

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

C.M.No.1629-C of 2016 in/and
RSA No.4448 of 2011 (O&M)
Date of decision:24.02.2016

Food Corporation of India and another ... Appellants

Vs.

Harbans Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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. K.K.Gupta, Advocate
for the applicant/appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.1629-C of 2016

For the reasons stated in the application, duly supported by an affidavit, order dated 28.01.2016 is recalled and the appeal is restored to its original number.

C.M. stands disposed of.

RSA No.4448 of 2011 (O&M)

The appellant-defendants are aggrieved of the judgment and decree dated 14.05.2011 rendered by the Lower Appellate Court, whereby, suit for recovery of ₹50,95,607.75 along with interest @ 7 ½

per annum, has been decreed by setting aside the judgment and decree of the trial Court which has dismissed the suit.

Mr. K.K.Gupta, learned counsel appearing on behalf of the appellant-defendants submits that suit was filed on 11.11.1997 for having allegedly done work from 07.10.1994 to 11.11.1994 without any written contract or issuance of work order, non production of payment register and witnesses, thus, there is no proof of any work executed. Neither any witness from the office of the miller examined nor the department granted any sanction for issuance of the work. The Lower Appellate Court has relied upon the testimony of PW1, retired employee, who, without any record, deposed that work was got undertaken from the respondent-plaintiffs, contractor. The limitation to file suit is three years, whereas, suit has been filed on 11.11.1997, thus, it is barred by one day. All these factors raised but the Lower Appellate Court failed to determine the points of law, much less, examined the witnesses and formed different opinion from the trial Court which is not only perverse but also erroneous, thus, substantial question of law arises for adjudication of the present appeal. He further submits that as per the provisions of Section 101 of the Indian Evidence Act, the respondent-plaintiffs failed to discharge the onus. In support of his aforementioned contentions, he relies upon the judgments of the Hon'ble Supreme Court in **Punjab Urban Planning and Dev. Authority vs. M/s Shiv Saraswati Iron & Steel Re-Rolling Mills 1998 (4) SCC 539** and **Rangammal vs.**

Kuppuswami and another 2011(4) RCR (Civil) 251.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr.Santosh Sharma, Advocate appearing on behalf of the respondent-plaintiffs submits, that in pursuance to the dismissal of the writ petition bearing No.7414 of 1996, decided on 23.05.1996, the respondent-plaintiffs approached the Hon'ble Supreme Court by filing SLP bearing No.16055 of 1996 which was dismissed on 26.08.1996. The representation was made for claiming amount. The Food Corporation of India constituted a committee which gave fact finding report, vide Ex.P-10, which was held in the month of March, 1997 and thereafter, in June, 1997 and found that work had actually not got done from the contractor, but no formal order was passed. The aforementioned act of committee itself amounts to acknowledgment as per provisions of Section 18 of the Limitation Act, therefore, suit cannot be said to be barred by law of limitation. The aforementioned fact finding report of the committee itself led conclusive piece of evidence, thus, there is no need to lead separate fresh evidence in this regard and prays that no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and am of the view that there is no merit or substance in the appeal of Mr. K.K.Gupta, for the reasons that Ex.P10 and Ex.P25 are the reports of the committee which have surfaced after recording of the

evidence of the workers, concerned officials and employees of the miller. Even prior to the constituting of the committee, there was a negotiation *vis-a-vis* rate which is reflected from the perusal of the document dated 08.08.1995, Ex.P15. All these facts have irresistibly concluded that FCI had acknowledged not only making of the payment, much less, undertaking of work at the instance of the respondent-plaintiffs. The only advantage which the Corporation has or had been relying upon is the non-issuance of the work order, much less, execution of the agreement. In fact, I have come across many other cases where the contractors are invited to undertake the work with the assurance that agreement and work order will be issued at the subsequent stage, but thereafter, the concerned officer of FCI, who, is either transferred or do not honour the commitment which results dragging of the party to the Court. Such an action, in my view, is not appreciable and liable to be deprecated. Ex.P10, Ex.P25 of March, 1997 and June, 1997, these reports leave no manner of doubt that the respondent-plaintiffs had undertaken the work in the absence of any work order or agreement. All these facts have been noticed by the Lower Appellate Court, while decreeing the suit.

There is no dispute with regard to the ratio decidendi culled out in the aforementioned judgments cited by Mr. Gupta, but the fact remains that reports of the committee have been proved by the respondent-plaintiffs. No other evidence was required. In fact, Ex.P10, Ex.P15 and Ex.P25, itself tantamount to discharge the onus

as enshrined under Section 101 of the Indian Evidence Act. Thus, the findings of the Lower Appellate Court, *vis-a-vis*, execution of the work, is hereby, affirmed. However, on going through the operative part of the judgment rendered by the Lower Appellate Court, I am of the view that the principal amount contains the element of interest and again interest from the date of filing of suit till passing of the decree has been awarded which amounts to interest on interest, which is not permissible in law.

Accordingly, the judgment and decree of the Lower Appellate Court is modified and the suit is decreed for an amount of ₹ 41, 59, 679.98/- along with interest @ 7 ½ % per annum from the date of filing of the suit and future interest @ 6% per annum from 14.05.2011 till the actual realization.

With the aforementioned observations, the appeal stands disposed of.

**(AMIT RAWAL)
JUDGE**

February 24, 2016
savita