IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4793-2014 (O&M)
Date of Decision: September 07, 2015

Food Corporation of India
......Appellant
Versus

M/s Parshada Mal Mukandi Lal and others
......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Rajesh Garg, Sr.Advocate with
Ms.Nimrata Shergill, Advocate
for the appellant.

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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?

NARESH KUMAR SANGHI, J.

The present regular second appeal has been filed by the Food Corporation of India (for brevity, `the Corporation') challenging the judgment and decree, dated 24.03.2014, passed by learned Additional District Judge, Ambala, whereby the appeal filed by respondent-defendants was accepted and the suit filed by the appellant-plaintiff-Corporation with a prayer for recovery of ₹4,33,649/- (Rupees four lacs thirty three thousand six hundred and forty-nine only) with costs and interest @ 18%

per annum was dismissed.

Mr.Rajesh Garg, learned senior counsel for the appellant-plaintiff-Corporation submits that respondent-defendant No.1 had written letter Ex.PW5/2 to the appellant-plaintiff-Corporation for milling the paddy upto the limit of 3000 metric ton and another letter Ex.PW5/3 whereby the capacity for milling the paddy was sought to be reduced to 1500 metric ton, which would clearly show that that there was an implied contract between the appellant-plaintiff-Corporation and the respondent-defendants, whereby the respondent-defendants had to mill the paddy. It was further submitted that the respondent-defendants had not raised any objection with regard to supply of sub-standard paddy at the time when it was stored at the premises of respondent-defendant No.1, therefore, the learned lower Appellate Court has gone wrong in concluding that there was no privity of contract between the parties for milling the paddy by the respondent-defendants, which was supplied by the appellant-plaintiff-Corporation.

Though the facts of the case were elaborately discussed by both the Courts below in their respective judgments, yet to link the present judgment, it is deemed appropriate to narrate the facts in brief.

Appellant-plaintiff-Corporation had filed the suit against five defendants for recovery of ₹4,33,649/- (Rupees four lacs thirty three thousand six hundred and forty-nine only) on the averments that respondent-defendant No.1 was a partnership concern and defendant Nos.2 to 5 were its partners. The firm was carrying on the business of milling/shelling of paddy. The appellant-plaintiff-Corporation floated tenders for storage and milling of paddy received from Food Corporation of India, Punjab region in Febraury, 1995. The respondent-defendant No.1, vide letters dated 17.01.1995 and 21.02.1995, allegedly offered to shell paddy on the terms and conditions of the appellant-plaintiff-Corporation. The respondent-defendant No.1, vide letter dated 04.03.1995, alleged to have acknowledged the receipt of 1760 bags (1121 quintals) of super fine paddy,(Ex-Punjab).

As per the appellant-plaintiff-Corporation the paddy was to be stored for milling on the following terms and conditions:-

(a) The contractor/miller will store the paddy in his godown and was to preserve the paddy in quality and quantity including safety/security;

(b) The miller was to give 67% yield of rice in

respect of superfine/fine varieties of rice, 68% in case of sela fine/superfine and 71% in case of common variety;

(c) The miller was to be paid Rs.9/- per quintal as milling charges in the case of paddy;

(d) The miller was to retain bye-products of rice with them;

(e) The miller was to retain surplus gunny bags with them and the cost thereof at a fixed rate was to be paid to FCI alongwith applicable sales tax;

(f) The milling was to be completed within a fixed specified time and in case the milling was not done within the fixed time, the miller was liable for penal action for late milling etc. In case of shortage of quantity, the FCI was to be compensated for the shortage in quantity of paddy by the rate of 1 ½ times of the actual cost to the Food Corporation of India; and

(g) The miller was to deposit security with FCI to be appropriated toward any loss and damages. This security was in addition to Rs.10,000/- as earnest money which was to be deposited by the miller at the

time of offer.

The appellant-plaintiff-Corporation stored 1760 bags of paddy in the premises of respondent-defendant No.1 vide receipt dated 21.02.1995. The respondent-defendants alleged to have deposited a sum of ₹10,000/- (Rupees ten thousand only) as earnest money but did not shell even a grain of paddy. Despite several letters written by the appellant-plaintiff-Corporation to the respondent-defendants with a request to start milling of the paddy, respondent-defendants did not respond and the paddy being perishable commodity started deteriorating since it was lying in the open courtyard within the domain of the defendant-firm. Finding no other way, the appellant-plaintiff-Corporation decided to dispose of the entire stock in possession of the respondent-defendants by inviting tenders. The appellant-plaintiff-Corporation accepted the tender of M/s Mittal Rice and General Mills, Ambala City. While handing over the paddy to M/s Mittal Rice and General Mills, Ambala City, it was found that the paddy handed over to the respondent-defendants was short by 155.56 quintals. 930 quintals of paddy was handed over to M/s Mittal Rice and General Mills, Ambala City, and a sum of ₹3,67,489.50 (Rupees three lacs sixty seven thousand four hundred eighty nine and fifty paise only) was received from the said firm. During transfer of the paddy from the premises of the respondent-defendant No.1, it was noticed that 35.44 quintals of the paddy was also damaged during storage in the premises of the defendant-firm. The purchase cost of paddy, stored in the premises of the defendant-firm, was ₹6,13,187/- (Rupees six lacs thirteen thousand one hundred and eighty seven only). The appellant-plaintiff-Corporation had received ₹3,68,701.10 (Rupees three lacs sixty eight thousand seven hundred one and ten paise only) from M/s Mittal Rice and General Mills, Ambala City and, as such, the said amount was deducted from ₹6,13,187/- (Rupees six lacs thirteen thousand one hundred and eighty seven only) and after adding the miscellaneous charges, the loss suffered by the appellant-plaintiff-Corporation was ₹2,44,789.10/- (Rupees two lacs forty-four thousand seven hundred eighty-nine and ten paise only). After adjustment of ₹10,000/- (Rupees ten thousand only) allegedly deposited by the defendants, the amount recoverable from the defendants was ₹2,34,789.10 (Rupees two lacs thirty four thousand seven hundred eighty-nine and ten paise only). Since the appellant-plaintiff-Corporation had purchased the paddy after obtaining loan from State Bank of India and its associates and the interest was calculated as ₹1,98,858.64 (Rupees one lac ninety-eight thousand eight hundred fifty eight and sixty-four paise only), therefore, the actual loss, after adding the interest, came to ₹4,33,649/- (Rupees four lacs thirty three thousand six hundred and forty-nine only) and, as such, the suit was filed before learned Civil Judge (Senior Division), Ambala City, for recovery of the said amount along with interest @ 18% per annum from the date of filing of the suit till realisation. In addition thereto, litigation costs were also claimed.

On notice, the respondent-defendants appeared and filed a joint written statement taking preliminary objections that there was no privity of contract between the parties for shelling the paddy and no agreement was ever entered into between the parties to the suit and, as such, the respondent-defendants were not responsible to store and shell the paddy. Sub-standard paddy was stored in the premises of respondent-defendant No.1 by the appellant-plaintiff -Corporation at its own risk, which could not be milled as claimed by the appellant-plaintiff. It was also disclosed that the appellant-plaintiff had filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi, for recovery of ₹2,20,75,864/- (Rupees two crores twenty lacs seventy five thousand eight hundred and sixty-four only) against New India Assurance Company Limited, under

Section 21 of the Consumers Protection Act. The said case included the loss claimed by the appellant-plaintiff-Corporation against the respondent-defendants. It was also averred that defendant Nos.4 and 5 were not the partners of respondent-defendant No.1 at the time of storage of the paddy in its (respondent-defendant No.1) premises and, as such, the suit was bad for misjoinder of the parties. It was also averred that the paddy stored in the premises of respondent-defendant No.1 remained in the supervision of three guards round the clock, who were employees of the appellant-plaintiff-Corporation. The claim put forth by the appellant-plaintiff-Corporation was specifically denied. It was also averred by the respondent-defendants that the President of Rice Millers Association, Ambala, had telegraphically informed the appellant-plaintiff-Corporation regarding the sub-standard paddy dumped in the premises of respondent-defendant No.1 and other mill owners. On account of its ill motive, the appellant-plaintiff-Corporation did not respond to the said telegram. The respondent-defendants also denied that 35.44 quintals of paddy was damaged for want of care, fault, negligence and omission on their part during the tenure the paddy was lying in the premises of respondent-defendant No.1. It was further averred that the appellant-plaintiff-Corporation had failed to pay the charges to the respondent-defendants for storage of paddy in the premises of respondent-defendant No.1.

No replication was filed.

On the pleadings of the parties, the following issues were framed:-

> "1. *Whether the plaintiff is entitled for the recovery of ₹4,33,649/- as prayed? OPP*
>
> *2. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
>
> *3. Relief."*

In order to prove its case, the appellant-plaintiff-Corporation examined Subhash Chander, Assistant Manager as PW1, Ram Kishan, Assistant Manager as PW2, Suraj Pal Singh, Assistant Manager as PW3, Charan Dass, Assistant Manager as PW4, Bal Krishan, Assistant Manager as PW5 and R.K. Verma, Deputy Manager as PW6.

In order to substantiate their case, one of the respondent-defendants appeared as DW1.

No evidence in rebuttal was led.

At this stage it is necessary to point out that the suit filed by the appellant-plaintiff-Corporation before learned

Additional Civil Judge (Senior Division), Ambala Cantt., in the year 1998 was without jurisdiction and hence, vide order dated 03.08.2007 the plaint was permitted to be returned to the appellant-plaintiff-Corporation for presentation before the appropriate Court and thereafter the suit was presented before learned Civil Judge (Senior Division) Ambala City.

Learned Civil Judge (Senior Division), Ambala City, decreed the suit filed by the appellant-plaintiff-Corporation and passed a decree amounting to ₹4,33,649/-(Rupees four lacs thirty three thousand six hundred and forty-nine only) in its (appellant-plaintiff-Corporation) favour and against defendant Nos.1 to 3 (respondent Nos.1 to 3 herein in this regular second appeal) with interest @ 6% per annum from the date of filing of the suit till actual realization. The suit qua respondent-defendant Nos.4 and 5 was dismissed by holding that they were not the partners of respondent-defendant No.1 at the time of alleged contract between the appellant-plaintiff-Corporation and respondent-defendant No.1.

Respondent-defendant No.1 and one of its partners challenged the judgment and decree passed by learned Trial Court before learned Additional District Judge, Ambala, which was accepted holding that no written agreement was ever executed between the parties; no terms and conditions were settled between the parties; the whole case of the appellant-plaintiff-Corporation was hinging on the receipt, Ex.P2, issued by the respondent-defendants acknowledging the storage of 1760 bags of paddy; vide letter Ex.PW5/3 respondent-defendant No.1 had clarified that the milling capacity of the paddy had to be reduced from 3000 metric ton to 1500 metric ton; the President, Rice Millers Association, Ambala Cantt. had informed the appellant-plaintiff-Corporation by way of telegram, Ex.A29, that the paddy received by the respondent-defendants and other mill owners was of sub-standard/below specifications and not fit for milling due to damaged, broken grain and the foreign matter in the same; on the basis of the information supplied by the respondent-defendants to the higher officials of the appellant-plaintiff-Corporation vide letters Exs.A24 to A27, directions were issued by the higher officers of the Corporation to the local officials of the Corporation to make all the arrangements for safety of the paddy against natural calamities/ theft/ pilferage and damage by flood etc. and to inspect the paddy stock weekly to ensure safety/ preservation and maintenance of the stocks; vide letter dated 13.03.1995 (Ex.A5) AM(QC), Ambala City, had written that paddy received Ex-Moga was sub-standard; Report

Ex.A51 showed that general appearance of the paddy was almost good but its resultant rice contained wrinkles/cracks and broken percentage which exceeded the prescribed limit parameters; various letters, as enshrined in Exs.A21, 23, 24, 25, 26, 27, 32, 33, 34, 36, 37, 38, 40 and 41, would reveal that it was the responsibility of the appellant-plaintiff-Corporation for the security, safety and preservation of the paddy received from Punjab and stored in a private rice mill at Ambala City; Manager (Commercial), Food Corporation of India, vide letter dated 24.09.2009, Ex.A20, admitted that the agreement was not executed with DM, Food Corporation of India, Karnal, and that the appellant-plaintiff-Corporation was not definite about its exact claim of the damaged paddy since at different stages the appellant-plaintiff-Corporation had put forth divergent figures before different Forums.

It is apposite to mention that during pendency of the appeal before learned Additional District Judge, Ambala, an application under Order 41 Rule 27, CPC, for permitting the respondent-defendants to adduce additional evidence was allowed. In additional evidence the respondent-defendants examined Sham Sunder, Manager, Food Corporation of India as AW1, who had placed on record the attested copies of the documents Exs.A1 to A61, supplied by the Office of the appellant-plaintiff-Corporation to the respondent-defendants, claimed under Right to Information Act.

Against the additional evidence led by the respondent-defendants (appellants in first appeal before learned Additional District Judge, Ambala), the appellant-plaintiff-Corporation tendered the document Mark R1.

As per the learned counsel for the appellant-plaintiff-Corporation, the following substantial questions of law arise for consideration of this Court:-

> " *a) Whether the appellate Court was right in law in concluding that there was no concluded contract between the parties?*
>
> *(b) Whether the ld. trial Court was right in law in holding that in view of various communications between the parties, a concluded contract was implied?*
>
> *c) Whether the appellate Court was right in concluding that even though the food stocks were stored at the premises of the defendants, it was the duty of the plaintiff for its safety?*
>
> *d) Whether the appellate Court failed to notice*

that a deterioration of food stocks was on account of non-milling of paddy in time by the defendants?

e) Whether the appellate Court was correct in law in ignoring the fact that the defendants pleaded sub-standard quality of food stocks, only after filing of the suit by the plaintiff?

f) Whether the ld.lower appellate Court failed to notice that the defendants admission regarding acceptance to mill the stocks was evident in one of its own letters?

It is apt to mention that originally the suit was filed before learned Additional Civil Judge (Sr.Division) against five persons and while allowing the suit qua respondent-defendant Nos.1, 2 and 3, the same was dismissed qua respondent-defendant Nos.4 and 5. Before learned District Judge, the appeal was presented by respondent -defendant Nos.1 and 2 only. The appellant-plaintiff-Corporation had not filed the appeal challenging the dismissal of the suit qua respondent-defendant Nos.4 and 5. The appeal was accepted by the learned Additional District Judge and the suit filed by the appellant-plaintiff-Corporation was dismissed. Now the appellant-plaintiff-Corporation has filed this appeal against the original defendant

Nos.4 and 5 also, which is even otherwise not maintainable in view of the facts discussed.

It is essential to clarify that the appellant-plaintiff-Corporation had submitted a claim of ₹21,123/- (Rupees twenty one thousand one hundred and twenty three only) to New India Assurance Company Limited, Karnal, on 13.10.1995. Then on 05.01.1998, a notice was issued by Mr.M.S.Mann, Advocate of FCI, Karnal, to the respondent-defendants for recovery of ₹6,38,440.50 (Rupees six lacs thirty eight thousand four hundred forty and fifty paise only) while the appellant-plaintiff-Corporation filed the suit on 19.02.1998 for recovery of ₹4,33,649/- (Rupees four lacs thirty three thousand six hundred and forty nine only) against the respondent-defendants. The application, dated 21.02.1998, Ex.A61, filed by FCI against the New India Assurance Company Limited before National Consumer Disputes Redressal Commission was for ₹1,16,882/- (Rupees one lac sixteen thousand eight hundred and eight two only) and the same was rejected vide order, dated 03.08.2004, Ex.A54, by holding as under:-

> *"It is further stated that the joint survey revealed that damage in respect of the lower layers of the stocks were pre-existing on account of un-*

precedent rains and consequent flood, prior to the date of obtaining of insurance cover. It also revealed that the stocks were stored in extremely poor conditions exposing it to the perils insured.

In this view of the matter, it is apparent that the damage to the paddy has occurred prior to 31.08.1995, i.e. the date of the policy and hence, mere acceptance of premium by the agent of the Insurance Company or issuance of the policy by the Insurance Company would not give any right to the complainant, as contract was void and contract of insurance is based on good faith.

In this view of the matter, there is no substance in this complaint and is therefore dismissed."

It would further facilitate this Court to quote the findings of first appellate Court which are as under:-

"*The agreement was not executed with DM, FCI, Karnal as admitted by the Manager (Commercial), FCI vide letter dated 24.09.2009 Ex.A20." (Reference para No.34).*

It would also be essential to refer para 39 of the appellate judgment which is as under:-

> *"Then, letter dated 23.05.1995 Ex.PW5/10, written by FCI, Chandigarh, to the Rice Millers of Ambala City including the appellants/defendants' firm, which reads as under:-*
>
> *`Please refer to DM, FCI, Karnal Savingram No.D/1(4)/P.SH/94-95/21.04.1995 regarding custom milling of Punjab Paddy stored in your mill premises.*
>
> *A considerable time has already been passed, but neither you have executed agreement with DM, Karnal nor started lifting of paddy so far.*
>
> *Request again to execute agreement with DM, Karnal and complete the lifting of paddy within a period of 20 days from the date of issue of this notice, failing which action will be taken as per tender terms and conditions and work will be got done from other Rice Millers at your risk and cost.'"*

The whole stress of the learned counsel for the appellant-plaintiff-Corporation is on the letters Exs.PW5/2 and PW5/3 dated 17.01.1995 and 21.02.1995 respectively addressed to the appellant-plaintiff-Corporation by the respondent-defendants. The first appellate Court has repelled the stand of the appellant-plaintiff-Corporation after discussing the issues in detail. This Court also finds that there was no privity of contract between the parties and the paddy stored at the premises of respondent-defendant No.1 remained within the domain of the appellant-plaintiff-Corporation and it was the liability of the appellant -plaintiff-Corporation not only to keep the paddy in the safe condition but also to prevent any damage so that it might not affect proper shelling/milling. This Court also finds that the respondent-defendants were very much conscious of the storage of the paddy at the premises of respondent-defendant No.1 and they had been writing the letters from time to time informing the authorities of appellant -plaintiff to take proper care of the paddy and further that the paddy stored at the premises of respondent-defendant No.1 was of sub-standard quality. This Court also finds that the appellant-plaintiff-Corporation was not sure with regard to the exact amount to be claimed from the respondent-defendants since it (appellant-Corporation) was putting forth a claim of different amounts before different Forums.

In view of the above discussion, this Court finds that no case is made out to interfere in the well reasoned judgment passed by the learned first appellate Court. It further finds that no substantial questions of law, as raised by learned counsel for the appellant-plaintiff-Corporation in the grounds of appeal, are involved in the present regular second appeal and, as such, the same is hereby dismissed.

September 07, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**