

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.5524 of 2014 (O&M)

Date of decision: 10.03.2015

Mohan Lal son of Shri Hans Raj, resident of House No.223, Rama
Gali, Khanna, District Ludhiana.

... Petitioner

versus

Food Corporation of India

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Naresh Prabhakar, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. There is simply no merit in the revision petition against the dismissal of a petition for rejection of a plaint filed by the respondent-Corporation. The suit claim is aggregate of several sums said to have been due from the respondent of an amount of ₹15,71,250/-. The plaint sets out the orders passed by the authorities on various dates imposing recoveries against the respondents. Of the details set out in the plaint, items 1 to 8 referred to orders of recoveries made before 01.05.2006 and items 9 to 20 relate to orders passed from 10.07.2006 to 30.05.2006. The petitioner had been

compulsory retired from service on 29.05.2006 and the suit has been filed on 11.05.2009.

2. The suit is sought to be rejected as barred by law on two premises: (i) that the claim is barred by law of limitation, in that, the suit claims relate to amounts allegedly due by him for more than 3 years prior to the institution; (ii) the negligence in the discharge of contractual obligation would not be enough to give rise to an independent cause of action in tort but would be confined to employer's action/suit in a contract for damages for breach of contract or for disciplinary proceedings initiated by the employer. In support of alleged non-maintainability of the suit, the counsel refers me to the decision of the Supreme Court in **Punjab State Civil Supplies Corporation Limited Versus Sikander Singh-(2006) 3 Supreme Court Cases 736.**

3. As regards the first objection regarding the bar of limitation, I have already observed that out of 20 heads of claim for the aggregate of amount claimed in the plaint, items 9 to 20 relate to orders of recovery passed within a period of 3 years prior to the date of institution of suit on 11.05.2009. A suit cannot be rejected in part only for certain heads of claim which according to the defendant is barred by limitation. Order 7 Rule 11 CPC will be invoked either to reject a plaint in full or should allow the case to be proceeded and the court will have power to only reject such claim which were

barred by limitation at the time of a full-fledged trial. Suit claim cannot be partially excised by invoking the powers under Order 7 Rule 11 CPC.

4. As regards the second objection that the claim for tortious claim cannot be brought after the employment ceased by reference to a judgment of the Supreme Court in **Punjab State Civil Supplies Corporation Limited** (supra) is wholly misplaced. The judgment of the Supreme Court simply does not say anything of what the petitioner seeks to contend. The Supreme Court was examining a situation of a civil suit in tort for damages against an employee where there were acts of malfeasance, misfeasance or non-feasance by employee in discharge of his duties under the contract of employment and such acts were said to have been actuated by malice or bad faith. The Court was rendering a finding that a mere negligence in the discharge of contractual duties would not be enough to give rise to an independent cause of action, but would be confined to the employer's action/suit in contract for damages for breach of contract or to disciplinary proceedings. If there is any negligent act on the part of the employee that resulted in loss of goods, the court was observing that mere negligence in the performance of duty may give rise to disciplinary proceedings but if such goods are lost due to such negligence or recovery of money from a delinquent employee, it may not give a cause of action for

filing a suit for recovery for the goods lost and the employer cannot maintain such a suit on the selfsame cause of action, if it has already recovered the loss by way of disciplinary proceedings, as was the case that was dealt with by the Supreme Court. In a situation where disciplinary proceedings had been initiated against an employee and recoveries made, a further action for damages in tort was found by the Supreme Court as not competent. Here is a case where the proceedings appear to have been initiated and the orders of recoveries have been made during the time when he was in employment. If the petitioner was also allowed to retire when there were amounts against him, the only benefit which an employee could take is that the departmental action cannot be taken after the relationship of the employer or workman cease. If a suit gets to be filed for what was assessed as payable, it shall be open for a defendant to contend that any of the orders which were passed during the time of his service were not properly passed or the liability fixed cannot found a cause of action for the suit. The issue of whether the amounts claimed was the result of negligence or acts of misfeasance are mixed questions of fact and law and that cannot be decided in a summary fashion while dealing with an application under Order 7 Rule 11 CPC.

5. I find no error in the orders dismissing an application. The petitioner will be competent to urge all defences that would

make the plaintiff's claim untenable. If he seeks that the case could be thrown out at the threshold, the petitioner shall be shown the door as the court has dealt with. The revision petition is dismissed.

(K.KANNAN)
JUDGE

10.03.2015
sanjeev