IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2467 of 2017 (O&M)
Date of decision : 30.10.2017

Food Corporation of India and others

...Appellants

Versus

Punjab State Cooperative Supplies & Marketing Federation Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Jatinder Jit Kaur, Advocate and
Mr. Ish Puneet Singh, Advocate for the appellants.

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ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

It is unfortunate that two Public Sector Undertakings are fighting for recovery of amount in the Courts.

The plaintiffs-respondents had filed a suit for recovery of ₹23,39,064/- as the defendants-appellants had wrongly deduced a sum of ₹11,93,400/- which was principle amount and remaining amount was interest. The deduction of the aforesaid amount is not in dispute and it is the defence of the defendants-appellants that the certain amount was due against the supply of gunny bags in the year 1982 which have not been counted for and, therefore, recovery has been made.

Both the Courts below after appreciating the evidence available on the file have recorded the findings of fact. The defendants-appellants have failed to prove the supply of the gunny bags. Thus, the suit filed by the plaintiffs was decreed for a sum of ₹11,93,400/- alongwith interest at the rate of 9% p.a.

Learned counsel for the appellants has submitted that the suit filed by the plaintiffs was barred by limitation. He has submitted that the amount was deducted on 25.01.2005 whereas the suit was filed on 05.02.2009. He submits that since the suit was filed after more than 3 years, therefore, the suit is barred by limitation.

I have considered the submission of the learned counsel.

It is not in dispute that the plaintiffs supplies food grains regularly to the defendants-appellants. Every year, the defendants-appellants purchase the food grains from the plaintiffs. There are numerous transactions in between the defendants and the plaintiffs. Both the parties maintain a running account. Once it is a case of running account, which is still continuing, the suit filed by the plaintiffs cannot be dismissed on the ground of limitation.

Second submission of the learned counsel is that the defendants-appellants had supplied certain gunny bags to the plaintiffs which have not been counted for.

Both the Courts below have appreciated the evidence and recorded a finding of fact that the defendants-appellants have failed to prove that some gunny bags were supplied. Such finding arrived at by the Courts below is not shown to be erroneous.

Learned counsel for the appellants in the last submitted that it was for the plaintiffs to prove that the gunny bags had not been received.

At the cost of repetition, it may be noticed that it was the case of the defendants-appellants that certain gunny bags were supplied in the year 1982. Onus was on the defendants to prove that the gunny bags were supplied. It was for the defendants to summon the officials who had allegedly signed the invoices. Still further, it has been found by the Court that gate passes produced by the defendants were blank except for two.

Taking into consideration the aforesaid facts, this Court do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. Finding of fact arrived at, was neither shown to be perverse nor shown to be result of misreading of the evidence.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the aforesaid judgment.

30.10.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**