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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12922-2015
Date of decision : 17.04.2017

M/s Ashoka Rice Mills

... Petitioner(s)

Versus

Food Corporation of India and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Rekhi, Advocate for the petitioner.

Mr. H.S. Dhandi, Advocate for the respondents.

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AMIT RAWAL, J. (ORAL)

The present writ petition has been filed for issuance of a writ in the nature of *certiorari* quashing the reply dated 31.07.2014 (Annexure P-5) given by the respondent vide which they refused to release the payment due and further writ in the nature of *mandamus* directing the respondent to release the milling charges, conversion charges as well as security deposit to the petitioner.

Mr. K.S. Rekhi, learned counsel appearing on behalf of the petitioner confines his relief in the present writ petition only for the release of the security amount by relying upon two documents, one deed of settlement dated 17.03.2006 and Award dated 08.11.2012 on the premise that Food Corporation of India was not successful in succeeding in the claim raised through an arbitration dispute. Though the petitioner has asked for other outstanding amount, but after the award, had been asking for the refund of the security, which fact is also evident from the legal notice dated 21.04.2015 (Annexure P-4) and thereafter, the writ petition has been filed on 30.06.2015, thus, the demand is within the limitation. The petitioner is basically asking the respondent(s) to perform their obligations as undertaken in the settlement agreement. The relevant paragraph of the settlement deed reads as under:-

> *"Now, therefore, after due deliberations and negotiations between the Corporation and the Miller, the accounts between the Corporation and the Miller has been settled, whereby it has been agreed that the Corporation will not pursue its claim against the miller before the Indian Council of Arbitration and after adjustment of other statutory claims, if any, the security deposit of the Miller will also be refunded and the Miller shall also have no claim whatsoever against the Corporation on any account and if any of the claim has been lodged by the Miller against the Corporation before any authority or Court of law of which the Corporation is yet to be served/called upon, the Miller shall withdraw the said claim/litigation and those Civil Litigations between the parties which are pending, shall also be withdrawn in pursuance of the aforesaid deed of settlement."*

and therefore, the objection of the respondent(s) qua the claim being time-barred or writ petition is hit by Doctrine of Delay and Laches, is neither here and there.

On the contrary, Mr. H.S. Dhandi, learned counsel appearing on behalf of the respondent(s) submits that as regards the claim of the petitioner with regard to the other outstanding amount, the same is blatantly barred by law of limitation. Once the Food Corporation of India has undertaken not to take any action against the Miller and the parties are bound by the agreement, nothing prevented the petitioner to seek the alleged claim within the prescribed period, but not in the manner and mode indicated by rasing the claim for the first time in the year 2015. The decision of the arbitration award in 2012 does not extend the period of limitation, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is some substance and force in the submissions of Mr. Rekhi, for, as regards the security of ₹ 30,000/- for the crop year 1994-95, the Corporation, in view of the settlement deed, had already honoured to refund the same, yet had initiated the arbitration proceedings, but could not succeed therein. It is only thereafter the petitioner raised the demand and filed the writ petition before the expiry of three years, in essence, the petitioner had two remedies, one to file a Civil Suit seeking mandatory injunction under Section 39 of the Specific Relief Act for breach of the obligations or through *mandamus*. In the present case, the petitioner has sought writ in the nature of *certiorari* quashing the reply dated 31.07.2014 (Annexure P-5) to the Legal Notice dated 21.04.2015 (Annexure P-4), where they refused to release the payment due. In my view, there is no dispute to the question of fact and law in view of the admission on the part of the Corporation of refunding the security. Resultantly, instead of relegating the petitioner to avail the alternative remedy, I issue a writ in the nature of *mandamus* directing the respondent(s) to release the security amount of ₹ 30,000/- for the crop year 1994-95 to the petitioner within a period of one month from the date of the receipt of the certified copy of this order along with interest @ 9% from the date of lodging the claim, failing which, another 3% interest, in essence, interest @ 12% shall entail.

With the aforesaid observations, the present writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

17.04.2017
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**