

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 10th, 2016

1. RSA No. 2183 of 2011 (O&M)

Food Corporation of India, District Office, Karnal

...Appellant

Versus

M/s Bajrang Bali Rice Mills, Pingli Road, near FCI Godown, Karnal & others

...Respondents

2. RSA No.2733 of 2011 (O&M)

Food Corporation of India, District Office, Karnal

...Appellant

Versus

M/s Siri Ganesh Rice and General Mills, Outside Shiv Puri Road, Karnail & others

...Respondents

3. RSA No. 2224 of 2011 (O&M)

Food Corporation of India, District Office, Karnal

...Appellant

Versus

M/s Goyal Rice Mills, Jundla Gate, Karnal & others

...Respondents

4. RSA No. 2600 of 2012 (O&M)

Mittal Trading Company, 5250, Anaj Mandi, Ambala Cantt & others

...Appellants

Versus

Food Corporation of India

...Respondents

5. RSA No. 2645 of 2012 (O&M)

M/s Sumit Trading Co.Village Khuda Khurd, Jagadhri Road, , Ambala Cantt & another

...Appellants

Versus

Food Corporation of India

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Ravi Kant Sharma, Advocate,
for the appellant in RSA Nos.2183, 2224 and 2733 of 2011 &
for the respondent(s) in RSA Nos.26000 and 2645 of 2012.

Mr.Munish Kumar Garg, Advocate,
for the appellant in RSA No.2645 of 2012.

Mr.C.B.Goel, Advocate,
for the appellant in RSA No.2600 of 2012.

Mr.V.K.Jindal, Senior Advocate with
Mr.Maninder S.Punia, Advocate,
for the respondents in RSA Nos.2224, 2733 and 2183 of 2011.

AMIT RAWAL, J.

By this order, I intend to dispose of five Regular Second Appeals bearing No.2183, 2733, 2224 of 2011, 2600 and 2645 of 2012 as the common questions of law and facts involved in all these appeals are the same.

RSA Nos.2183, 2733 and 2224 of 2011 are at the instance of the Food Corporation of India (for short "FCI") against the judgments and decrees, whereby the suits filed against the millers at Karnal have been dismissed and RSA Nos.2600 and 2645 of 2012 have been filed by the Millers against the judgments and decrees, whereby the suits filed on behalf of the FCI by invoking the jurisdiction of Court at Ambala, have been decreed. The facts are being taken from RSA No.2183 of 2011.

The FCI filed a suit for recovery of 1,04,39,643.60P against the defendants through District Manager, District Office, Karnal, who has been authorised by the Zonal Manager and Principal Officer of FCI to file the suit

on its behalf on the premise that it invited offers for storage-cum-milling of

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High Court Chandigarh

FCI paddy received from Punjab region in February, 1995. It has been alleged that as per letter dated 7.2.1995, defendant offered to shell 50000 quintals of paddy on terms and conditions to be determined and arrived at by the FCI and also deposited a sum of 10,000/- as earnest money along with offer. It has further been pleaded in the plaint that the FCI, vide telegram dated 21.2.1995, conveyed the acceptance of offer of the defendant firm.

Mr.Ravi Kant Sharma, learned counsel appearing on behalf of the appellant-FCI submits that the findings rendered by both the Courts below in dismissing the suit are not only illegal but perverse, much less arbitrary and fallacious as the Courts below have not examined the contents of the acknowledgment, referred above, because as per the provisions of Sections 10 and 19 of the Contract Act, 1872, acceptance of the counter offer is a concluded contract and in support of his aforementioned submission, relied upon the judgment rendered by the Bombay High Court in **Claridges Infotech Pvt.Ltd. Versus Surendra Kapur and Ors., 2009 AIR (Bombay) 1**. He further submits that the miller had given an undertaking to shell the unmilled paddy as the Millers in the State of Punjab had gone on strike for not lifting and storing the paddy from the procurement agencies and owing to the shortage of places/space, the paddy was stored in the mills located in Haryana State, close to the border of Punjab for the purpose of custom milling, thus, in the absence of formal agreement having entered into would not entail into dismissal of the suit on the ground that there was no contract. It is a matter of record that sufficient amount of paddy in quintals was stored at the mill of the defendant and other millers and this fact was also acknowledged through various

documents. The news item published in the Newspaper is not admissible in evidence and, therefore, the Court could not have taken the cognizance. The oral agreement entered into between the parties is a concluded and binding contract.

The suit had been dismissed on two grounds, (i) there was no concluded contract between the parties; and (ii) the suit was not filed by the duly authorised Principal Officer as per the provisions of Order 29 Rule 1 CPC.

He further submits that in view of the law laid down in the judgment rendered in **Central Bank of India Versus Tarseema Compress Wood Manufacturing Company and others, AIR 1997 Bombay 225**, any person having been authorised by the competent authority is not only competent to sign the plaint, but can also appear in the witness box. As per the memorandum of the suit, the same had been filed through the District Manager, who had been duly authorised by Zonal Manager and this proposition of law has also been upheld by the Hon'ble Supreme Court in **United Bank of India Versus Naresh Kumar and others, 1997 AIR (SC) 3**.

The news item (Ex.DW1/A) published in "Indian Express" dated 16.11.1995 was with regard to the allotment of paddy stock for the purpose of milling at Karnal. The aforementioned news item could not prevail upon the judicial mind to form an opinion contrary to the oral and documentary evidence placed on record. The Courts were enjoined upon an obligation to decide the issue raised before it seeking recovery of the substantial amount on the preponderance of the oral and documentary evidence. The steps taken, acts done and conduct of the respondents

indicate the intention of putting their hands together and steps taken in furtherance to the acceptance of contract, so mere non-execution of the agreement would not entail to the adjudication of the dispute and, thus, urges this Court to formulate the following substantial questions of law:-

- a) Whether a suit filed by duly authorized 'Principal Officer' of the Corporation under Order-29 Rule-1 CPC read with Section 37 of the Food Corporation Act 1964 be considered to be a properly constituted & properly filed civil suit?
- 2) Whether the News items published in the news paper are admissible under Evidence Act when such reports can not take the place of rigors of Evidence Act and procedural mechanism to prove an actual fact?
- 3) Whether oral agreement entered into between the parties and in furtherance there to steps taken to perform the contract so agreed would amount to binding contract between the parties?

Mr.V.K.Jindal, learned Senior Counsel assisted by Mr.Maninder S. Punia Advocate, appearing on behalf of the respondents in RSA Nos.2224, 2733 and 2183 of 2011 submits that similar suits were also instituted in various Courts, but the same came to be dismissed and one of the matter reached this Court in Regular Second Appeal No.4793 of 2014 titled as "Food Corporation of India Versus M/s Parshada Mal Mukandi Lal and others", decided on 7.9.2015 and this Court, after discussing the entire evidence threadbare, formed an opinion that there was no concluded agreement between the FCI and the millers for storing the paddy. There was

no privity of contract between the parties and the paddy stored at the premises of miller was within the domain of the FCI and it was the liability of the FCI to keep the paddy in the safe condition and prevent the damage, so that it might not affect the proper shelling/milling. He further submits that the FCI had also got the area insured from the insurance company and invoked the jurisdiction of the National Consumer Disputes Redressal Commission, New Delhi by filing Original Petition No.255 of 1999 titled as “Food Corporation of India Versus M/s New India Assurance Co.Ltd., but the Commission dismissed the petition, while arriving at a finding that the paddy had already been damaged when the insurance policy was obtained. He further submits that both the Courts below, after examining the evidence in extenso, formed an opinion that there was no privity of contract and in the absence of the contract, alleged acknowledgment would not foist the status of the parties as part to the contract. The alleged acknowledgment reveals that the millers had come to the rescue of the FCI for storing the paddy owing to the refusal of the millers in the State of Punjab to lift the paddy for the purpose of custom milling, in essence the object and aim behind the acknowledgment was only for the purpose of storing and not shelling. No Government agency, without having entered into an agreement/contract, offers or entertains substantial quantity of paddy for custom milling. Even otherwise, where the millers enter into a contract for the purpose of custom milling of the rice, they are required to execute the bank guarantee and also to pay the security. No steps were taken by the Corporation in this regard, therefore, rightly so, the Courts below have dismissed the suits.

Mr.C.B.Goel, learned counsel appearing on behalf of the

appellant in RSA No.2600 of 2012 submits that both the Courts below have committed illegality and perversity in decreeing the suit despite the fact that there was no privity of contract and heavily relied upon the alleged agreement. He adopts the arguments submitted on behalf of Mr.Jindal appearing on behalf of the mills/millers located at Karnal and, thus, urges this Court to formulate the following substantial question of law for determination by this Court:-

- 1) Whether in the absence of any concluded contract/ privity of contract between the millers and the FCI, suit for recovery is maintainable or not?
- 2) Whether the Courts below have misread the documents and the findings are accordingly misplaced by heavily relying upon the alleged acknowledgment amounting to perversity?

Mr.Jindal has also relied upon the judgment rendered in **M/s Rickmers Verwaltung GmbH Versus Indian Oil Corporation Ltd., 1991 (1) R.C.R. (Civil) 379** to contend that the draft agreement or the negotiation between the parties, would not be construed concluded contract between the parties. He has also cited the judgment rendered in **Food Corporation of India Versus Baldev Kaur and others, 1981 AIR (Punjab) 113**, wherein it has been held that the District Manager of the Food Corporation is not empowered to conduct the case on behalf of the Corporation and the Civil Revision was dismissed.

Mr.Ravi Kant Sharma, in rebuttal, has also relied upon the judgment rendered by the Hon'ble Supreme Court in **Kollipara Sriramulu (dead) by his legal representative Versus T.Aswatha Narayana (dead) by his legal representatives and others, AIR 1968 Supreme Court 1028**

to contend that where the person had shown the wish and intention, formal agreement drawn up cannot be said to be not bound by the offer and acceptance.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the submissions of Mr.Ravi Kant Sharma, whereas there is force and merit in the submissions of Mr.C.B.Goel and, thus, the appeals filed on behalf of the FCI are liable to be dismissed and that of the millers are liable to be allowed on the following grounds:-

- 1) It is undisputed that no formal agreement/contract had been entered into between the millers and the FCI. The contract/agreement envisages various exigencies in the shape of conditions, much less an arbitration clause in case of any dispute;
- 2) The agreement also envisages certain acts to be performed on behalf of the millers, i.e., furnishing of security/advance and bank guarantee. It is a matter of record that no such bank guarantee or security, at any point of time, was submitted by the miller. The FCI had failed to place on record any receipts vis-a-vis supply of the paddy, much less any GR or gate passes to this effect;
- 3) The FCI has failed to plead the ingredients of Section 107 of the Contract Act, which deals with trade usage. Had there been such pleading, perhaps the plea of FCI had some force vis-a-vis the offer and acknowledgment, but in the absence of such pleading, the aforementioned evidence cannot

be looked into;

4) A perusal of letters dated 23.2.1995 (Ex.D15), 29.1.1997 (Ex.D16), 27.9.1996 (Ex.D19) and 7.2.1998 (Ex.D21) indicate that there was no contract. There is prescribed proforma for having entered into a contract with the Government agencies and millers. In fact, the FCI had dumped a huge stock of paddy owing to the decision of the millers not to lift the paddy for the purpose of custom milling, for, open space in the mill is always used as a dumping/stock of paddy on behalf of the procurement agencies. In fact, storage of paddy is on account of procurement agencies. Even, numerous letters have been placed on record on behalf of the defendants requesting the FCI to lift the paddy from the premises as the paddy was in bad and dilapidated condition and this fact has also been noticed by the National Consumer Disputes Redressal Commission, New Delhi in its order dated 3.8.2004 passed in Original Petition No.255 of 1999, where there has been categoric finding that damage to the paddy had already occurred prior to 31.8.1995, i.e., the date of the policy and, thus, the acceptance of premium by the insurance company disentitled the Corporation to lodge the claim;

5) PW-2 Bal Kishan admitted that there is special proforma of agreement (Ex.D23) for milling and storing of the paddy. He also admitted that no terms and conditions were settled with the defendants with regard to the milling-cum-storage. He, in the cross-examination, admitted that no agreement was scribed

between the miller and the FCI and the goods mentioned in Ex.P1 were checked by quality control staff and when Ex.P1 was executed, the aforementioned paddy was not checked by him nor it was checked in his presence. He admitted that Ex.P1 was issued after the paddy had already been stored and the storage of the paddy was also checked by him. He further admitted that the FCI, after lifting the paddy from the defendants' premises, did not get milled from any other rice sheller, rather the paddy was sold by inviting tenders. The said paddy was stored on kacha floor of the mill. There were no wooden crates and wooden planks. Thus, in my view, the FCI has failed to lay foundation in seeking the recovery of the amount in all the suits, therefore, the judgments and decrees rendered qua recovery of amount in RSA Nos.2183, 2733 and 2224 of 2011 are hereby affirmed and the judgments and decrees rendered in RSA Nos.2600 and 2645 of 2012 are hereby set-aside;

6) As regards the finding of the Court below with regard to the competency of the District Manager in instituting the suit, I am of the view that such finding is not in consonance with the provisions of Order 29 Rule 1 CPC as it has been held that any person authorised on behalf the Corporation can depose or sign the plaint. The memorandum of the plaint clearly shows that the suit had been filed through District Manager, who had been duly authorised by the Zonal Manager and Principal Officer of the FCI. In order to lend support to my observation, I rely upon

the judgment rendered by the Hon'ble Supreme Court in AIR 1997 SC 3.

Keeping in view of the aforementioned facts and circumstances, question No.1 framed on the request of Mr.Ravi Kant Sharma is answered in favour of the appellant-plaintiff-FCI in RSA Nos.2183, 2733 and 2224 of 2011 and against the respondent-defendants, whereas questions No.2 and 3 are answered against the appellant-plaintiffs and in favour of the respondent-defendants.

The questions of law framed on the request of Mr.C.B.Goel are answered in favour of the appellant-plaintiffs in RSA Nos.2600 and 2645 of 2012 and against the respondent-FCI.

Accordingly, RSA Nos.2183, 2733 and 2224 of 2011 are dismissed, whereas RSA Nos.2600 and 2645 of 2012 are allowed.

May 10th, 2016
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(AMIT RAWAL)
JUDGE