IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.5282 of 2015
Date of decision: 25.01.2016

M/s Nissing Transport Company

... Appellant

Versus

Food Corporation of India & another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Munish Mittal, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

The appellant herein had instituted a suit for declaration to the effect that it is entitled for compound interest at the rate of 18% per annum, on an amount of Rs.88,014/- from 14.03.1990 to 01.09.2008 and further, for declaration that the order dated 17/23.04.2009, passed by the 1st respondent herein (defendant No.1 before the learned Civil Judge, Karnal), i.e. the General Manager of the Food Corporation of India, is null and void and not binding upon the appellant-plaintiff. The appellant further sought a direction to the respondents-defendants to release an amount of Rs.22,003/-, alongwith compound interest at the rate of 18% per annum, from 14.03.1990 till the date that the amount was actually paid to the appellant.

2. The background leading up to the filing of the suit was that the

appellant is stated to be a Company (actually a firm), engaged in transport business, that was allotted the work of lifting food grains from the godowns of the respondent Corporation up to the Railway head, for the period from 15.03.1988 to 14.03.1990.

Upon completion of the contract, the respondents cleared various bills raised by the appellant but deducted a sum of Rs.1,10,017/-, on the ground that it was to be so deducted towards payment into the Employees' Provident Fund. This deduction is stated to have been challenged by the appellant before the respondents themselves and eventually, on 01.09.2008, the respondents released a sum of Rs.88,014/-, vide a cheque drawn on the State Bank of India. Thus, out of the total sum of Rs.1,10,017/-, Rs.22,003/- was still not paid, which also was therefore sought to be released, by way of the suit instituted, alongwith interest on the entire amount of Rs.1,10,017.

The suit itself was instituted on 11.09.2009. The amount of Rs.22,003/- was withheld by way of deduction towards income tax paid, to the extent of 20% of the total amount payable.

3. Upon notice being issued by the Civil Judge (Jr. Division), Karnal, the respondents-defendants took a preliminary objection with regard to the suit being completely time barred and on merits pleaded that the amount of Rs.1,10,017/- was deducted on account of contribution to be made to the Employees' Provident Fund and that the appellant-plaintiff was required to submit a clearance certificate from the Employees' Provident Fund authorities, which it did not submit and eventually the amount was transferred to the income head of the Corporation.

The documents required to be furnished were only furnished by the appellant on 10.03.2008 and therefore, after deducting Rs.22,003/- by way of tax paid, the remaining amount of Rs.88,014/- was paid.

It was specifically pleaded that the appellant did not claim the amount for a long time and as such, the respondent had no other option but to transfer the amount to the income head of the Corporation.

The appellant served a registered notice only on 30.09.2008 and also filed a writ petition before this Court, which was disposed of vide order dated 04.02.2009, with a direction to the respondents to take cognizance of the claim raised by the petitioner through its legal notice and to dispose it off within a period of four months. Consequently, the 1st respondent, vide his order dated 17/23.04.2009, had rejected the claim of the appellant with regard to the payment of Rs.22,003/- on account of deduction by way of income tax, as also had rejected the claim for 18% interest from 1990 to 2008 (on the amount of Rs.88,014/- having been paid on 01.09.2008, as already noticed).

4. On a replication having been filed reiterating the claim in the suit, the learned Civil Judge framed the following issues:-

> "1. Whether the plaintiff is entitled for a decree for declaration as prayed along with mandatory injunction as prayed for? OPP
> 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
> 3. Whether the suit of the plaintiff is hopelessly time barred? OPD
> 4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
> 5. Relief."

5. Ishwar Chand Garg, through whom the appellant had instituted

the suit, showing him to be the proprietor/partner of the firm, appeared as PW1 and tendered his affidavit Ex.PW1/A, reiterating what had been stated in the plaint and also tendering a copy of the legal notice issued as Mark-A, postal receipt as Ex.P1, registered A.D. post as Ex.P2, a copy of a letter dated 10.12.2008 as Ex.P3, a copy of Civil Writ Petition No.1809 of 2009 as Ex.P4, a copy of the order passed in the aforesaid writ petition, dated 04.02.2009, as Ex.P5 and a copy of an order dated 25.05.2009 as Ex.P6.

Rajesh Kumar Gupta, Advocate at the District Courts, Karnal, was examined as PW2 and deposed that on 30.09.2008, a notice (exhibited as P-7) was sent by him on the instructions of the plaintiff (appellant) to the respondents. He also proved the postal receipt of the said notice as Ex.P1 and the registered A.D. post as Ex.P2.

PW3 was one Naresh Kumar Gupta, shown to be 'AGI' of the respondent Corporation. This witness proved the sanction order (with regard to the payment of Rs.88,014/-) dated 01.09.2008 as Ex.P8, the order dated 17/23.04.2009 (Ex.P9) and also a letter dated 26.08.2008 (Ex.P10).

Pardeep Batra, Legal Assistant in the office of the Employees' Provident Fund (Commissioner), Karnal, appeared as PW4 and deposed that a letter dated 28.10.1991 (Ex.PW4/A), was issued by his department and was placed in a case file, Mark-B.

Before closing the evidence of the plaintiff (appellant), counsel appearing for it tendered a copy of the partnership deed of the firm as Ex.P11 and a General Power of Attorney as Ex.P12.

6. The respondents-defendants examined only one witness, Baldev Raj, Manager, Accounts, of the Corporation as DW1, who tendered his affidavit Ex.DW1/A, reiterating the averments made in the written

statement and further deposing that he had brought the original letter dated 10.03.2008, an attested copy of which was tendered as Ex.D1. The original receipt of a return filed, was tendered by him as Ex.D2.

7. Having considered the evidence and the pleadings, the learned Civil Judge rejected the prayer for payment of interest at the rate of 18% per annum on the amount of Rs.88,014/-, on the ground that PW1, during cross-examination, had admitted that he had no proof with regard to any letter sent to the defendants for release of the outstanding amount, or any document by which he could show that any effort at all had been made to refund the said amount, prior to 10.03.2008. Thus, obviously, for a period of 18 years after the expiry/conclusion of the contract, on 14.03.1990, no efforts whatsoever were made by the appellant-plaintiff to even try and get released the amount withheld by the respondents.

However, as regards the amount of Rs.22,003/-, as was not paid out of the total amount of Rs.1,10,017/-, the said amount was held to be payable by the respondents to the appellant herein, on the ground that no evidence had been led by the respondents to show that the said amount was actually deducted by way of income tax and that the total amount due had been shown to be the balance unclaimed account added to the income of the Corporation.

8. Though nothing has been said in the judgment of the learned Civil Judge, with regard to payment of any interest on the aforesaid amount of Rs.22,003/-, it is obvious that that claim was also rejected, in view of the fact that the respondents-defendants were directed to only "reconsider the release of Rs.22,003/-", alleged to be deducted on account of income tax.

9. The issues, on the suit being time barred and the plaintiff being

estopped by its own conduct from filing the suit, were decided in favour of the appellant-plaintiff, as they were held to be not pressed by the defendants.

However, issue No.2, with regard to the maintainability of the suit, was held to be against the appellant-plaintiff and in favour of the respondents-defendants, on the ground that the plaintiff firm was not shown to be registered and as such, being an unregistered firm, a suit against a 3rd person was not maintainable, in terms of Section 69 of the Indian Partnership Act, 1932.

10. Consequently, the suit of the appellant was partly decreed, to the extent of the claim on the balance amount of Rs.22,003/-, though the direction issued was simply to reconsider the release of the said amount, as per rules.

11. The respondents herein, as also the appellant, both filed appeals against the judgment and decree of the learned Civil Judge (Jr.Division), Karnal, dated 15.01.2013, before the learned District Judge, Karnal, who, upon hearing the parties and considering the evidence, dismissed both the appeals.

The learned 1st appellate court held that the amount of Rs.1,10,017/- was to be refunded to the appellant by the respondents but it did not do so for a period of 18 years, till the appellant completed the formalities required, i.e. submission of a clearance certificate from the Employees' Provident Fund authorities, after which the amount of Rs.88,014/- was refunded.

That Court also noticed the orders passed by this Court in CWP No.1809 of 2009, filed by the appellant.

12. As regards the amount of Rs.22,003/- which the trial Court had held to be payable to the appellant, the District Judge agreed with the same, on the ground that the said amount was not the income of the department but admittedly was an amount to be refunded and since the major amount has been so refunded, upon receiving of the clearance certificate, the remaining amount could also not be held back, as an amount paid to the income tax department by the respondent Corporation, simply because the entire amount of Rs.1,10,017/- was shown to be the income of the Corporation itself, upon which it had paid the aforesaid amount as tax.

The accreditation by the Corporation, of the amount of Rs.1,10,017/-, under the head of its own income, thereby necessitating payment of tax on it, was held by the learned lower appellate court to be the fault of the Corporation itself and not of the appellant; hence, it was held that even if the said amount had been paid by the respondents by way of income tax, it did not alter the fact that the said amount was actually due to the appellant and as such, the trial courts' finding and decree in respect of refund of that amount, was upheld.

13. It needs to be noticed here that the said finding of the courts below, has not been assailed by the respondent Corporation before this Court, by way of any second appeal.

The finding on non-maintainability of the suit, in terms of Section 69 of the Indian Partnership Act 1932, was not touched upon by the 1st appellate court, seemingly not having been argued before that court.

Be that as it may, since the respondents have filed no appeal against the judgments and decree of the courts below, those issues are not to be gone into by this Court, in the present appeal.

14. Mr. Munish Mittal, learned counsel appearing for the appellant, submitted that the respondent Corporation having withheld the amount of Rs.88,014/-, for a period of 18 years, and an amount of Rs.22,003/- even till date, the appellant was fully entitled to interest on the same, once the courts below had come to a finding that the said amount was actually due to the appellant. Hence, rejection of the suit qua the component of interest, is an error in law that needs to be rectified by this Court.

15. Having heard learned counsel and having considered the judgments of the courts below, in the light of the evidence led by the parties, I find no ground to interfere with the rejection of the appellants' claim for interest, in the suit filed by it. It has been found as a matter of fact, on the basis of documents exhibited in evidence, as also on the basis of the cross-examination of PW1, that for 18 long years, till 10.03.2008, the appellant remained completely silent with regard to payment of the amount of Rs.1,10,017/- due to it. It was, in fact, to its good fortune that the respondents fairly, even after such a long period, decided to refund the amount of Rs.88,014/- in the year 2008. However, simply because the major part of the principal amount due was refunded to the appellant, does not entitle it to seek interest also on the same amount, after having taken no action to obtain the amount for almost two decades. Thus, as regards interest, the appellant must suffer for such inaction and consequently, I find absolutely no error in the judgments of the courts below in refusing to decree the suit of the appellant, qua the interest claimed by it on the aforesaid amount.

16. In fact, as regards the Rs.22,003/- further ordered to be refunded, on the ground that payment of income tax was made by the

respondent Corporation by showing the total amount of Rs.1,10,017/- to be its own income; that issue may otherwise have been considered if any appeal had been filed by the respondent Corporation. The same not having been done in the past 11 months since the judgment of the lower appellate court, in an appeal filed by the other party, this Court cannot consider that issue beyond the comment already made on it.

Further, it also seems strange that the Civil Judge having come to a conclusion that the suit itself was not maintainable, in view of what is contained in Section 69 of the Indian Partnership Act, 1932, the suit was still partly decreed, to the extent of directing the respondents to reconsider the release of Rs.22,003/- to the appellant.

However, to repeat, this not being an appeal by the respondents, assailing the aforesaid findings, nothing further needs to be said on that issue.

17. Consequently, in view of what has been discussed herein above, I find no merit in this appeal, which is accordingly dismissed *in limine*, with no order as to costs.

25.01.2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**