IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 03.05.2017

RSA No.1307 of 2017 (O&M)

Food Corporation of India ...Appellant

Vs.

Mewa Lal ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sumeet Goel & Mr. Atul Gaur, Advocates,
for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.3122-C of 2017

The deficiency in court fee has already been made good.

Application stands disposed of.

RSA No.1307 of 2017

Food Corporation of India is in second appeal aggrieved by the judgment and decree passed by both the Courts below, dismissing the suit filed by the Corporation in the civil court to recover sums of money against 73 penalty orders of recovery passed against the defendant employee from 09.08.2004 to 11.05.2010, totaling a sum of ₹11,03,214/- less amounts already recovered from salary, gratuity, leave encashment etc. while in service.

The suit was filed on 13.02.2012. The defendant retired on 31.03.2009 on attaining the age of superannuation. The suit was brought within three years of retirement. The Additional Civil Judge (Senior Division), Ferozepur dismissed the suit vide judgment and decree dated

25.05.2015. In appeal, the learned first Appellate Court rightly observed that the liability was not recurring and the penalty orders mentioned at Sr.Nos.1 to 66 i.e. up till 21.01.2009 were barred by time. The total amount mentioned at Sr.Nos.67 to 73 as calculated by the first appeal Judge comes to ₹55,900/-. Since the plaintiff-Corporation had already recovered a sum of ₹7,35,200/- from the defendant during service, the amount was far in excess of the sums claimable by the plaintiff FCI from Sr.Nos.67 to 73. It may be mentioned that the amount of ₹7,35,200/- was recovered from the defendant from his salary, gratuity amount, earned leave encashment, HPL encashment, arrears of revised wages etc. and still an amount of ₹3,68,014/- was to be recovered for which sum of money the suit was filed for recovery.

It is beyond the pale of doubt that the penalty orders mentioned at Sr.Nos.1 to 66 were clearly barred by time. The right to money may have continued to exist, but the remedy stood extinguished and, therefore, the first Appellate Court was correct in upholding the judgment and decree dated 25.05.2015 dismissing the suit.

While on the way to dismiss the case an argument of desperation may be noticed, which was taken before the first Appellate Court by the Corporation, was the Corporation's reliance on the ruling delivered in case Pappachan S. Vs. The State of Kerala & others, 2009 (5) RCR (Civil) 208 (SC) to argue, that the period of limitation for State to recover money is 30 years prescribed under the Limitation Act, 1963 and therefore the right to sue survives on the date of institution of the suit. This case on facts or law has no application to the facts of the present case which arises out of various penalty orders and not on refusal to discharge debt by acknowledgement of debt by a citizen or an employee. The argument was noticed, but was rightly rejected by the lower Appellate Court.

Moreover, the instant appeal is patently frivolous and has been brought 61 days beyond limitation period prescribed for filing second appeals. Nothing new has been brought out in this appeal amounting even remotely to a substantial question of law to be determined in second appeal. The judgments and decrees of the Courts below do not suffer from any irregularity or patent illegality. Findings of fact recorded on the evidence are not to be disturbed. There is no merit in this appeal and the same is dismissed at the threshold for lack of merit worthy of admission. The application under Section 5 of the Limitation Act contains insufficient explanation for the delay in presentation of the appeal and is dismissed along with the appeal.

03.05.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

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