the foregoing reasons, I do not find any illegality or infirmity in the impugned order passed by the learned trial court. The appeal lacks merit and is dismissed accordingly.



**Srinagar,**

**25.11.2022**

***"Bhat Altaf, PS"***

*Whether the judgment is speaking: Yes/No*

*Whether the judgment is reportable: Yes/No*