

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

RSA No. 2725 of 2010(O&M)

Date of decision: January 11, 2016

Darayao Singh

-----Appellant

V/s

**Haryana Land Reclamation and
Development Corporation & another**

-----Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vivek Khatri, Advocate for the appellant.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1] Plaintiff-appellant has assailed judgment and decree dated 28.01.2010 passed by learned Addl. District Judge, Palwal, vide which judgment and decree dated 29.09.2008 passed by learned Civil Judge (Jr. Div.) Palwal, has been affirmed.

[2] Plaintiff filed the suit for declaration and permanent injunction as a consequential relief on the ground that plaintiff-appellant is a Manager in Haryana Land Reclamation and Development Corporation (hereinafter referred as "HLRDC"), which is State Government undertaking having its registered Office at SCO32-34, Sector 17C, Chandigarh and deals in

trading of fertilizers, pesticide and Zips etc. Plaintiff alleged that when he was posted as a Manager in the aforesaid Corporation at Palwal from 1998 to May, 2001, then in the year 1999, defendant No.1 demanded Adani DAP for sale through Branch Office of HLRDC at Palwal, vide letter dated 27.10.1999 with a condition that supply of DAP to be made by M/s. Adani Exports Limited Ahmadabad upto 07.11.1999 positively because the sale of DAP fertilizers was a seasonal sale. The Adani Exports Limited supplied the said DAP fertilizers at Palwal on 24.11.1999. 1953 metric tonnes was supplied out of which 279.00 metric tonnes DAP for HALC at Palwal and 1674 metric tonnes for Branch Office of HLRDC at Palwal was supplied. Due to the late supply of said DAP, HALC refused to receive the said quantity of DAP, as the said quantity was also to be lifted by the HLRDC at Palwal. DAP fertilizers was to be sold by defendant No.1. In the meeting dated 17.04.2000 of defendant No.1, which is held at Hisar, it was decided that the old stock of DAP was to be sold @ Rs.415/- per bag to the farmers for five bags per farmer, as per central government policy. Since the supply was made late, it was decided that the interest upto 30.09.2000 has to be borne by M/s. Adani Exports Ltd.

[3] The plaintiff further alleged that the plaintiff along with his staff tried to sell out the huge quantity of said DAP fertilizers and also made various efforts including a request to defendant No.1 to grant permission for opening five other

temporary sale points in the area of Palwal, as it was difficult to sell huge quantity of said fertilizers. In this regard, plaintiff wrote a letter dated 12.09.2000 to defendant No.1, but the proposal of the plaintiff was declined.

[4] Plaintiff also submitted that he made best efforts to sell out the stock of said fertilizers through munadi in the area of villages around the Palwal and also by way of advertisement in newspapers as well as by way of distributing pamphlets. Plaintiff further submitted that despite his sincere efforts to sell the fertilizers, defendant No.1 imposed a recovery of interest of balance quantity of the said fertilizers, in which 50% of the interest of total amount of Rs.3,13,584/- was to be paid by the plaintiff and 50% was to be paid by the Asstt. Manager, HLRDC at Palwal, vide order dated 02.05.2001. Thereafter, the entire payment of interest was imposed against the plaintiff. Hence, the plaintiff has challenged the imposition of amount towards interest in this Civil Suit.

[5] The suit was contested by the defendants on all counts. On merits, it has been admitted that M/s. Adani Exports Limited, Ahmedabad had supplied two rakes of DAP fertilizers one for Kaithal and one for Palwal during Rabi 1999-2000. Both the rakes were to be received in the first week of November, 1999. The company could not supply the rakes in time and the said DAP was received at Palwal on 24.11.1999 at the fag end of the season. Therefore, defendant No.1 did not accept the

material and to avoid demurrage, the management decided to take the delivery of the rakes at the expenses of supplier.

[6] Defendant alleged that the plaintiff assured that all the material would be sold by end of June, 2000, as confirmed by the Superintending Engineer in his note dated 15.03.2000. The plaintiff could not sold entire stock of DAP and could sold only 1466.750 metric tonnes of DAP upto Rabi 2000-2001 and left out stock was 503.75.

[7] A show cause notice was issued to the plaintiff on 07.02.2001, wherein he was asked to explain as to why the interest of Rs.3,13,384/- in respect of 503.75 metric tonnes of DAP for the period from 01.10.2000 to 31.01.2001 be not recovered from him in the first instance. The reply of the plaintiff was not found satisfactory and the plaintiff was held responsible for causing blockage of inventory on DAP. Due to late supply of said fertilizers, it was decided by the defendant-corporation that interest upto 30.09.2000 was to be borne by M/s. Adani Export Limited, Ahmedabad.

[8] Initially the loss of interest was to be apportioned in the ratio of 50:50 against the plaintiff and Sh. Meer Singh, Asstt. Manager, but later on the entire recovery of interest amounting to Rs.3,13,384/- was decided to be recovered from the plaintiff in view of the decision dated 01.05.2001, which was got approved from the Board of Directors.

[9] On the basis of pleadings of the parties, following issues were framed vide order dated 11.12.2003.

(1) Whether the plaintiff is entitled for decree for declaration to the effect that letter dated 02.05.2001 and 17.07.2001 are illegal, null and void if so its effect? OPP

(2) Whether the present suit is not maintainable for want of notice under Section 80 CPC? OPD

(3) Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

(4) Whether ad valorem court fee has been paid or not? OPD

(5) Relief.

[10] Thereafter, both the parties led evidence. Issue No.1 was of paramount consideration. The plaintiff assailed the letters dated 02.05.2001 and 17.07.2001 in the suit being illegal, null and void. Defendants alleged that despite sufficient time given to the plaintiff, he could not sell out remaining 503.75 metric tonnes of DAP and therefore, corporation has to pay interest to the bank, which is to be recovered from the plaintiff, as he was posted as Manager at the relevant time. The defendants also alleged that principle of natural justice has been compiled with and a show cause notice was issued, which was duly replied by the plaintiff and, thereafter, personal hearing was also given to the plaintiff.

[11] Trial Court decided issue No.1 against the plaintiff. The suit was held maintainable even in the absence of notice under Section 80 CPC and issues No. 3 and 4 were not

pressed by the defendants. Resultantly, the suit was dismissed, vide judgment and decree dated 23.09.2008, passed by Civil Judge, (Jr. Div.) Palwal.

[12] Feeling aggrieved against the aforesaid judgment and decree, the plaintiff filed appeal before the Lower Appellate Court and the same has also been dismissed, vide judgment and decree dated 28.10.2010. The Lower Appellate Court also commented upon the conduct of the appellant for not disclosing as to whether he has filed any appeal against the order of Managing Director or not? On the assurance of the plaintiff, the time was extended upto 30.09.2000 for the sale of the entire stock. The recovery imposed upon the plaintiff was on account of internal administrative matter and the Courts are only obliged to see whether principles of natural justice have been complied with or not and there was proper observance of procedure of law.

[13] The plaintiff admitted that a show cause notice was issued to him by the Managing Director before the penalty was imposed upon him. A reply was filed by him and an opportunity of hearing was afforded to him during enquiry. The plaintiff during his cross-examination had admitted that an appeal against the said order was filed before the Chairman. In the first breath, he stated that he did not file any appeal and further stated that he did not do so because nobody was ready to hear such appeals which have never been decided by the Chairman.

When he was asked to recall whether he had filed any appeal before the Chairman on 29.08.2001, the plaintiff replied that he does not remember if he had done so.

[14] The Lower Appellate Court while commenting upon the conduct of the plaintiff observed that he was not even prepared to make a true statement with regard to representation filed by him before the competent authority and was also not concerned about the facts of the same.

[15] In those set of circumstances, the Lower Appellate Court did not find any ground to interfere in the appeal, as the alternative remedy was available to the plaintiff which was not availed by him in terms of Section 41(h) of Specific Relief Act, 1963, and, therefore, the appeal was dismissed.

[16] The plaintiff has formulated following substantial questions of law at ground No.11 of the grounds of appeal filed in this Court:-

(i) *Whether, the penalty imposed upon the appellant by the respondent no.1 vide its letter No. HLRDC/Accounts/12 (27)/2408G, dated 2.5.2001 is justified, when it is proved on record that delay of supply of DAP fertilizers caused by M/s. Adani Exports Limited?*

(ii) *Whether the efforts made by the plaintiff/appellant for sale of DAP fertilizers can be ignored, while imposing the penalty upon him?*

(iii) *Whether the statement and admission made by DW1 can be ignored in regard to the sale of DAP fertilizers, in the previous years as well as in*

the year, on which the plaintiff/appellant held liable for the alleged occurrence?

(iv) Whether the respondent no.1 has acted in a illegal and arbitrary manner, while imposing penalty upon the plaintiff/appellant when the delay caused only by M/s. Adani Exports Limited, for late supply of DAP fertilizers?

(v) Whether both the courts below have totally misread and misinterpret the evidences on the record?

[17] I have heard learned counsel for the appellant.

[18] Learned counsel for the plaintiff has vehemently argued that the imposition of penalty towards interest is totally unfounded, as the plaintiff made every effort to sell the DAP fertilizers even by seeking permission for opening additional sale points, but the same was refused by defendant No.1 and entailed in the deficit, which according to him was not a deficit in terms of target of 1500 metric tonnes, as fixed for Palwal. Learned counsel even relied upon Ex.D2, proceedings of the meeting, wherein, as per para 3, the following recitals was made on 15.03.2000.

“Out of these two rakes, a quantity of 2100.735 MT has been received by Manager, Kaithal and a quantity of 1912.20 MT by Manager, Palwal. These Managers have a demand of only 1,000 MT & 1500 MT of DAP respectively for sale in June 2000.....”

[19] Learned counsel for the plaintiff also argued that capacity through out Haryana in different yards/centers is

different. In case of Palwal, the demand was only to the tune of 1500 metric tonnes and this demand was fixed sale target which was to be achieved by the plaintiff in the Corporation at Palwal. The plaintiff had sold out 1466.750 metric tonnes DAP upto Rabi 2000-2001 and in this way stock of 503.75 metric tonnes was left out without sale. He also argued that according to the capacity and demand of 1500 metric tonnes, the amount of DAP sold upto Rabi 2000-2001 was fully justified in consonance with the requirement and the plaintiff has been victimized. It is nowhere prescribed whether demand was ever raised by the plaintiff or defendant No.1 for Palwal. Since the supply was made only on 24.11.1999, i.e. the sowing season of wheat had already gone, in which DAP fertilizers should have been utilized, therefore the next season was of Rabi 2000-2001 that came in May-June, 2000 and, therefore, the selling of DAP to the tune of 1466.750 metric tonnes upto Rabi 2000-2001 should not have been treated to be insufficient particularly when demand was only 1500 metric tonnes for Palwal.

[20] Learned counsel for the plaintiff-appellant also relied upon Ex.P-20 and P-22 and the news cuttings in the context showing the target to be 1500 metric tonnes only. He further relied upon examination-in-chief of DW-1 S.P. Sharma, Regional Manager, HLRDC, wherein he had admitted that the supply of DAP was made late at the fag end of the season and the plaintiff assured that he would sale the entire material by the

end of January, 2000 i.e. within two months. The aforesaid fact was certified by the then Superintending Engineer in his note dated 15.03.2000. The aforesaid assurance was not fulfilled by the plaintiff, as he could not sell the required stock of fertilizers up to 30.09.2000 and a show cause notice issued to the plaintiff by defendant No.1, thereafter, imposition of penalty of Rs.3,13,584 for the period from 01.10.2000 to 31.01.2001 be ordered to be paid by the plaintiff.

[21] In the affidavit, proceedings in terms of Ex.D2 have been attested which prescribes the demand at Palwal only on 1500 metric tonnes of DAP. DW-1 while appearing in cross-examination had admitted that the said DAP was received at the end of November, 1999 and quantity was of 1953 metric tonnes. The said witness had admitted that at Palwal Center, the sale of fertilizers made in 2001-2002 was unprecedented and no center in Haryana could match that. The said witness also admitted that the plaintiff had requested vide letter dated 20.09.2000 for seeking permission for opening of other sales centers which was rejected by then Superintending Engineer on 08.10.2000, as per Ex.PX.

[22] In view of the aforesaid, learned counsel for the plaintiff assailed that the interest should not have been imposed upon the plaintiff, as the plaintiff has made all sincere efforts to sell the said DAP fertilizers.

[23] On the other hand, learned counsel for the respondent-defendant has argued that filing of suit without availing departmental remedy is not maintainable and the suit is liable to be dismissed on this very score alone. Even the conduct of the plaintiff was not aboveboard in view of his evasive conduct. The scope of civil suit is only to see that there is no infraction to rule and procedure while proceeding against the plaintiff departmentally. The departmental enquiry was held in which the plaintiff was afforded opportunities of hearing, he himself appeared as witness and admitted that a show cause notice was issued to him by the Corporation which was duly replied. Plaintiff had also admitted that he was having remedy of filing appeal against the order of Asstt. Manager instead of filing the appeal, he preferred to file civil suit. Even the conduct of the plaintiff has been highlighted by the Lower Appellate Court in the context of filing or non-filing of departmental appeal.

[24] I have examined the matter with reference to material shown before the Court. From the perusal of proceedings dated 15.03.2000, I have found that the demand of fertilizers at Palwal was only 1500 metric tonnes of DAP which was to be sold by the end of June, 2000. The supply was made late on 24.11.1999 by that time the season for sowing crop had virtually gone, therefore, only Rabi crop was left in which the sale of fertilizers was to be made. As against the demand of

1500 metric tonnes, the supply made at Palwal was of 1953 metric tonnes out of which plaintiff had sold stock of 566.750 metric tonnes, which was marginally short of demand stock of 500 metric tonnes, as per material on record in the form of Ex.D2, showing the demand of 1500 metric tonnes, as per the proceedings of the department.

[25] The aforesaid aspect of the matter has not been dealt by both the Courts below with reference to affairs of Ex.D2, Ex.P20 and Ex. P22. The statement of DW1 if led from the examination-in-chief brought out the fact that despite the supply was made on 24.11.1999, assurance of the plaintiff was obtained to sell out the entire stock by end of January 2000 and this fact was certified by the then Superintending Engineer in his note dated 15.03.2000. A show cause notice of recovery of Rs.3,13,384/- was made for the period from 01.10.2000 to 31.01.2001.

[26] A perusal of the record did not point out as to whether demand of Palwal Center of HLRDC was ever raised beyond 1500 metric tonnes. When stock was to be sold upto 30.06.2000 then how the amount of Rs.3,13,384/- has been imposed as interest on the stock of 503.75 metric tonnes for the period from 01.10.2000 to 31.01.2001. These things have been pleaded by defendant No.1 in paras 3 and 4 of the affidavit filed in examination-in-chief which according to this Court are beyond comprehension. It has not been brought from the

findings of the Court that up to what date, the entire stock of 1953 metric tonnes had been taken into consideration while imposing penalty in the form of interest of remaining left out stock. Whether left out stock to the tune of 503.75 metric tonnes as on 30.06.2000 can be assessed in the light of demand at Palwal only that on 1500 metric tonnes. Interpretation arising out of Ex.D2 and the evidence led in respect of circulation and publication vide Ex.P20 and P22 have not been taken into consideration by the Courts below while returning findings under issue No.1. Even if no departmental appeal has been preferred by the plaintiff, still the illegality which crept in during departmental proceedings, can be entertained in the civil suit, because that would be taken to be an infraction in the procedure and violation of natural justice. To that extent interference can be made if material facts had not been considered by the authorities as well as by the Court while deciding with reference to evidence on record. Apparently, there was no fixed sale targets through out the State of Haryana, as per Ex.D2. The supply made at Palwal Center was beyond the demanded capacity of 1500 metric tonnes. If the supply made at Palwal was beyond the demand, then how the excess supply made can be attributed to the plaintiff who had sold 1466.750 metric tonnes out of total demanded capacity of 1500 metric tonnes, Since the total supply made at Palwal was of 1953 metric tonnes, therefore, question arises whether for the excess

supply, the plaintiff could be penalized in case of his failure to sell out the total supply which according to the examination-in-chief of Sh. S.P. Sharma, Regional Manager, HLRDC (DW-1) was to be done at the end of January, 2000 and the Manager was supposed to sell the entire stock up to 30.06.2000. A perusal of the record does not show any such finding recorded by the trial Court as well as by the Lower Appellate Court while deciding the relevant issue.

[27] Secondly, whether the inability of the defendant-Corporation and of the Courts below in not appreciating the capacity of Palwal station to be that of 1500 metric tonnes, as against the total supply of 1953 metric tonnes and sale of 1466.750 metric tonnes, would amount to illegality and infraction of law and procedure of the nature requiring interference by the civil suit under Section 9 of the Code of Civil Procedure.

[28] In view of the aforesaid, I am of the view that trial Court can be obligated to decided the suit in terms of evidence on record specifically dealing with the capacity demanded at Palwal station with reference to total supply made and inability of the plaintiff to sell the entire stock. In view of the total assessment, findings need to be given by the trial Court as to whether plaintiff has still committed a misconduct and sold out the entire stock, as against the total capacity of Palwal station.

The trial Court is also required to give finding whether the

capacity of Palwal was ever examined with reference to any material on record? However, out of total supply of 1953 metric tonnes as per the case of the department itself 279 metric tonnes was meant for HLSC, who ultimately refused and that was credited in the capacity of HLRDC at Palwal. The trial Court shall also decide the factum of late receipt of supply on 24.11.1999, particularly when at the time of fixation of the capacity of the centre, likely utilization of DAP fertilizers in view of season of sowing wheat crop was in offing.

[29] With the aforesaid reasoning, I remand this case to the trial Court for decision on merits after giving necessary findings under issue No.1 after considering the material on record. In the light of the aforesaid, I set aside the impugned judgment and decrees passed by the Courts below and remand this case to the trial court to decide the case afresh after taking into consideration the facts, as discussed in preceding paras of the judgment.

[30] Parties are directed to appear before trial Court on 11.02.2016.

(RAJ MOHAN SINGH)
JUDGE

January 11, 2016
Anjal