IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2489 of 2015 (O&M)
Date of Decision: 11.05.2017

Haryana Agro-Industries Corporation Limited and another ... Appellants

Versus

P.C. Goyal ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pankaj Gupta, Advocate, for the appellants.

Mr. Sanjiv Gupta, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

1. This appeal arises out of civil suit for recovery filed by the Haryana Agro Industries Corporation Limited against the defendant-respondent (hereafter referred to by their original positions in the suit). The plaintiff is an agency of the Food Corporation of India for procuring agricultural products for the Central Pool for onward distribution of foodgrain to States which need them. This case relates to procurement season 1998-99 when 183711 quintals of wheat was purchased by the previous Mandi Inspector out of which 1,17,850 quintals were taken over and delivered by the defendant during 1999-2000. The defendant was held responsible for loss caused to wheat in standard weight, damage or otherwise to the plaintiff till its safe delivery.

2. The plaintiff averred in the plaint that stocks of crop for the year 1998-99 and 1999-2000 were liquidated and the last delivery was made on April 12, 2002 and October 23, 2002 respectively and thereafter the total losses suffered by the plaintiff were assessed at Rs.8,21,001.80 P. The

plaintiff held defendant responsible for 70% losses on account of less gain plus interest. Defendant was tried departmentally for misconduct by negligence. The Enquiry Officer exonerated him of the charge. However, the punishing authority appended dissenting note and passed the impugned order inflicting penalty of withholding of three annual grade increments with cumulative effect besides recovery of 70% of the total loss of Rs.8,21,001/-. Litigation arising out of penalty order is pending with which we are not concerned in this appeal. It is only the recovery part which is involved in the suit filed by the plaintiff. The suit has been dismissed by the learned Additional Civil Judge (Senior Division), Fatehabad by judgment and decree dated February 24, 2012. Plaintiff's appeal before the Additional District Judge, Fatehabad remained unsuccessful when it was dismissed on November 01, 2014. The plaintiff is in second appeal.

3. The two Courts below have agreed with the defendant that the suit was not maintainable since the Managing Director authorized the Assistant Accountant to sign and verify the present suit filed on behalf of the plaintiff.

4. The Court applied the ruling of the Supreme Court in Pramod K. Pankaj v. State of Bihar and others, 2004 (1) SCT 83 (SC) and two judgments of Delhi High Court in M/s Nibro Limited v. National Insurance Co. Ltd., AIR 1991 Delhi 25 and M/s Rajghria Paper Mills Ltd. v. General Manager, Indian Security Press and another, AIR 2000 Delhi 239 to hold that suit was not filed under proper authority and was not maintainable on account of the defect. The Judges applied the provisions of Order 29 Rule 1 CPC which prescribe that a suit on behalf of a Corporation can be filed,

signed and verified by a Secretary or Director or any Principal Officer of the Corporation. Instead of filing the suit himself the Managing Director delegated his authority and authorized by resolution to be filed by a sub delegate an Assistant Accountant in the office. The principle applied was that a delegate cannot sub-delegate its powers. Both the Courts are one on this and I have no reason to disagree.

5. As far as the recovery part is concerned on merits the Courts have applied the law in <u>Punjab State Civil Supplies Corp. Ltd. v. Sikander Singh</u>, AIR 2006 SC 1438. In this case the Supreme Court held that if an employee commits misconduct and if he is departmentally proceeded with, then appropriate punishment is to be imposed as per rules and where in the departmental proceedings the delinquent official has been asked to pay a penalty by way of recovery of loss to the extent of which he was found responsible then no civil suit is maintainable for the same cause of action. The Supreme Court further held that a suit for damages would be maintainable only on the ground of breach of terms and conditions of the contract and damages should be proved in terms of Section 73 of the Indian Contract Act. In view of this legal position also the suit was held not maintainable with finding returned concurrently.

6. The charge against the defendant was not misappropriation of foodgrain while the suit was based on the premise of difference in weight during storage which is a natural consequence of the weather when foodgrains are stored over a long period of time. In this case, the admitted position was that stocks remained in the custody of the defendant and another officer over a long period from season 1998-99 to October 2002.

The suit was filed in 2009 after conclusion of departmental proceedings followed by imposition of major penalty. The issue whether the suit was barred by limitation was not pressed by the defendant and was given up in favour of the plaintiffs.

7. I have heard the learned counsel for the parties at some length and have perused the record. So long as misappropriation was not the charge then negligence of an employee may result in disciplinary proceedings but not for recovery of damages in each case. This is the statement of law in *Sikander Singh* case. The judgment relied upon by the appellants in Shakti Kumar v. Punjab State Civil Supplies Corporation and others, 2009 (5) RCR (Civil) 817 is of no help to them since it deals with an order passed under Order 7 Rule 11 (d) with the trial Court dismissing the application. Sikander Singh case was noticed by both the trial Judge and the Single Bench and it has been observed that the ratio of the case was that since loss was caused by reason of misconduct it was directed to be recovered in the departmental proceedings and the same stood recovered. Therefore, the recovery suit was not maintainable. In *Shakti Kumar* case the suit was at a preliminary stage and findings were yet to arrive at and accordingly the order dismissing the application for rejection of plaint was not open to be interfered with at an interlocutory stage.

8. Mr. Sanjiv Gupta, learned counsel appearing for the defendant-respondent has drawn attention to the dissenting note of the Managing Director depending on a hypothesis that "it may be possible that Sh. P.C. Goel might have mixed the re-conditioned stock of 23000 bags with new stock to make acceptable to the FCI which resulted into shortage/less gain

of 1500 quintals...”.

9. Mr. Gupta, contends that the suit on merits had no sound foundation to stand on. He would refer to the proceedings of the meeting of the Committee constituted for review of cases relating to wheat loss/gain held on July 08, 2003 which recognizes that in case of storage for more than two years, weight loss is bound to occur due to some atta formation/cleaning/dara operation and change of gunny bags etc.

10. Without dilating on this any further, I would dismiss the appeal since it does not involve any question of law much less substantial for the consideration of the Court. The findings are based on facts.

11. The ruling in *Sikander Singh* holds the fields and Single Bench in *Shakti Kumar* can make no inroads into the binding dictum in *Sikander Singh*.

12. The appeal is accordingly dismissed with costs of Rs.50,000/- to be paid to the defendant for presenting a frivolous appeal only to get the stamp of Court for which plaintiff has to suffer for its own negligence in presenting the baseless suit through a Babu in the office and that too in the face of the judgment of the Supreme Court in *Sikander Singh,* which ruling all civil and judicial authorities have to act in aid of. The judgment and decree in appeal is upheld. The suit dismissed as vexatious and a measure of harassment.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned Yes

Whether reportable No