

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

R.S.A No.2318 of 2014 (O&M)

Date of decision : 26.04.2016

Punjab State Warehousing Corporation, Chandigarh and another

..... Appellants

Versus

M/s Luxmi Industries Jalalabad

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vikas Singh, Advocate
for the appellant.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-plaintiffs against the judgment and decree dated 11.10.2013 passed by the learned Additional District Judge, Ferozepur, whereby the appeal filed by them against the judgment and decree dated 21.02.2011 passed by the learned Additional Civil Judge (Senior Division), Ferozepur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.
3. Appellant-plaintiffs have filed the suit for recovery of Rs. 4,33,192/- along with interest *pendente lite* as well as future interest @ 30 % per annum on the grounds *inter alia* that in the year 1995-96,

10222 bags weighing 6628.70 qtls. of paddy common and 66279 bags weighing 42546.65 qtls. of superfine paddy of 'A' grade quality was entrusted to the respondent-defendant Miller for custom milling and delivery of rice in account of the plaintiff-Corporation up to 28.02.1996. Defendants were required to deliver the rice to the tune of 4507.52 qtls. of common quality and 28931.72 qtls. of superfine quality in the account of the plaintiffs in their Central Pool with the Food Corporation of India (for short 'F.C.I'). Instead of that the defendants delivered only 1500 bags weighing 1417.50 qtls. rice of common variety and 33070 bags weighing 31766.18 qtls. of fine variety rice to the FCI in the account of the plaintiffs. In that manner, the defendant failed to supply 3090.02 qtls. of common variety. But, they supplied 2834.46 qtls. of fine rice in lieu of the common rice. In this way, there was shortage of 255.55 qtls. of common rice, which caused a loss of Rs. 2,43,987/- to the appellants-plaintiffs. The defendant-respondent also did not returned the price of the gunny bags, did not pay the sale tax, the plaintiffs-Corporation also suffered loss of interest, stitching charges etc and total sum of Rs. 4,33,192/- was recoverable from the defendants. Hence the suit.

4. Defendant-respondent contested the suit on the grounds *inter alia* that the defendant had delivered the advance rice to the F.C.I and only thereafter, the paddy was released/supplied to the defendant. The defendant has denied any outstanding paddy/rice against the defendant. Rather, the defendant is to release around Rs. 10 lacs towards milling charges and Rs. 50,000/- against the quality difference.

5. From the pleadings of the parties, the following issues were

framed by the learned trial Court:-

1. Whether the plaintiff is entitled for recovery of suit amount from the defendant?OPP
 2. Whether the plaintiff is entitled for interest if so, at what rate? OPP
 3. Whether the present suit is false, frivolous and vexatious to the knowledge of the plaintiff and is liable to be dismissed?OPD
 4. Whether the suit is time barred?OPD
 5. Relief.
6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiffs-appellants, vide impugned judgment and decree dated 21.02.2011.
7. Aggrieved with the aforesaid judgment and decree, appellants-plaintiffs have preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 11.10.2013. Hence this Regular Second Appeal.
8. I have heard Mr.Vikas Singh, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.
9. Initiating the arguments, learned counsel for the appellants contended that the findings recorded by the learned trial Court that the suit filed by the appellants-plaintiffs was time barred have been reversed by the learned First Appellate Court. He further contended that from the statement of PW-1 V.K.Sethi, Junior Assistant, PSWC and the entire record produced by him, it was established that the paddy was entrusted to the defendant-respondent miller for milling. But, the defendant has not supplied the requisite quantity of rice to the FCI in the account of the

plaintiffs-Corporation. Thus, he contended that the appellant-plaintiffs are entitled to recover the suit amount along with interest from the defendant-respondent.

10. I have duly considered the aforesaid contentions.

11. The issue regarding limitation is a legal question. Learned trial Court has categorically held that the transaction relates to the year 1995-96 and the suit has been filed in February 2004. So, the suit was time barred. However, the learned First Appellate Court has reversed the findings of the learned trial Court simply on the ground that the plaintiffs being a State have limitation to file the suit. Accordingly, the suit was within limitation. It was also observed by the learned First Appellate Court that the arbitration proceedings were dismissed on 16.09.2003 and the suit was filed on 28.02.2004 i.e. within limitation. Learned counsel for the appellants has also pleaded that the suit is within limitation as the period spent in the arbitration proceedings has to be excluded under Section 14 of the Limitation Act, 1963 (for short 'Act').

12. This fact is not disputed that earlier the matter was referred for adjudication to the Arbitrator. But, the Arbitrator vide order dated 16.09.2003 has dismissed/declined the reference on the ground that agreement was not signed by both the parties. Thereafter, the suit has been filed. Section 14 (1) of the Act reads as under:-

“(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature,

is unable to entertain it.”

The aforesaid provision shows that in computing the period of limitation for any suit, the time during which the plaintiffs have been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain the suit. Here in this case, the plaintiffs-appellants have not been prosecuting any civil proceedings before any Court. They were only prosecuting the arbitration proceedings before the Arbitrator, which cannot be equated with the civil proceedings in a Court as Arbitrator is not a Court. Hence, the period spent in the arbitration proceedings cannot be excluded while computing the period of limitation under Section 14 of the Act. Moreover, in the plaint, the appellant-plaintiffs have nowhere mentioned as to when the arbitration proceedings started and how much period the appellant-plaintiffs are claiming to be excluded. This fact is not disputed that the transaction relates to the year 1995-1996 and the suit has been filed by appellant-plaintiffs for recovery on 28.02.2004 i.e. after about seven years. Whereas, the period of limitation for filing the suit for recovery is three years. So, the suit of the plaintiffs-appellants cannot be stated to be within limitation. The findings recorded by the learned First Appellate Court that as the plaintiffs are the State, so, the suit is within limitation, is totally perverse. Plaintiff no.1 is a Corporation and plaintiff no.2 is its Officer. Article 112 of the Limitation Act is only applicable to the suit filed by the Central

Government or any State Government. Admittedly, the plaintiffs are not the Central Government or State Government and they cannot be granted the benefit of Article 112 of the Act. Thus, the suit filed by the plaintiffs-appellants was barred by limitation.

13. On merits also the appellants have not been able to establish their case. It is settled principle of law that the plaintiffs cannot take the weakness of the case of the defendant. Plaintiffs have to prove their case by leading cogent and convincing evidence to claim the relief. In the instant case, the appellants-plaintiffs were required to establish the entrustment of the quantity of the paddy alleged in the plaint to defendant and the shortage in supply of rice by it. Learned counsel for the appellants has contended that the entire file has been produced in evidence by the appellants in the statement of PW-1 V.K.Sethi, Jr. Assistant, PSWC. But, mere production of the file will not prove the documents lying therein. The appellants-plaintiffs were required to examine the concerned officers, who have prepared those documents. PW-1 V.K.Sethi has admitted in the cross-examination that he never remained posted in the field nor he discharged any filed duty. He further admitted that the agreement between the parties was not prepared in his presence nor he was signatory thereto. He further categorically stated that he did not personally delivered the paddy to the defendant. He further admitted that none of the page contained in the file Ex.P-1 is signed by him nor executed in his presence. So, the documents lying in the file Ex.P-1 are not proved at all. This witness also had no knowledge about entrustment of the paddy to the defendant-respondent. He further deposed

in the cross-examination that he does not know if the corporation is yet to make payment regarding quality difference rice to the defendant. He could not deny that defendant is to receive Rs. 10 lacs from the plaintiffs-appellants on account of milling charges for the year 1995-96 as well as quality difference charges. He further stated that he does not know if the defendant is liable to pay on account of any gunny bag and sale tax. He further admitted that no notice was served upon the defendant regarding the quality cut imposed by the FCI. Thus, this witness has no knowledge at all with respect to the facts of the case. The statement of such a witness cannot establish as to how much paddy was entrusted to the defendant and what was the shortage in the supply of the rice by the defendant. As already mentioned, the documents lying in the file Ex.P-1 have not been proved in accordance with law as the concerned official who had prepared those documents has not been examined. So, those documents cannot be taken into consideration.

14. Consequently, the appellants have not been able to establish that they are entitled to the suit amount from the defendant.

15. Thus, keeping in view of my aforesaid discussion, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

April 26, 2016

s.khan

(DARSHAN SINGH)
JUDGE