

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.5161 of 2016 (O&M)
Date of decision: 25.04.2017**

Punjab Agro Foodgrains Corporation Ltd.

... Appellant

Vs.

R.S. Jaura

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 25.05.2016 passed by learned Additional District Judge, whereby first appeal of the plaintiff was dismissed and the impugned judgment and decree dated 13.05.2015 of the learned trial Court, partly decreeing the suit for recovery, were upheld, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that plaintiff-Corporation had instituted suit for recovery of ₹11,81,671/- from defendant, who served as its Vice-Chairman vide memo No.18/23/2004 – Agri. II (8)/4825 dated 08.12.2004 of Department of

Agriculture, Government of Punjab. Defendant was entitled to telephone and car facilities as per terms and conditions mentioned in his appointment letter. During his tenure from 2004 to 2007, defendant claimed and received a total sum of ₹15,73,006/- for telephone and for repair, maintenance and petrol of official car, whereas as per the terms and conditions he was entitled for a total sum of ₹3,90,335/- only. Therefore, the defendant received a total sum of ₹11,82,671/- as excess payment, over and above his actual entitlement. Plaintiff called upon the defendant to deposit the excess amount through letters dated 12.03.2007, 18.03.2008, 17.06.2008, 21.01.2009, 24.03.2009 and thereafter through legal notice dated 12.05.2009, but to no avail. A prayer had been made by plaintiff for decreeing the suit for recovery of the excess amount of ₹11,82,671/- received by defendant.

Upon service, defendant failed to appear. Then the defendant was sought to be served by way of publication, but he still failed to appear, as a result of which, defendant was proceeded against ex-parte vide order dated 27.07.2011 passed by the learned trial Court. Ex-parte evidence was led by the plaintiff/appellant-Corporation. After going through the ex-parte evidence brought on record and hearing the learned counsel for the plaintiff, learned trial Court came to be conclusion that the plaintiff could prove its case but partly. Suit for recovery was for an amount of Rs.11,82,671/- but except for Rs.70,928/-, the remaining amount sought to be recovered was found time barred. Accordingly, suit of the plaintiff was partly decreed by the learned trial Court, holding it entitled to recover an amount of Rs.70,928/- along with interest @12% per annum from the date of payment till institution of the suit on

17.03.2010 and thereafter, future interest @6% per annum from the date of institution of the suit till its actual realization.

Dissatisfied, plaintiff challenged the judgment and decree dated 13.05.2015 passed by the learned trial Court by way of first appeal under Section 96 of the Code of Civil Procedure, which also came to be dismissed by learned First Appellate Court, vide impugned judgment and decree dated 25.05.2016. Hence this regular second appeal at the hands of unsuccessful plaintiff.

At the very outset, learned counsel for the appellant fairly states that he does not intend to press this appeal on merits of the case so far as the recovery of amount beyond Rs.70,928/- is concerned. He further submits that only the observations made by the learned trial Court in para 11 of its impugned judgment and upheld by the learned first appellate Court, referring to the alleged irresponsible conduct on the part of some of the officers/officials of the appellant-Corporation, are uncalled for and the same may be ordered to be deleted from the impugned judgments.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the observations made by the learned trial Court in para 11 of its impugned judgment dated 13.05.2015 have neither been found factually incorrect nor legally misconceived. In fact, the observations made by the learned trial Court in para 11 of its impugned judgment are based on official record of the appellant-Corporation itself.

It is also a matter of record and not in dispute that had an appropriate and prompt action been taken at the hands of the concerned officers/officials of the appellant-Corporation, its suit for recovery beyond Rs.70,928/- would not have become time barred. Further, the learned trial Court has just expected the concerned competent authority to look into the entire matter seriously so that necessary action may be taken against the erring officers/officials who failed to act in time for the recovery of excess expenditure of Rs.11,82,671/- from the defendant despite specific directions contained in letters Ex.P14 to P16.

The learned trial Court committed no error of law, while making such observations and the same have been rightly upheld by the learned first appellate Court as well. Having said that, this Court feels no hesitation to conclude that once the appellant is not feeling aggrieved against the impugned judgments rendered by both the learned Courts below on merits of the case, no fault can be found with the observations and directions recorded by the learned trial Court, which have been rightly upheld by the learned first appellate Court and both the impugned judgments and decrees deserve to be upheld.

Learned counsel for the appellant also places reliance on an affidavit dated 17.12.2016 of Ms. Anjna Kapoor, General Manager (Personnel) of the appellant-Corporation, filed in compliance of the order dated 30.09.2016 passed by this Court to justify the delay caused in filing the suit for recovery. However, despite making his best efforts, learned counsel for the appellant could not improve the case of the appellant and rightly so, as the entire case of the appellant-Corporation was based on its own official record. It cannot be

disputed at this stage that the claim of the appellant for recovery of an amount of Rs.11,82,671/-, which might be a genuine claim, became time barred beyond the abovesaid amount of Rs.70,928/-, only because of negligence on the part of concerned officers/officials of the appellant-Corporation.

As noticed hereinabove, since the appellant has not challenged the findings recorded by both the learned Courts below on merits of the case, there is no scope at the hands of this Court to interfere in the concurrent findings of facts recorded by the learned Courts below and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant could not refer to any question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

Since the time of about two years has lapsed from the date of passing of judgment and decreed by the learned trial Court on 13.05.2015, the Managing Director of the appellant-Corporation is directed to place on record the compliance report within three months.

Let a copy of this order be also sent to Chief Secretary, Punjab who is directed to ensure early and effective action and then file his own affidavit with compliance report before the next date. List on 31.07.2017 for compliance.

25.04.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No