IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.177 of 1976

Against the judgment dated 05.12.1975 passed by 1st Subordinate Judge, Gaya in Title Suit No.27 of 1969.

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The State of Bihar

.... Defendant-Appellant

Versus

Bhagwan Das Charan Paharhi

.... Plaintiff-Respondent

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Appearance :

For the Appellant : Mr. Kundan Bhahadur Singh, SC. 22
Mr. Neeraj Kumar, AC. to SC.22.

For the Respondent : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 17-05-2016

The plaintiff-respondent filed the aforesaid suit for declaration that the order of the Collector upholding the maintainability of Certificate Case No.08/supply/1965-66 is invalid, illegal and without jurisdiction and further prayed for permanent injunction restraining the State from taking steps for recovery of the amount through the certificate proceeding.

2. The plaintiff's case, in short, is that the State appointed the plaintiff as stockist of food grains, wheat as well as rice from the year 1955 to 1960. Although there was a provision for entering into

agreement, no agreement was entered into. During this period the plaintiff was carrying on his duties as stockist according to direction of State authorities but there arose some dispute when the State authorities refused to pay some rightful claim of the plaintiff, therefore, the plaintiff filed Money Suit No.15 of 1962. The defendant-State denied the allegation on the ground that there is no agreement between the parties. However major part of the claim of the plaintiff was disallowed and thereafter the State authorities got the stock audited by auditor, who submitted report showing defalcation of Rs.27,038.68. On the basis of said report the Certificate Case No.08/supply/1965-66 was initiated. The further case of the plaintiff is that the report is bias report. Without considering the defence of the plaintiff and without considering the true facts and objection made by the plaintiff report was submitted and moreover the report is only a piece of evidence. In different headings different amounts were claimed to have been defalcated, which are wrong. In the plaint, details have been given explaining how the claims are incorrect. For example, the State claimed Rs.699.65 on account of price of 49 mounds, 39 seers of wheat as in the report it was pointed out that the wheat is found short. The plaintiff alleged that the weighing machine of the Railway was defective and prior to the report the plaintiff pointed out this defective weighing machine to the department. The defendant also claimed of Rs.420/- for 30 mounds of wheat without considering the case of the plaintiff that in fact the plaintiff was not responsible for the same. The said wheat bags were lying in Gaya Railway Station for more than two months and delivery was given to the plaintiff in damaged condition in presence of the magistrate. 410 bags were given to the plaintiff and out of that because of damaged wheat 30 mounds of wheat dust were separated. In the report the magistrate mentioned this fact but it was not noticed even by the auditors. Likewise the plaintiff has pleaded in great details about claim of the State for different periods. In the judgment also the trial court has mentioned in detail.

3. The State authorities filed written statement. Their main defence is that the auditor's report is correct and therefore certificate case was instituted.

4. All other allegations of the plaintiff were denied.

5. The learned court below on the basis of the aforesaid pleading of the parties framed the following issues:-

(i) Is the suit as framed maintainable?
(ii) Has the plaintiff got a valid cause of action and right to sue?
(iii) Is the suit barred by limitation?
(iv) Is the suit barred under the provision of Bihar and Orissa Public Demand Recovery Act, 1914?
(v) Is the suit bad for non-compliance of Section 80 CPC?

(vi) Is the plaintiff entitled to pay ad-valorem court fee?

(vii) Is the audit report, Ext.A is valid, legal and in order, and the plaintiff is liable for the amount that is found due after scrutiny and audit of the account which cannot be challenged by the plaintiff?

(viii) Was the certificate requisition justly filed on 27.05.1964?

(ix) Are the said agreement of the stockistship concerning the period of said audit are void and inoperative for want of requisition?

(x) Is the order dated 23.09.1966 of Collector, Gaya holding the certificate proceeding in question maintainable, is illegal, invalid, ultra vires, and without jurisdiction and fit to be set aside?

(xi) Is the plaintiff entitled for permanently restraining the defendant from taking further steps for realising through said certificate proceedings?

(xii) Is the plaintiff entitled to decree?

(xiii) To what other relief or reliefs is that plaintiff entitled?

6. In support of their respect cases the parties adduced their evidences.

7. The learned trial court on the basis of materials came to the conclusion that except the report of the auditor nothing has been produced by the defendant in support of the claim of the defendant. The court below also came to the conclusion that the report itself is doubtful and, therefore, ultimately came to the conclusion that nothing is due to be paid by the plaintiff to the State authorities, as such, decreed the plaintiff's suit.

8. The learned standing counsel for the appellant submitted

that the court below has not properly appreciated the materials and evidences and wrongly came to the conclusion that the audit report is doubtful. According to the Standing Counsel, the wheat and rice were found less than the quantity delivered to the plaintiff, therefore, the plaintiff is liable to pay the amount for the food grains which were found short. The auditors have given reasons for their finding but the learned court below erroneously doubted the report itself and wrongly decreed the plaintiff's suit.

9. As stated above, nobody is appearing on behalf of the respondent.

10. In view of the aforesaid submission of the learned Standing counsel for the State the point arises for consideration is as to whether the plaintiff has been able to prove his case that nothing is due to be paid by the plaintiff to the State and the audit report is wrong report on the basis of which no recovery can be made.

11. The plaintiff has produced the judgment of Money Suit No.15 of 1962, which was marked as Ext.12/A. Ext.12 is the order of District Supply Officer dated 31.08.1966. The District Supply Officer is the officer of the State and is acting on behalf of the State. The order sheet has been marked as Ext.12 from which it appears that the D.S.O. himself doubted the correctness of the demand made by the State authorities.

12. Ext.12/C is the order of the Collector dated 23.09.1968. With respect to demand order it may be mentioned here that there is no case made by the State that it is the demand recoverable under Public Demand Recovery Act. Nothing has been produced on behalf of the State authorizing D.S.O. to file certificate case. The State also did not produce any chit of paper. The State also did not challenge the account furnished by the plaintiff, which has been marked as Ext.8.

13. Ext.1 is the auditors' report. From perusal of this audit report, it is found that the auditors pointed out shortage due to the defective weighment by the Railway but it was ignored on the ground that within two months the shortage was found. The plaintiff has produced Ext.3/B which is objection dated 07.05.1957 regarding the defective weighment bridge of the Railway but it was never considered and the audit was conducted from 03.02.1962 to 06.04.1962.

14. P.W.16 has been examined by the plaintiff and also P.W.19, the plaintiff, who has clearly stated the defective weighment bridge of Railway. It appears that the Ext.13 is the railway receipt entry wherein there was explanation about the shortage but these letters were not produced before the auditors.

15. Ext.6 is the delivery chart of rice weighed by Railway

and Ext.8 is the actual weight in presence of the magistrate deputed which clearly proves that there was shortage delivery. The plaintiff also produced letter dated 07.09.1956, which has been marked as Ext.3/G and the letter written in September 1956 by S.D.O. to the D.S.O. which has been Ext.3/A. The letter dated 07.06.1956 has been marked as Ext.16 and from perusal of the order by D.S.O, Gaya it would be evident that for shortage delivery railway was responsible. In such circumstances claim should have been filed before Railway. These are the matters much prior to the audit of the stock. In the audit report these matters were not at all considered. The plaintiff has produced Ext.14, the detailed account of all the grains, which according to P.W.19, was supplied to the D.S.O., Gaya which was received in the office.

16. In view of the above discussion it appears that the case of the State is based on the audit report only. The auditors have not been examined as witness and, therefore, no opportunity was given to the plaintiff to cross-examine them. Therefore, the report cannot be accepted blindly particularly when the claim of the plaintiff as mentioned in detail was never considered by the auditors. I, therefore, find that the learned court below has rightly held that the plaintiff has been able to prove his case that no due is there and the plaintiff is not liable to pay anything to the State as such the

certificate case was wrongly instituted. Therefore, finding of the trial court is hereby confirmed.

17. In the result, this appeal is dismissed. In the facts and circumstances of the case, no order as to cost.

(Mungeshwar Sahoo, J)

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