THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.737 OF 1985

JUDGMENT:

This appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), is filed against the Decree and Judgment dated 12.12.1983 in A.S. No.210 of 1979 passed by the District Judge, West Godavari, Eluru, confirming the Decree and Judgment dated 31.08.1979 in O.S. No.1 of 1975 passed by the Principal District Munsiff, Tadepalligudem.

02. The appellant herein is the plaintiff- Food Corporation of India ('FCI' in short) and the respondents herein are the defendants in O.S. No.1 of 1975. They will hereinafter be referred to as arrayed before the trial court for convenience.

03. The plaintiff filed O.S. No.1 of 1975 before the Principal District Munsiff, Tadepalligudem, against the defendants. The said suit was filed for recovery of Rs.9,911/- towards excess payment of price of rice supplied by the defendants, and such mistake was discovered in the year 1973 when the analysis report was received by the plaintiff from the analyst. Though the plaintiff demanded for refund of the excess amount paid by mistake, the defendants did not repay the same.

04. The defendants denied their liability to repay the amount on the ground that they supplied Bangaru Theegalu rice. The plaintiff agreed and paid the price of rice, thereby question of repayment does not arise and thus, the claim of the plaintiff is barred by limitation.

05. The trial court dismissed the suit by Judgment dated 31.08.1979, aggrieved thereby the plaintiff preferred A.S. No.210 of 1979 before the District Judge, West Godavari at Eluru. The learned District Judge dismissed the appeal by Judgment dated 12.12.1983. Aggrieved thereby, the second appeal is preferred.

06. Heard the learned counsel for the appellant. None

represents for the respondents and no argument is advanced on their behalf.

07. The appeal was admitted by this Court on 30.08.1985. The substantial question of law that was raised before this Court are:

> 1) Whether, in view of language used in G.O.Ms.No.69 Food and Agriculture Department dated 17.01.1970, Government of Andhra Pradesh and in the light of the Judgment in W.P. No.4832 of 1973 dated 02.09.1973 which is affirmed in W.A. No.867 of 1976 dated 18.12.1974, whether the Judgment of the trial court which is confirmed by the Appellate Court are perverse and in ignorance of the orders passed in W.P. No.4832 of 1973, which is affirmed in W.A. No.867 of 1976 dated 18.12.1974?
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> 2) Whether the claim of the appellant is within time?

QUESTIONS Nos.1 AND 2:

08. During argument, it is brought to the notice of this Court that in the similar set of facts, the plaintiff-FCI filed O.S. No.828 of 1974 and batch, wherein the suits were dismissed by Judgment dated 31.08.1979 and the same was confirmed by the first appellate court in A.S. No.198 of 1979 and batch by Judgment dated 12.12.1983, aggrieved thereby, it has preferred S.A.No.588 of 1984 and batch before this Court. Those appeals were allowed by common Judgment dated 29.02.1988. It is also stated that the defendants also filed different suits against claim for recovery of amount by the plaintiff-FCI.

09. It is the case of the plaintiff that it has paid excess amount for the price of rice during the month of October 1970 and it is illegal. By Judgment dated 31.08.1979 the trial court dismissed the suit and the same was confirmed by the first appellate court by Judgment dated 12.12.1983, aggrieved thereby the present appeal is preferred.

10. The controversy in this appeal is very narrow compass. The State Government, in exercise of the powers under the Essential

Commodities Act, issued the Andhra Pradesh Rice (Procurement Ex-Mill Prices) Order 1970, in G.O.Ms.No.69 Food and Agriculture Department dated 17.01.1970. Clause (1) of the Order gives its name and also makes it applicable to the entire state. By Clause (2) of the Order the rice is classified in four varieties viz.,

a) Long slender/ short Slender including scented varieties (superfine);
b) Medium Slender (Fine);
c) Long Bold (Medium); and
d) Short Bold (Coarse)

11. The said clause also gives the dimensions of the several varieties of rice mentioned in it. According to Clause (3) of the order, ‘wholesale price’ means the price of rice per quintal at which rice shall be sold at the mill to a dealer. Clause (4) fixes the procurement price of rice in Schedules I and II. In this case, the controversy is about ‘Bangaruteegalu’ variety of rice which is mentioned in Schedule I under the Head ‘Medium Slender’. According to the explanation to Clause (4) rice shall be deemed to be of fair average quality if it satisfies the conditions mentioned in it, except to the extent indicated in Schedule III of the Order. In case, where the tolerance limits mentioned in Schedule III are exceeded, cuts in price have to be applied as indicated in clause (4) of the Schedule. Note (2) under the said clause (4) provides for analysis of samples for determination of price. Another note provides that the price payable for the stock of rice shall be determined on the report of the analyst which has to be communicated to the Millers and according to a proviso to a further sub-note (iii) a re-analysis has to be carried out only for the purpose of finally determining the variations in the quality in respect of impurities other than moisture contend in rice. Schedule III makes two groups: (a) Slender group (long, short and medium slender varieties - superfine and fine varieties) and (b) Bold group (long and short bold varieties-coarse variety). In view of the judgment of this court in SA No.588 of 1985 and batch, the appellant is entitled to

claim recovery.

12. In the batch of appeals, the defendants did not raise any contention regarding the bar of claim of the plaintiff by limitation, but the trial court and the appellate court discussed about the limitation, by framing the issue for consideration and held that the suit filed by the plaintiff is barred by limitation.

13. The learned counsel for the plaintiff while contending that payment of price to the defendants only as per the orders of the Government, but by mistake, the price was paid in excess of the rate under the Control Order referred supra. In this regard, he relied upon the Judgment of this Court in **THE UNION OF INDIA, REPRESENTED BY SECRETARY MINISTRY OF (F. & AG.) V. KANURI DAMODARAIAH & CO.**[1] wherein it was held as follows:

> "Under the provisions of S.3(2) (f) all that is necessary is to require any person holding in stock any essential commodity to sell the whole or specified part of the stock in such circumstances as may be specified in the order and under Section 3(3), the rice which is payable on the sale of the goods is specified, While an order under Section 3(2) (f) may amount to an agreement for sale, no price is payable until the sale and that price which is only payable on sale will be in accordance with the price notified under the provisions of S.3(3) of the said Act. There is therefore no validity for the contention advanced by the respondent that once price is fixed under the order as it has been done in these second appeals, the price payable to them will be in accordance with that which has been fixed in the requisition order under S.3(2) (f) of the said Act irrespective of the time of delivery of the goods. If that were so, the Government itself will be contravening its orders. Apart from this, the judgment of the Supreme Court is clear and supports our view that the price payable is the controlled price prevailing on the date when the sale is made and the sale is effected only when the good are ascertained."

14. The main contention of the plaintiff in this regard is that the limitation of three years starts from the date of discovery of mistake under Clause (c) to Sub-Section (1) of Section 17 of the Limitation

Act, 1963 (for short, ‘the Act’). In the present facts of the case, the mistake was discovered in the year 1973 and the suit was filed in the year 1975. It is, therefore, the claim of the plaintiff is within limitation.

15. According to Clause (c) to Sub-section (1) of Section 17 of the Act, Where, in case of any suit or application for which a period of limitation is prescribed by this Act - the suit or application is for relief from the consequences of a mistake; The period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. Thus, the limitation starts only from the date of discovery of payment of price of rice by mistake, the trial court and the first appellate court did not consider the impact of mistake in terms of Clause (c) to Sub-section (1) of Section 17 of the Act and committed an error in dismissing the claim on the ground of bar of limitation.

16. Thus, in view of the law laid down by this Court in the above Judgment, the payment of excess amount is only due to mistake and it was discovered in the year 1973, thereby limitation starts only from the date of such discovery as per Clause (c) to Sub-Section (1) of Section 17 of the Act. The issue involved in this appeal is squarely covered by the common Judgment of this Court in S.A. No.588/1984 and batch. Hence, this Court has no other alternative except to arrive at the same conclusion arrived at by this Court in SA. No.588 of 1984 and batch. Hence, I find that the trial court and the first appellate court have committed error in dismissing the claim and the same is liable to be set aside and accordingly, the substantial questions are answered in favour of the appellant-plaintiff and against the respondents-defendants.

17. In the result, the second appeal is allowed setting aside the Decree and Judgment dated 12.12.1983 in A.S. No.210 of 1979

passed by the District Judge, West Godavari, Eluru. The defendants are directed to pay Rs.9,911/- with interest @ 12% per annum from the date of suit till the date of realisation to the plaintiff as per Section 34 of the Code, since the transaction is a commercial transaction. There shall be no order as to costs.

18. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 21.07.2016
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