

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

Date of decision: 22.05.2017

RSA No.1234 of 2017 (O&M)

Satish Kumar Sofat

...Appellant

Vs.

Food Corporation of India & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manohar Lall, Advocate, for the appellant.

Ms. Jatinder Kaur, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (O&M)

The dispute in this appeal has been reduced by Mr. Manohar Lal to the argument contending that the learned District Judge, Faridkot in his judgment and decree dated 30.11.2016 has not considered and passed orders on the defendant's application under Order 41 Rule 27 of the CPC for leading additional evidence by way of production of an apparently relevant document dated 30.11.2015, which has been issued by the Food Corporation of India (FCI) by way of a certificate of the amount of recovery to be made and the recovered amount in respect of the appellant Satish Kumar Sofat, EX:-TAII/TAIII.

In the certificate, the total recovery had been shown reading ₹5,09,400/- and the amount has been recovered from the appellant's salary; PLI & Gratuity, totaling ₹3,91,725/- leaving balance amount yet to be recovered at ₹1,17,675/-. The certificate has been issued under the signatures of the Manager (Admn), FCI DO Ludhiana and Manager (A/cs) FCI DO Ludhiana.

Even though no orders were passed on the application for leading additional evidence in the first appellate Court, but as noticed in Para.11 of the judgment, the learned District Judge has entertained and heard the argument on behalf of the appellant/defendant that the Department had issued a certificate dated 30.11.2015, as above, being sum of money due and recoverable from the defendant and the present suit was filed by the FCI for recovery of ₹3,04,359/- from the defendant. The argument before the learned District Judge was that this document contradicts and falsifies the claim of the FCI.

Mr. Manohar Lall submits that though the document has been mentioned, but it has not been dealt with and no finding has been returned obviously for the reason that the application for leading additional evidence was left without orders when the main appeal was decided. If this additional evidence is accepted on record then the decision has to be interfered with on facts which were not in the knowledge of the defendant at the time of trial in the first court. The same was obtained through the RTI Act from the plaintiff FCI.

On the other hand, Ms. Jatinder Kaur appearing for the FCI submits that the appeal was filed on 19.07.2016 and the document is dated 30.11.2015 and was mentioned in the grounds of appeal, but its copy was not appended and the application under Order 41 Rule 27 was filed later on, on 21.10.2016 and the appeal was dismissed and the learned District Judge did not even issue notice in the application. If the learned District Judge did not issue notice, then jurisdiction vested in the Court was not exercised. An order should have been passed on the application since it was not a frivolous one and rights depended on the certificate to dislodge the claim of FCI. It was the duty of FCI to have produced the document in the suit. Without

deciding the application the lower appellate court entertained the argument based on the certificate in Para.11, referred to above.

If the document was of vital importance for the full and complete adjudication of the controversy involved in the appeal, then the learned District Judge was duty bound to have apprized himself as to the effect of the document on relief. If the learned District Judge did not draw his attention to this document in the proper manner, then there was imminent possibility of miscarriage of justice. Moreover, an application for leading additional evidence can be moved at any stage before judgment. When an appeal is filed it is in continuation of the suit and, therefore, such an application could well be filed in the appellate Courts craving leave to admit the document in evidence.

The trial Court decided the suit on 31.05.2016. A look at the document itself shows that it has not been marked to the defendant and the same has been received on an application under Right to Information Act, 2005. As soon as the defendant could lay hands on the document on which his defence could depend, he was within his rights to produce it through an application. His application for additional evidence is dated 21.10.2016. Prayer in the application was that the applicant/appellant should be allowed to produce and prove the document mentioned in the head-note of the application by way of additional evidence, in the interest of justice.

The technicalities of the law have to be kept aside while venturing to do justice and the learned District Judge should have taken cognizance of the document and expressed an opinion on its evidentiary worth and its relevance to the context and having failed to do so this Court is left with no option in second appeal, but to remit the matter to the learned District Judge to take up the application under Order 41 Rule 27 and pass

suitable orders thereon and if he is convinced that the document is crucial to the determination, then he would proceed to decide the matter on merits afresh. For this no further evidence would be required or taken as it would be only a matter of argument. Once the view of the FCI on the document is received i.e. if the document is admitted or denied, no further evidence will be allowed from either of the parties since the entire issue presently turns around the certificate.

As a result of the above discussion, this appeal is partially allowed. The judgment and decree dated 30.11.2016 is set aside. The case is remanded to the learned District Judge, Faridkot to pass orders in accordance with law after first taking up the application.

The learned District Judge, Faridkot would also take into consideration another issue raised on behalf of the appellant regarding the maintainability of the suit itself by keeping in view the Supreme Court judgment cited by Mr. Manohar Lal rendered in Punjab State Civil Supplies Corporation Ltd. Vs. Sikander Singh, AIR 2006 SC 1438 and thereafter express his opinion on the legal issue as to whether ratio of the judgment applies to this case or not.

Parties are directed to appear in the Court of learned District Judge, Faridkot on 06.07.2017.

22.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>