

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3214 of 2015

Date of decision:08.12.2017

M/s R.V.Rice Mills

... Petitioner

Vs.

The Punjab State Co-op Supply &
Marketing Federation Ltd. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.N.Malik, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate
for respondent No.1.

AMIT RAWAL J.

The petitioner-defendant No.2 is in revision petition challenging the order dated 22.04.2015 rendered by the Civil Judge (Junior Division), Dhuri, District Sangrur, whereby, application moved by the plaintiff-respondent No.1 to prove the alleged surety bonds by way of secondary evidence, has been allowed.

Mr.G.N.Malik, learned counsel for the petitioner/defendant No.2 submitted that on 01.09.2010, an agreement was executed between the petitioner and respondent No.2 - M/s T.S.Agro, vide which the rice sheller owned by the petitioner was given on licence to M/s T.S.Agro for the period w.e.f. 01.09.2010 to 31.08.2011, for the purpose of milling of paddy. Thereafter, respondent No.2-M/s T.S.Agro entered into an agreement dated 09.11.2010 with the plaintiff/respondent No.1 for milling of paddy and an

affidavit dated 10.11.2010 was furnished by the petitioner to the plaintiff/respondent No.1. It was specifically mentioned in the affidavit that if there was any default on the part of M/s T.S.Agro in supply of rice or paddy, then the petitioner-M/s R.V.Rice Mills would not be responsible for the same. The aforementioned affidavit was attested by Executive Magistrate, Dhuri and original of the same was submitted to plaintiff/respondent No.1 and photocopy of the same was retained by the petitioner.

He further submitted that the plaintiff/respondent No.1 instituted a suit arraying the petitioner as defendant No.1 claiming the following relief:-

“In the Court of Addl.Civil Judge (Jr. Div.) Dhuri

The Punjab State Co-op Supply & Mktg. Fed Ltd. Through its District Manager Sangrur. ..Plaintiff

Vs.

- 1. M/s T.S.Agro Maanwala Road, Dhuri through its Sole Prop.Sh. Navneet Single son of Sh. Navneet Singla son of Sh. Sanjiv Kumar residing at W.No.15-A/367/1 V.P.O Dhuri Distt. Sangrur.*
- 2. M/s R.V.Rice Mills, Benra Road, Maanwala, Dhuri through its partners Raksha Rani wife of Rajinder Kumar and Vijay Kumar son of Chiranji Lal both residents of Near Mintu Tent House, Dhuri.*
- 3. M/s Nagjoyti Rice Mills, Sultanpur through its Sole Prop.Vijay Kumar son of Dharam Pal resident of Malgodown Road, Opposite Papu Decorator, Dhuri.Defts.*

Suit for a decree of permanent injunction restraining the deft.no.2 i.e.M/s R.V.Rice Mills from alienating, mortgaging, transferring or dispossessing of property measuring 12 Bighas comprised in khata no.93/195 khasra no.226/6-5, 1177/227/5-

15 situated in the revenue estate of village Mannwala, Tehsil Dhuri as per jamabandi for the year 2007-08 and also restraining the deft. No.3 from alienating, mortgaging, transferring or dispossessing of the property measuring 11 bighas 5 biswas detailed as under:-

1) Land measuring 6 Bighas 13 biswas being 133/4545 share in land measuring 227 bighas 10 biswas in khata no.215/372 to 392 khasra nos.1228/0-8, 764/5-9, 765min/2-10, 766min/7-14, 767/6-5, 768/9-3, 770min/6-13, 771/6-5, 772min/5-2, 765/1min/0-6, 860min/4-4, 868/14-10, 869/7-14, 765min/2-0, 766min/0-4, 770min/2-0, 772min/2-12, 792min/4-3, 797min/5-7, 765/1min/0-4, 791/1/7-6, 793/7-18, 796/8-3, 797min/1-5, 798/6-18, 860 min/3-10, 861/6-0, 862/6-0, 864/7-15, 866/6-5, 867/6-5, 865/6-5, 641min/1-12, 643/6-13, 641min/3-0, 641min/1-13, 792min/2-3, 792min/1-15, 870min/4-13, 870min/3-7, 640min/3-6, 642/2-9, 769/8-13, 640min/2-4, 640min/2-0, 642min/1-0, 642min/1-0, 794/7-2, 863/7-9, 790min/1-0, 790min/0-6 situated in the revenue estate of village Sultanpur, Tehsil Dhuri.

II) Land measuring 3 Bighas 2 Biswas being 1/8 share in land measuring 24 Bighas 16 Biswas in Khata No.215/378 to 384 Khasra Nos.641 min/1-12, 643/6-13, 641min/3-0, 641min/1-13, 792 min/2-3, 792min/1-15, 870min/4-13, 870min/3-7.

III) Land measuring 1 Bighas 10 Biswas being 30/729 share

in land measuring 36 Bighas 9 Biswas in Khata No.215/385 to 392 khasra Nos.640min/3-6, 642min/2-9, 769/8-13, 640min/2-4, 640min/2-0, 642min/1-0, 642min/1-0, 794/7-2, 863/7-9, 790min/1-0, 790min/0-6, situated in the revenue estate of village Sultanpur, Tehsil Dhuri as per jamabadi for the year 2006-07 in order to delay and defeat the recovery rights of the plaintiff Markfed.”

The plaintiff/respondent No.1 alongwith suit also filed an application under Order 39 Rules 1 and 2 CPC for grant of interim injunction and the trial Court, vide order dated 18.09.2012, dismissed the application and the same was upheld by the Lower Appellate Court on 17.09.2014 (Annexure P-1). The entire genesis of the suit was based upon the forged documents. The petitioner moved an application calling upon the plaintiff/respondent No.1 to produce the original documents. The said application was not decided by the trial Court but vide order dated 17.07.2012, it was observed by the Court that the original documents would be produced at an appropriate stage. At the stage of evidence also, the application dated 12.08.2013 (Annexure P-2) was moved for production of the documents. The plaintiff/respondent No.1, in the reply dated 19.09.2013 (Annexure P-3) stated that the documents would be produced at the time of evidence. On the next date of hearing, i.e., 20.09.2013, the plaintiff/respondent No.1 moved an application under Section 65 of the Indian Evidence Act, 1872 for proving the surety bonds, wherein, by referring to paragraph 3 of the application, it was stated that the said document was lost and cannot be traced. The aforementioned application

was emphatically opposed, yet the trial Court has erroneously allowed the application.

During the course of hearing, he has drawn the attention of this Court to vernacular of the affidavit, Annexure P-6 which according to him had been executed and Annexure P-7 had been written as surety bonds which is result of forgery and fabrication and therefore, *prima facie*, the documents being forged and fabricated could not have been permitted to be led as Secondary Evidence subject to proof of existence and loss. He, thus, urged this Court for setting aside the impugned order.

Per contra, Mr.Sourabh Goel, learned counsel for the plaintiff/respondent No.1 submitted that no prejudice would be caused to the petitioner as the order impugned has not allowed the secondary evidence in a blanket manner but subject to its existence and proof.

During the course of arguments, he has also referred to **CWP No.7313 of 2012 titled as M/s R.V.Rice Mill vs. State of Punjab and others**, wherein, reliance was placed upon the reply dated 24.09.2012 and another LPA No.1225 of 2014 titled as M/s R.V.Rice Mill Dhuri Vs. State of Punjab and others, wherein surety bond was also relied upon by the State of Punjab in the reply dated 24.10.2013 and thus, urged this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the finding rendered by the trial Court while allowing the application is in compliance to the provisions of Section 65 of the Indian Evidence Act, 1872 and did not allow the secondary evidence blanketly but with a rider of its existence and loss. The plaintiff, in my

view, would have all the possible chance to prove the alleged forgery being raised in the application. No doubt, in reply to the application for production of the documents, the plaintiff/respondent No.1 had stated that the same would be produced at the time of evidence. Paragraph 2 of the reply reads as under:-

“2. That in reply to para 2 of the application it is submitted that Arbitration proceedings are pending before Arbitrator against the defd.No.1 and the original documents are also required in that proceedings and as such the original have not been placed on the case file at the time of filing the present suit. However, at the time of leading evidence, the original documents would be produced.”

Be that as it may, I would be refraining myself from pondering upon the reply filed in the writ petition aforesaid as it would prejudice the rights of the petitioner-defendant No.2. He would be at liberty to take all possible objections by putting cross-examination and summoning the evidence from the concerned department. According to them, it was an affidavit not the surety bond and was attested by concerned Executive Magistrate. To establish whether it was a surety bond or an affidavit, it shall be the domain of the trial Court to examine the evidence brought on record in pursuance to the order passed and decide the suit in accordance with law.

Leaving open to the parties to lead evidence in support of respective pleadings, in my view, the order under challenge does not suffer from any illegality and perversity, much less, the same cannot be said to have been passed without jurisdiction.

No ground is made out for interference in the impugned order.
Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

December 08, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No