110.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4799-2015 (O&M)
Date of decision:25.04.2017

PUNJAB STATE WAREHOUSING CORPORATION ... Appellant

Versus

M/S SHIV SHANKAR RICE MILLS AND ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anil Kumar Sharma, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-4989-C-2017

Prayer in the application filed under Section 151 CPC is for preponing the date of hearing of the appeal which is otherwise fixed for 03.05.2017.

For the reasons stated in the application, same is allowed. The hearing of the appeal is preponed and is taken up on board today itself.

CM-11521-C-2015

Prayer in the application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 4 days in filing the present appeal.

For the reasons stated in the application, same is allowed. The delay of 4 days in filing the present appeal is condoned.

CM-11520-C-2015

Prayer in the application filed under Section 151 CPC is for condonation of delay of 61 days in refiling the present appeal.

For the reasons stated in the application, same is allowed. The delay of 61 days in refiling the present appeal is condoned.

RSA-4799-2015

The appellant-plaintiff-Punjab State Warehousing Corporation (herein referred as "plaintiff") has filed the present Regular Second Appeal against the judgment and decree dated 11.12.2014 passed by learned Additional District Judge, Sangrur, whereby their appeal against the judgment and decree dated 24.07.2012 passed by learned Additional Civil Judge (Senior Division), Sangrur, was dismissed.

Briefly stated, the plaintiff had filed a suit for recovery of ₹90,283/-. However, the said suit, which was filed on 29.11.2006, was withdrawn by the plaintiff vide statement dated 16.02.2008. The respondents-defendants had also filed counter claim for recovery of ₹2,58,892/- along with interest against the plaintiff-non counter claimant. Therefore, it was only the counter claim which was required to be considered by the trial Court. As per the counter claim filed by the respondents-defendants (herein referred as "counter claimant"), the counter claimant, is running a Rice Sheller under the name and style of M/s Shiv Shankar Rice Mills, Patran Road, Moonak, District Sangrur, for the last many years. Som Nath is a sole proprietor of the said

Sheller. The Sheller was milling paddy of different departments and had been delivering the resultant rice without any fail, after complying the terms & conditions of the agreement, as entered between the parties. In the year 2002-03, the Sheller of the counter claimant was allotted to the plaintiff for the purpose of milling the paddy and accordingly, an agreement was executed between the parties on 25.10.2003. As per the terms & conditions of the agreement, the counter claimant returned the resultant rice. However, the counter claimant was entitled to receive milling charges from the department, as detailed in the counter claim. The counter claimant raised a claim of ₹1,62,337/- from the plaintiff as the said amount was got deposited from the defendants-counter claimant in excess by raising wrong and illegal demands. Accordingly for the year 2004-05, the DFSC, Sangrur, refused to allot paddy for the purpose of milling to the counter claimant unless and until the counter claimant did not deposit the outstanding amount of ₹2,47,000/-. Accordingly, the said amount was deposited by the counter claimant vide DD No.320890 dated 28.09.2004. But thereafter again at the behest of plaintiff, another demand of ₹90,380/- was raised. The plaintiff-department withdrew the suit for recovery of aforesaid amount of ₹90,380/- on the ground that the plaintiff had received the suit amount plus other expenses of the suit.

On the counter claim so filed by the defendants-counter claimant, notice was issued to the plaintiff/non-counter claimant. The plaintiff filed reply, denying the claim of the counter claimant and the same is termed as a 'counter blast' to the suit filed by the plaintiff. Since the counter claimant had voluntarily deposited the suit amount, so they are estopped from filing counter claim. As per the policy for the Kharif, the counter claimant was bound to make the payment under the policy for getting the licence renewed. Therefore, the plaintiff-department has a legal right to stop the allotment in favour of counter claimant. The counter claim is time barred. It has been denied that the amount of ₹90,283/- was got deposited forcibly.

While the suit had been withdrawn by the plaintiff as the counter claimant had deposited ₹90,283/- plus other expenses of the suit, the defendants-counter claimant moved an application under Order 6 Rule 17 CPC for amendment of the counter claim whereby he included the said amount of ₹90,283/- which was otherwise deposited by the defendants-counter claimant under duress. In this manner, the counter claimant has raised a claimed of ₹2,58,892/- along with interest.

Learned trial Court, vide judgment and decree dated 24.07.2012, decreed the counter claim of the defendants-counter claimant and held that the counter claimant is entitled to recover the amount of ₹2,58,892/- i.e. ₹1,62,337/- along with interest @ 6% per annum from the date filing of suit i.e. 29.11.2006 till actual realization and also entitled to recover the amount of ₹96,555/- along with interest @ 6% per annum w.e.f. 16.02.2008 till realization of the amount.

Aggrieved against the aforesaid judgment and decree dated 24.07.2012 passed by the trial Court, the plaintiff-non counter claimant filed an appeal. However, the appeal was also dismissed by the Lower Appellate Court vide judgment and decree dated 11.12.2014.

It is in the aforesaid circumstances, the appellant-plaintiff has filed the present Regular Second Appeal.

Learned counsel for the appellant has argued that the judgments and decrees passed by both the courts below are against law. The courts below have not properly and correctly interpreted the law. The fact that once the defendants-counter claimant had deposited ₹90,283/- and had withdrawn the suit, therefore, while allowing amendment of the counter claim, the courts below have wrongly awarded the amount so deposited by the defendants-counter claimant. The Miller had delivered rice after deducting 1% driage from the paddy stored with him and as per the Miller, only 5.84 quintals less rice was delivered by him. The Miller had calculated only ₹6,366/- payable to the appellant-plaintiff on account of less rice, while as per the cost sheet circulated by the Government of India, the benefit of driage is payable in terms of cost of paddy. The appellant-plaintiff charged ₹3,88,109/- against less rice supplied by the Miller to the tune of 356.06 quintals and at the same time, allowed the Miller the benefit of driage amounting to ₹2,92,723/-. As such net recoverable amount comes to ₹95,386/- on account of less rice delivered/benefit of driage to the party. This shows net difference of ₹89,020/-. Thus, both the courts below have wrongly allowed the counter claim.

I have heard learned counsel for the appellant.

The argument, as raised by learned counsel for the appellant, is that the counter claimant has deposited the amount and, therefore, his admission of outstanding dues cannot be accepted for the reason that by way of amendment in the counter claim, the suit amount deposited has been included in the claim. The amendment sought by the defendants-counter claimant was allowed by the trial court, but such amendment was never challenged by the appellant-plaintiff before any other higher forum. Since the amount was deposited under the compelling circumstances, the defendants-counter claimant has incorporated the said amount along with other amount as detailed in the counter claim.

In para 14 of the Lower Appellate Court, the plea raised by the appellant-plaintiff has been dealt with in the following manner:-

> "As far as findings of learned lower Court on issue No.8 are concerned, the defendants/counter claimants have filed this counter claim for recovery of Rs.2,58,892/-. In order to prove the counter claim, counter claimant Som Nath appeared in the witness box as DW-1 and deposed on oath that they are running rice sheller from the last so many years. He further stated that during the crop year of 2002-03, plaintiff/appellant allotted for the custom milling of paddy to the defendants/respondents and they supplied less rice i.e. 5.83 Quintal of rice, for which they were duty bound to pay a sum of Rs.6366/- to

the department. The counter claimant was entitled to receive milling charges from the department, which comes out to be Rs.1,62,337/-. Instead of making the payment of the same, counter claim filed this suit for recovery and now a sum of Rs.2,58,892/- is outstanding against the appellant/plaintiff. This witness was cross-examined at length by the learned counsel for the appellant/plaintiff during trial, but he had failed to shatter his credibility or to extract anything favourable to the plaintiff/appellant. In his cross-examination, this witness has admitted that for paddy milling for the year 2002-03, agreement Ex.P3 was executed between the parties and milling was to be done as per the clauses made in this agreement. From this witness, plaintiff could not prove that why they have not paid a sum of Rs.1,62,337/- to the defendants/respondents and why plaintiff got deposited a sum of Rs.90,283/- from the defendants by filing the present suit. The only witness appearing on behalf of the department i.e. PW-1 Girish Kumar has deposed that as per document Ex.D7 and other documents placed on the file, counter claimant was to pay a sum of Rs.10,05,615/-. Whereas respondents have alleged that plaintiff has to pay a sum of Rs.6,83,096/- as milling charges and Rs.6,42,026/- as transport charges. In this way, a sum of Rs.2,75,043/- was due towards the miller. Counter claimant had deposited Rs.One lac as security and deposited a sum of Rs.2,47,000/- by DD Ex.D1 dated 08.9.2004 and also deposited Rs.90,380/- vide letter dated 27.9.2007. In this way, the counter claimant had paid a sum of Rs.4,37,380/- more and whereas the plaintiff was entitled to recover only a sum of Rs.2,75,043/-. After deducting the above said amount, the plaintiff had received a sum of Rs.1,62,337/- and got deposited a sum of Rs.96,555/- during the pendency of the present suit. Thus, it is clear that plaintiff/non-counter claimant had got deposited Rs.2,58,892/- more from the defendant/counter claimant. There is nothing on the file to prove this fact that plaintiff was entitled to recover a sum of Rs.96,555/- from the defendant/counter claimant which was got deposited during the pendency of the suit. Even it is not made clear by the appellant that how the counter claim is hopelessly time barred. There is no illegality or irregularity in the findings of learned lower Court on issue No.8 and these findings are hereby affirmed."

On the basis of aforesaid findings whereby the counter claimant was held entitled to receive milling charges from the department and for not making payment for such milling charges, the counter claimant had filed suit for recovery. Accordingly, an amount of ₹2,58,892/- was outstanding against the appellant-plaintiff. Since the defendants-counter claimant has milled the paddy as entrusted by the department, therefore, the defendants-counter claimant was entitled for milling charges from the department which is altogether a question of calculation. It has not been denied by the plaintiff that the defendants-counter claimant has not milled the paddy. So, once it is established that the counter claimant had milled the paddy, the Miller is entitled for the milling charges as well as other incidental charges as admissible under the policy/rules.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere in the present regular second appeal which is based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

25.04.2017
sanjeev

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