HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.604 of 2000

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 29.12.1999 in A.S.No.117 of 1996 on the file of III Additional District Judge, Kakinada, East Godavari District, whereunder, decree and judgment dated 12.12.1995 in O.S.No.894 of 1989 on the file of II Additional Munsif Magistrate (presently Junior Civil Judge), Kakinada is confirmed.

2. Appellant herein is the unsuccessful plaintiff in both the Courts. Plaintiff filed the above referred O.S.No.894 of 1989 for recovery of Rs.13,986.35 ps being the amount raised under invoices and bills towards value of 50 metric tonnes of de-oiled rice bran through bill No.17, dated 27.9.1986 and bill No.18, dated 30.09.1986. According to plaintiff, as per G.OMs.No.624 F and A (C.F.IV), dated 16.12.1986 (for short "G.O."), Government enhanced the price of de-oiled rice bran and that plaintiff is entitled at the enhanced rate under the above two bills, since G.O. has retrospective effect from June 1986 and as the supplies are made in September 1986.

3. Defendants filed written statement disputing the claim of plaintiff. According to defendants, the rate claimed under bill Nos.17 and 18 is as per contractual rate and once plaintiff has claimed as per the contractual rate, plaintiff is not entitled to the benefits of G.O. and that the claim of plaintiff at enhanced rate is not tenable.

4. Plaintiff also claimed a sum of Rs.660/- towards the balance amount due for the goods supplied and defendants resisted that claim on the ground that it is time barred claim and

plaintiff is not entitled for that amount. On these contentions, trial Court on a consideration of oral and documentary evidence held that plaintiff is not entitled for the suit amount and dismissed the suit. Against dismissal of suit, plaintiff preferred appeal to the District Court and III Additional District Judge, Kakinada on a reappraisal of entire oral and documentary evidence confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred.

5. This Court admitted the appeal on 05.09.2000 treating the following as the substantial questions of law :

> "a). Whether the plaintiff is entitled to claim the control price fixed by the Govt., under G.O.Ms.No.624 dt.16.12.1986 which is effective retrospectively from 1.6.1986 onwards.
>
> b). Whether the interpretation of the courts below that the plaintiff is not entitled to claim the differential amount as fixed by the govt., in case of controlled commodities is correct and valid under law.
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> c). Whether the 2nd defendant is entitled to pay less than the rate fixed by the govt., for controlled commodity when the same was supplied to it by the manufacturer under permits from the Dt. Civil Supplies Department?
>
> d). Whether the findings of the Courts below on the interpretation of the meaning of the words in G.O.Ms.No.624 dt.16.12.1986 are perverse and unsustainable?"

6. Heard arguments.

7. Advocate for appellant submitted short point that falls for consideration of this court is implementation of G.O.Ms.No.624, dated 16.12.1986, which is marked as Ex.A20. He submitted that Government by way of amendment of earlier G.O., enhanced the

price from Rs.30/- to Rs.45/- per quintal in case of solvent extracted rice bran and plaintiff claimed that enhanced amount, as the Government has given retrospective effect to the amendment from June 1986. He submitted as the material was supplied in the month of September 1986, the amended provisions of the G.O. squarely applies to plaintiff's case, but both trial court and appellate court have wrongly held that these provisions cannot be extended in view of the contract between plaintiff and defendants with regard to price. He submitted that the findings of trial court and appellate Court have to be set aside and the suit has to be decreed, so far as the enhanced rate of claim is concerned.

8. On the other hand, advocate for respondents submitted that both the courts have rightly appreciated the evidence on record and no question of law is involved and it is only interpretation of G.O, therefore second appeal is liable to be dismissed.

9. Now the point that would arise for my consideration is:

1) Whether the substantial questions of law as urged by appellants are tenable ?

POINT:

10. As already referred above the suit is filed for recovery of Rs.13,986.35 ps being the balance of principal and interest due on Bill Nos.17 and 18. It is undisputed fact that District Supply Officer, Kakinada, issued permit dated 12.09.1986 to lift a total quantity of 50 metric tonnes of de-oiled rice bran from plaintiff company and a sum of Rs.20,000/- was sent by way of advance towards the cost of 50 metric tones de-oiled rice bran calculating at the rate of Rs.300/- per metric tonne through bill Nos.17 and 18, dated 27.09.1986 and 30.09.1986 respectively. According to

plaintiff, after adjusting the advance amount, a sum of Rs.660.35 ps is still due from second defendant in respect of the above referred transaction and in that connection, there was correspondence between the parties. This is one claim.

11. Plaintiff contended that in view of the amended G.O., the rate of Rs.300/- per metric tonne has to be taken as Rs.450/- per metric tonne and on that basis plaintiff is entitled for the difference amount with interest. This is the second claim.

12. Admittedly, the balance amount of Rs.660.35 ps was not claimed within the limitation period of 3 years, as the suit was filed beyond the limitation date of 30.09.1989. In respect of difference amount also, both Courts held that the claim was not made within time. It is further observed that as the plaintiff has already raised bills for the material supplied at the contract rate of Rs.300/- per metric tonne, he has no right to claim the enhanced rate as per the amended G.O.

13. As seen from the G.O. relied on by plaintiff, this Rs.45/- per quintal is the outer limit fixed by the Government and it is not the minimum price. When there is a contract between the parties fixing the rate and plaintiff supplied the goods at that rate and raised the bill at the very same rate, it is not open to plaintiff to claim the outer limit rate fixed in the G.O. Both trial Court and appellate Court have held that as the contract is concluded between the parties at the rate of Rs.300/- per metric tonne, the amended rate cannot be clamed by plaintiff. I do not find any wrong in the approach of trial court and appellate court in applying G.O.Ms.No.624, dated 16.12.1986 to the facts of the case. Both the Courts on facts concurrently held that the benefits of the said G.O. cannot be applied to plaintiff and those findings are based on

sound reasoning.

14. As seen from the material, I do not find any wrong appreciation of evidence and both the Courts have rightly refused to extend the benefit of GO Ms No.624, dated 16.12.1986 to plaintiff. Therefore, the substantial questions of law contended by plaintiff cannot be accepted as both the Courts rightly interpreted the language of G.O.

15. For these reasons, this Second Appeal is dismissed. No costs. Miscellaneous petitions, if any pending, in this Appeal shall stand closed.

S. RAVI KUMAR, J

Date: 11-02-2016.
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