IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1971 of 1990 (O&M)

Date of Decision:18.04.2017

Punjab State Civil Supplies Corporation and another .....**Appellants**

Versus

M/s Rama Rice Mills and others .....**Respondents**

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Nitin Kaushal, Advocate, for the appellants.

Mr.P.K.Mutneja, Advocate, for the respondents.

****

<u>RAMESHWAR SINGH MALIK, J.(Oral)</u>

Plaintiffs are in regular second appeal against the impugned judgment of reversal passed by the learned first appellate Court, whereby first appeal of the defendants was allowed, dismissing the suit of the plaintiffs-appellants for recovery and also holding that defendants were not entitled for any rendition of accounts.

Brief facts of the case, as noticed by the learned first appellate Court in para 3 of its impugned judgment, are that plaintiff No.1 was a company registered under the Companies Act, 1956, having its registered office at Chandigarh. Managing Director was its principal officer and he was conversant with the facts of the case. He was also empowered to institute the suit and thus was competent to sign and verify the plaint. Plaintiff No.1 was having one of its district offices, headed by District Manager, plaintiff No.2 at Faridkot to conduct its business on its behalf.

The defendant firm was a registered firm and defendants No.2 to 7 were its partners who were jointly and severally liable. The plaintiffs had multifarious functions and one of the functions of the plaintiffs was to purchase paddy through district offices and to get the same custom milled and to deliver the resultant rice therefrom to the Food Corporation of India in the Central pool or to export the same as per the policy of the Government from time to time. In the year 1980-81, defendant No.1 through Harpal Singh, approached the plaintiff, i.e. District Manager, Faridkot, plaintiff No.2 for export milling of paddy PR-106 of Bagha Purana centre of the plaintiff and the defendant undertook the liability to prepare the export quality of rice of the approved specifications. He further agreed to give 55% yield of the export quality against the paddy supplied by the plaintiff and in accordance with the above said terms, 15097 bags of paddy PR-106 were released to the defendant vide release order dated February 10, 1981 for export milling as per the terms and conditions approved by the State Government, vide instructions dated 25th November, 1980. The paddy in question was released from Bagha Purana centre of the plaintiff and the same was transported by the defendant at their own arrangement to their mill premises and the delivery thereof was voluntarily accepted by the defendant. The defendant took the delivery of the paddy vide release order dated 10th February, 1981, which was duly signed by their representative after satisfying himself with the quality, quantity and weight of the paddy. The representative of the defendant also issued an acknowledgment receipt on 5th March, 1981 for the receipt of 15097 bags of PR-106 paddy weighing 10356 quintals 54 kilograms 200 grams.

The defendant failed to prepare the export quality of approved specifications (Russian specification) on account of which the defendant offered to prepare FAQ rice and to deliver the same to the F.C.I. of 67% yield and the rice which was to be delivered was 6938 quintals 88 kilograms 200 grams, out of which the defendant delivered only 6108 quintals 50 kgs. 300 grams of rice leaving a balance of 830-37-900 quintals for which the defendant gave a writing on 3rd November, 1982, promising to deliver the balance rice by 31st December, 1982, which the defendant did not deliver. The export quality rice yield was 55%. The sample of the rice was taken and the analysis of the manufactured rice was not of the agreed specifications, so the defendants were advised to prepare the rice of the agreed specifications after reconditioning but to no effect. A telegram to that effect was also issued giving the result of the analysis. As per the instructions of the Government, the yield of FAQ rice was 67% from PR-106 paddy and the instructions of that letter were applicable to all the rice millers for milling the paddy of PR-106 paddy and IR-8 in the State of Punjab. These instructions were accepted and adopted by all the rice millers, including the defendants. In view of the aforesaid standard and practice prevalent in the State and the instructions issued by the Government applicable to the defendants, the defendants were liable to deliver the rice of FAQ specifications to the F.C.I. on behalf of the plaintiff at the yield of 67% of paddy PR-106 received by the defendant. The defendant also failed to prepare the export quality rice. The defendant prepared FAQ rice and delivered to the F.C.I. on behalf of the plaintiff. The total rice of FAQ delivered was 6108-50-300 quintals but the total which was to be delivered was 6938-88-200 quintals. Thus there was 830-37-900 quintals FAQ rice still due from the defendant to the plaintiff which the defendant promised to deliver by 31st December, 1982 vide letter dated 3rd November, 1982. The market rate of FAQ rice at that time was ₹210-50 per quintal. The plaintiff also delivered 8659 empty bags and the price of each bag was Rs.3.78 which the defendants failed to return. The defendants had neither supplied the balance quantity of FAQ rice weighing 830-37-900 quintals nor they returned 8659 empty bags. Therefore, the defendants were legally bound to deliver either the balance rice of FAQ quality along with the empty bags or the price thereof which comes to ₹1,74,794.78 of the remaining rice and ₹32,731.02 as the cost of the bags along with interest at the rate of 18% per annum, which comes to ₹96,499.74. The plaintiffs were also entitled for the future interest on the decretal amount till realisation of the same. When the defendants refused to give the balance rice and the bags or their price, the present suit was filed.

Upon service, defendants put appearance and filed their written statement, raising more than one preliminary objections. They also filed their counter-claim for rendition of accounts. Replication was filed by the plaintiffs. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

> *"1. Whether the plaintiff is entitled to recover ₹3,04,025.54 as detailed in para 16 of the plaint? OPP*
>
> *2. Whether the suit has not been filed by the competent person?OPD*
>
> *3. Whether the suit is bad for mis-joinder of proper parties?OPD*
>
> *4. Whether the names of defendants No.2 to 7 have been wrongly added? If so, its effect?OPD*
>
> *5. Whether the paddy was shelled in January and February, 1981 and there was no arrangement*

with the plaintiff to take delivery?OPD

6. *Whether the paddy thrown into the mill premises of the defendant firm was got shelled under coercion, fraud and threat?OPD*
7. *Whether the defendant is entitled to rendition of accounts with the plaintiff?OPD*
8. *Relief."*

In order to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have proved their case, whereas defendants were not entitled for the relief of rendition of accounts. Accordingly, suit for recovery filed by the plaintiffs was decreed along with interest vide judgment and decree dated 11.11.1986.

Feeling aggrieved, defendants filed their first appeal. Relief sought by the defendants for rendition of accounts by way of their counter-claim was dismissed by the learned first appellate Court. However, their first appeal was allowed setting aside the abovesaid judgment and decree of the learned trial Court, holding that the plaintiffs were not entitled to recover any amount from the defendants, vide impugned judgment and decree dated 18.05.1990. Hence, this regular second appeal, at the hands of the plaintiffs.

The appeal was admitted for regular hearing vide order dated 20.11.1990 passed by this Court. That is how this Court is seized of the matter.

Heard learned counsel for the parties.

The entire case of the plaintiffs-appellants is based on alleged oral contract, whereby paddy was supplied by the plaintiffs-appellants to the defendants-respondents for the purpose of milling. Once the appellants were the plaintiffs, onus was on them to prove their case by leading cogent and convincing evidence to the effect that the contract was executed between the parties, in accordance with law. However, the plaintiffs miserably failed to prove on record that there was a contract between the parties. It also goes without saying that in the absence of any valid contract between the parties, plaintiffs-appellants would have no claim, whatsoever, against the defendants-respondents. Having said that, this Court feels no hesitation to conclude that the learned District Judge has rightly passed the impugned judgment and decree which deserve to be upheld.

It is a matter of record that to govern such a fact situation regarding contract between the parties, for the purpose of supplying paddy so as to get it milled from rice mills, there were Govt. instructions in place in the form of Ex.P4/1. Further, there was a memorandum of Articles of Association of Punjab State Civil Supplies Corporation-appellant herein, on the subject as to how the contracts were to be executed. Relevant extract of Article 76 of the memorandum of Articles of Association of Punjab State Civil Supplies Corporation and particularly its sub-clause (xix) as well as the instructions Ex.P4/1 read as under:-

> *"Without prejudice to the other powers conferred by these Articles but subject to the provisions of Section 291, 292, 294 and 297 of the Act, the Board shall have the following powers, that is to say, powers:*
>
> *(xix) to enter into all such negotiations and contracts and rescind and vary all such contracts and do all such acts, deeds and things in the name and on behalf of the company as they may consider expedient for or in*

> *relation to any of the matters aforesaid or otherwise for the purpose of the Company."*
>
> *Ex.P4/1 are the instructions as to how the paddy is to be delivered and how the agreements are to be entered into:-*
>
> *(a) An agreement should be on the prescribed form on a judicial paper which shall be entered into with the millers, at the time of the transfer of the stock in joint custody.*
>
> *(b) A cash security of Rs.20,000/- shall be got deposited from the miller, which shall be liable to forfeiture in case of default or non-performance of the contract.*
>
> © *In addition to cash security, every miller shall furnish a bank guarantee of Rs.one lac to cover the cost of paddy issued to him from the stock held in his joint custody."*

When Shri P.N.Kansal, the then District Manager, appeared as PW4 before the Court, he made a candid admission that the agreement was not in writing but it was oral one. Relevant para of cross-examination of this material witness, which goes to the root of the cause, reads as under:-

> *"The agreement was not in writing but it was oral one. No bank guarantee or security was taken from the defendants firm. I had received the instructions that the agreement should be in writing, bank guarantee should be taken and security should be got deposited from the miller from the head office. I had not complied with these written instructions because paddy was to be got shelled for the first time by the party and the party was not willing to enter into an agreement in writing and to deposit the security or to furnish bank guarantee, so in the interest of our department we have delivered the paddy to the miller without complying with the aforesaid instructions. I do not remember if I had also received instructions that paddy*

was to be delivered in small quantity to the extent of 200 Mt."

This witness has further deposed that he entered into an oral contract with one Harpal Singh, who was said to be a partner of the firm. He had no personal knowledge whether Harpal Singh was the partner of the firm or not. He also deposed that there was nothing on record that Harpal Singh was ever authorized by the defendant-firm to enter into a contract with the department. It has not at all been proved that Harpal Singh was one of the partners of the firm. Board of Directors of the appellant-Corporation never passed any resolution authorizing even its Managing Director, much less any District Manager to enter into an oral agreement. In such a fact situation, it is held that the alleged oral contract which was between defendants and the District Manager was *void ab initio* and not at all enforceable in law. It is so said because such an oral agreement or contract would be running counter to the memorandum of Articles of Association of the appellant-Corporation and also the abovesaid Govt. instructions.

When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the appellants had no answer and rightly so, it being a matter of record. In fact, the learned trial Court fell in serious error of law, while passing its judgment and decree dated 11.11.1986. It was rightly set aside by the learned District Judge by passing the impugned judgment which has been found based on sound reasons. As noticed here-in-above, plaintiffs-appellants have violated their own instructions acting in most casual and irresponsible manner. In the very nature of things, alleged oral contract would be of no consequence as the same would not be enforceable in law. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts in **M/s Hansraj Gupta and Company Versus Union of India, 1973 AIR (SC) 2724, New Churulia Coal Company Limited Versus Union of India, 1956 AIR (Calcutta) 138** and **Madura Municipality through Commissioner Versus K.Alagirisami Naidu, 1939 AIR (Madras) 957.** Learned counsel for the appellants could not point out any contrary law.

Before arriving at his judicious conclusion, the learned District Judge re-examined, considered and rightly appreciated the true facts of the case as well as the evidence available on record, in the correct perspective. Some of the relevant findings recorded by the learned first appellate Court in para 10 and 11 of its impugned judgment, read as under:-

> *"I have considered the arguments of the learned counsel for the respondents and find no force in the same. In the present case, it is a question of law that whether the District Manager of a Company can enter into an oral or written contract without specific authority of the Board of Directors which can be given only by passing a resolution, by the Board of Directors, which is lacking in this case. In reply to para 2 of the plaint, it is specifically mentioned that plaintiff No.2 has no legal authority. This means that the plea was taken in the written statement. Otherwise also, a question of law is not to be referred to in the pleadings and can be argued at any stage.*
>
> *The next contention of the plaintiffs' Counsel is that there was a novation of contract and the contract for export quality of rice was renewed with a contract to*

> *supply FAQ quality of rice. It is to be seen whether there could be a novation of the contract. In this regard, we are to see whether the first contract said to have been entered was a legal and binding contract. If the first contract regarding the export quality of rice is barred by law and is not by a competent person then it is to be seen whether the novation of the contract is by a competent person and, as such, is legal one. In this case, the pleading of the plaintiff is that the defendant approached the plaintiff, through the District Manager, for export milling of paddy PR-106 and the defendant failed to prepare the export quality of rice and offered to prepare FAQ rice. Even there is nothing on the record as to with whom the defendant entered into a renewed contract to prepare FAQ quality of rice. No evidence is led by the plaintiff that there was a fresh contract entered into with Shri P.N.Kansal, the then District Manager PUNSUP."*

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate Court. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, it is unhesitatingly held that the learned first appellate Court was well justified to pass the impugned judgment and decree and the same deserve to be upheld, for this reason as well. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

April 18, 2017 **(RAMESHWAR SINGH MALIK)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No