

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

RSA No. 3137 of 2014 (O&M)

Date of decision: September 14, 2015

Punjab State Warehousing Corporation and another

...Appellants

Versus

M/s Bhagwati Rice Mills

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers 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?**

Present: Mr. BR Bansal, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

1. The plaintiffs, who filed a suit for recovery for the value of stock entrusted to the rice miller lost the case on the defence taken by the defendant that the rice were stocked in the defendant's premises only as custodian of the stock and not with any undertaking between the parties that it will custom the mill and deliver to the plaintiffs. The defendant was trying to rely on the practice and legal concomitant of an agreement between the Corporation and the Rice Miller before any entrustment is made. The defendant was pleading that there had been no agreement at all for entrustment of the paddy for custom milling. It was the further defence that no entrustment will be made without adequate security and admittedly no security had been called from the defendant only because there had been

no entrustment of the stock. There was yet another line of defence, namely, that the suit claim was with reference to causing shortage of paddy stock for the year 1994-1995 but the suit had been filed only on 5th May, 2006 and hence suit was also barred by limitation.

2. The plaintiffs are relying on an averment in the plaint that for the kharif 1994-1995, the stock had been entrusted to the defendant for custom milling and the said fact had not been denied by the defendant as concluding the liability on the part of the defendant. In my view, the absence of the agreement and the security deposit lent credence to the defence that the defendant was no more than a custodian and not liable for anything as shortage other than for prove a negligence were surely relevant. The substantial defence was one of limitation and the plaintiffs wanted to seek the exclusion of time purported to have been spent on the arbitral proceedings for the same relief but the award itself was set aside on a finding that there had been no agreement and consequently without any written arbitral agreement there could have been no adjudication by the arbitrator. This plea was also unavailable to the plaintiffs. They had not even filed an application under Section 14 of the Limitation Act for exclusion of time. The Code of Civil Procedure requires that for claiming any relief, which on the face of it is barred by limitation, the plaintiff is required to set the necessary particulars as to how the claim is not so barred. It could not have been merely an agreement to explain the defence that the plaintiff's claim was barred by limitation, for, a plaintiff to be pleading that the time spent for in arbitration stands excluded. Order 7 Rule 6 f the CPC is the governing provision that states where the suit is instituted after the

expiry of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption of such law is claimed. The only exceptions as provided through the provision is when the exclusion for the period of limitation is otherwise brought out in the averment in the plaint which is not inconsistent with the ground set forth in the plaint. The specific attention of the parties was not even brought with reference to the pendency of the arbitral proceedings for claiming such exclusion. I do not think there is any error in the judgments of the courts below for intervention in the second appeal. The question of law that arises on the nature of pleadings to claim exclusion from limitation, if applied, is only against the appellants. The second appeal is dismissed.

September 14, 2015
prem

(K.KANNAN)
JUDGE