IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 470 of 2013 (O&M)
Date of decision : April 21, 2015

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Haryana Agro Industries Corporation Limited
through its General, Manager (Administration)
...........Appellant

Versus

Subhash Chander Arora
..........Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Pankaj Gupta, Advocate for the appellant.

Mr. Sandeep Suri, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present regular second appeal has been filed against the judgment dated 5.9.2012 passed by the Additional District Judge, Fatehabad whereby the appeal against the judgment and decree dated 12.1.2010 passed by Additional Civil Judge (Senior Division), Ratia was allowed and the suit of the plaintiff-appellant (hereinafter referred to as `the plaintiff') for recovery of Rs.66,85,303/- was dismissed.

Brief facts of the case are that defendant Subhash chander was posted as Mandi Inspector-cum-Store Keeper, Ratia for the procurement of wheat during rabi marketing seasons 1999-2000 and 2000-2001 as per letter dated 1.4.1999 and 24.3.2000. While discharging the duties as Mandi Inspector-cum-Store Keeper, Ratia Mandi for the crop 1999-2000 the defendant purchased wheat weighing 219574.45 quintals during the year 1999-2000. A shortage of 1010.87-385 quintals was found due to less gain than the prescribed norms at the revised norms gain as per instructions given in para 3 of the plaint. The Mandi Supervisor-cum-Store Keeper was held responsible for 70% of less gain than the fixed norms. The defendant was held liable for 2254.27-280 quintals of wheat worth Rs.8,00,547 along with interest @ 9.10% per annum. In the like manner 159379 quintal wheat was purchased in the year 2000-01, however, there was shortage in less gain of 2746.44-640 quintals than the fixed norm. As such defendant was held liable to pay Rs. 20,74,866/- along with interest as per details given in para 4 of the plaint. The act of omission and commission on the part of defendant constitute grave misconduct in terms of clause 21 of the Certified Standing Orders of the Corporation for which the defendant has already been charge sheeted. Despite repeated requests when the defendant did not make the aforesaid deficiency of Rs.66,85,303/- as detailed above good, the plaintiff was constrained to file the instant suit for recovery.

On notice, defendant filed their written statement and took objections with regard to the maintainability of the suit locus standi and cause of action. The deterioration in the stocks was attributed to prolonged storage coupled with extra ordinary volume of inventories of wheat stocks which had to be carried forward during the years.

The trial Court framed the following issues:

1. *Whether the plaintiff is entitled to recovery of a sum of Rs. 66,85,303/- along with interest as described in the headnote of the plaint? OPP.*
2. *Whether the plaintiff has no locus standi to file the present suit? OPD.*
3. *Whether the plaintiff has no cause of action to file the present suit? OPD.*
4. *Whether the suit is not maintainable in the present form? OPD.*
5. *Whether the suit has not been filed by competent person? OPD.*
6. *Whether the civil Court has no jurisdiction to try and entertain the present suit? OPD.*
7. *Whether the plaintiff is estopped by its own act and conduct to file the present suit? OPD.*
8. *Whether the suit is time barred? OPD.*
9. *Whether the suit is bad for want of proper court fee? OPD*
10. *Whether the plaintiff has concealed the material facts? OPD.*

The trial Court after going through the evidence decided issue no.1 in favour of the plaintiff, whereas issued no.8 against the plaintiff. Issues no.2,3,4 were decided against the defendant and issues no. 5,6,7,9 and 10 were also decided against the defendant being not pressed. Resultantly, the suit of the plaintiff was decreed holding the plaintiff entitled to recovery of Rs.66,85,303/- from the defendant along with pendente lite and future interest @ 6% per annum from the date of filing the suit till its realization.

The Corporation examined P.C Goyal, District Manager, Farmers Service Centre, Fatehabad as PW-1. He has tendered his affidavit Ex. PW1/A into his evidence. In the affidavit, he has reiterated the contents of the plaint. The plaintiff has also tendered documents such as Authority Letter Ex. P-1, Procedural instructions, deployment of staff and norms gains for wheat duty for the year 1999-2000 Ex.P-2, procedural instructions, deployment of staff and norms gains for wheat duty for the year 1999-2000 Ex.P-3 List of daily purchase 1999-2000 Ex.P-4, statement showing the details of less/excess delivered to FCI during the year 1999-2000. Ex.P-5 statement of showing the details of less/excess delivered to FCI during the year 1999-2000 delivered in 2000-2005 Ex. P-6, list of daily purchase 2000-2001 Ex.P-7 statement of showing the details of less/excess delivered to FCI during the year 2000-01, 2000 to 2005 Ex. P-8 statement of showing the details of less/excess delivered to FCI during the year 2000-01, 2000 to 2005 Ex. P-9, Copy of Bill No.788 dated 31.7.2004 Ex. P-9, Copy of bill No. 789 dated

31.7.2004 Ex.P-10, Copy of bill No. 819 dated 29.9.2004 Ex. P11, Copy of bill NO. 820 dated 29.9.2004 Ex. P-12. Thereafter evidence of plaintiff was close vide his separate statement dated 10.2.2009.

Defendant examined Subhash Chand, Assistant to Harayan Agro Ltd., Head Office, Chandigarh as DW-1, Prithvi Singh Tehsildar as DW-2, Deepak Gupta as DW-3, Ajender Kumar as DW-4 and M.P Singh, DGM as DW-5. They produced the summoned record. Defendant Subhash Chander has appeared as DW-6 and tendered his affidavit Ex. DW6/A into his evidence. In documentary evidence, documents such as copy of inquiry report Ex. D1, Copy of letter of Financial Commissioner for disposal of old stocks Ex. D2, copy of letter of Financial Commissioner for disposal of old stocks dated 9.4.2007 for the year 1998-99 to 2000-01 Ex. D3, Copy of letter of Director, Food & Supplies, Haryana Ex. D-4, copy of rains card 38 pages Ex. D5, Investigation report about damage to Central Pool Wheat Stock dated 23.6.2005 Ex. D6, procedural Instructions, deployment of staff and norms gains etc. for the year 1999-2000 Ex. D7 and copy of letter to Deputy G.M., Haryana Agro Industries Corporation regarding benefit of less gain on combine harvest Ex. D8 on the case file. Thereafter, defendant Subhash Chander closed his evidence vide separate statement dated 5.10.2009.

After going through the evidence, trial Court came to the conclusion that defendant had himself admitted the purchase and delivery of above said wheat and hence he was also liable for the less gain and shortage in standard weight of wheat up to 70% being

Mandi Inspector-cum-Store Keeper. As per the deposition of defendant Subhash Chander as DW-6, he admitted that in view of the letter i.e deployment of staff and norms gains for wheat duty for the year 1999-2000 Ex. P-2, Procedural instructions, deployment of staff and norms gains for wheat duty for the year 1999-2000 Ex. P-3, he was appointed as Mandi Inspector-cum-Store Keeper. He admitted the purchase of the wheat as per the conditions of the Corporation as well as delivery of the same to the FCI vide letters Ex. P-5 and Ex. P-6 for the period from 2002-04, 2004-05. He further admitted that as per the instructions of the plaintiff-Corporation, Mandi Inspector-cum-Store Keeper as per the fixed norms of the corporation is liable for 70% of less gain. He further admitted that he never made a request to the departmental authority for providing him sufficient staff as well as polythene so as to keep the stock safe. As per the Instructions issued by the Corporation from time to time, Mandi Inspector-cum-Store Keeper is responsible for 70% of less gain than the fixed norms and as such, defendant is liable for less gain of 707.61 qutls.(i.e. 70% of 1010.87-385 qtls.) valuing Rs. 800547/- for the crop year 1999-2000 along with interest @ 9.10% per annum.

Further, the departmental enquiry was conducted and as per the enquiry report Ex. D-1, it was held that no doubt Subhash Chander Arora is responsible for the damage of wheat for not giving gain as per norms of the Corporation, the District Manager is also responsible for non-lifting of the stock. The suit was decreed. The trial Court held that the suit was filed within a period of limitation as the last delivery was made on 17.7.2004 and 24.7.2004 and the suit was filed on 16.7.2007 which was within the period of limitation.

However, on appeal filed by the defendant-respondent, the lower appellate Court in paragraph 16 of the judgment referred to the report (Ex. D1) given by Sh. R.R Banswal, Inquiry Officer who conducted an inquiry against the defendant. A perusal of Ex. D1 reveals as under:-

> *"From the perusal of the record, statements of prosecution witnesses, statement of Charged official, it is clear that the wheat purchased during the year 2001-02 and further purchased during crop year 2000-01 were delivered to FCI up to 2004-05. The wheat was damaged due to longer storage and on account of natural calamities. The stock was lying in the open under cap cover. Due to longer storage, it is natural that the required gain will not be possible. It is also clear vide letter dated 14.2.1991 issued by the HWC stating that if the stock of wheat is lasted more than 2 years, the chances of loss up to 50% are expected.*
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> *Due to non-lifting of the purchased wheat in a regular way, the FCI also compensated by paying the differential amount to the concerned Department. The concerned District Manager held*

charged official responsible for his carelessness and deficiency in service which deteriorated the wheat stock pertaining to the year 1999-2000 to 2000-02. No doubt, Sh. Subhash Chand Arora is responsible for the damage of wheat for not giving gain as per norms of the corporation, the District Manager is also responsible for non-lifting of the stock. He should have inspected the stocks/situation and have requested the FCI and his senior officers for providing specials for lifting the wheat. From the above, it is clear that the shortage of wheat was not lifted in good condition. The wheat stock was not lifted in time. Almost 90% of the stock was lying in open.

It is also a fact that the FCI admitted that the damages were due to longer storage and non-lifting of stock in time and FCI has also compensated to the procuring agency. Keeping in view the above discussions, detailed circumstances and references quoted by the Charged Official, inspection report of the FCI, judgment of the High Court, unscientific storage, weather conditions. I find that the Charged Official Sh. Subhash Chand Arora cannot be held solely responsible for the losses as per fixed norms of the Corporation".

The Lower Appellate Court came to a conclusion that as per the enquiry report, the defendant Subhash Chand Arora was not solely held responsible for the losses. The FCI had admitted the damages were due to over stockage and non-lifting of the stocks in time and FCI had compensated the procuring agency for the same. No punishment had been inflicted on the defendant Subhash Chander Arora by the authorities under disciplinary proceedings. Moreover as per standing order 8.8.1990 applicable as issued by the Corporation, deduction may be made for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default as per Section 7 Sub-Section 2(c) of the Payment of Wages Act. The suit was held not maintainable in view of standing orders dated 8.8.1990 and in view of the fact that the defendant had already been exonerated in the disciplinary enquiry as per the enquiry report Ex. D-1. Further the lower Appellate Court held that the suit was not maintainable as it had been instituted by a District Manager of a Company. It was the Managing Director who had been authorised to institute a suit by the Corporation and before doing so, he has to approach the Board for ratification and to do all such acts in accordance with the decision of the Board from time to time. In this case Managing Director did not institute the instant suit but delegated this power to District Manager. The Managing Director did not approach the Board for the ratification or to seek resolution on behalf of the company to institute the instant suit. Reference was made to a judgment in the case of ***Pramod K. Pankaj vs. State of Hisar & Others 2004(1) SCT 83***, wherein it has been held that in the absence of any power a 'Delegatus Non Potest Delegare" is a well-known maxim which means in absence of any power a delegate cannot sub-delegate its power to another person. In the instant case also Managing Director has no power to sub delegate his power to District Manager to institute the suit. The suit was held to be not maintainable.

Heard counsel for the parties.

The trial court while decreeing the suit of the plaintiff had taken into account the details of the wheat which was in the custody of the defendant Subhash Chand Arora in the year 1999-2000 in the year 2000-01. He had prepared record of the purchase of the wheat himself from 2004-05 through bills. In the enquiry report Ex. D-1, even though it was held that the defendant respondent was not solely responsible for the damage of the wheat and the District Manager was also responsible for non lifting of the stock. However, keeping in view the Instructions issued by the Corporation from time to time that Mandi Inspector cum-Storekeeper was responsible for the 70% less gain than the fixed norms the suit of the plaintiff was decreed.

A perusal of the enquiry report further shows that the wheat was damaged due to long storage and on account of natural calamities. The stock was lying open under cap cover and due to long storage, the required gain was not possible. Moreover in the enquiry report, it is further stated that if the stock of wheat is lasted for more than 2 years, the chances of loss up to 50% are expected. The District Manager was also responsible for non-lifting of the stock. He should have inspected the stocks/situation and have requested the FCI and his seniors officers for providing specials for lifting the wheat. The wheat stock was not lifted in time and almost 90% of the stock was lying in open. FCI admitted that the damages were due to longer storage and non-lifting of stock in time and FCI has also compensated to the procuring agency. As per the enquiry, the defendant Subhash Chand Arora was exhonerated. Had there been any loss caused to the plaintiff in the departmental enquiry, necessary orders for recovery of the loss could have been made as per the standing orders 8.8.1990 which in the present case has not been done as the employee Subhash Chand Arora had been exhonerated. Keeping in view that the FCI had admitted that the damages were due to long storage and non-lifting of the stock, the recovery from the defendant could not be initiated by filing the present suit.

In view of all that has been discussed above, the judgment of the lower Appellate Court does not suffer from any illegality or infirmity. No substantial question of law arises in this regular second appeal. Hence the same is dismissed.

April 21, 2015 **(RITU BAHRI)**
ritu **JUDGE**