

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

RSA No. 5158 of 2017 (O&M)

Date of Decision : 13.11.2017

**PUNJAB STATE COOP SUPPLY AND MARKETING FEDERATION
LTD CHANDIGARH**

.... Appellant

Versus

FOOD CORPORATION OF INDIA AND ORS

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

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

B.S.WALIA, JUDGE (ORAL)

CM-13760-C-2017

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Delay of 339 days in late filing of the appeal is condoned.

CM-13759-C-2017

Application is allowed as prayed for, subject to all just exceptions.

Main case :

1. Short point arising for consideration in this case is whether the finding of the Lower Appellate Court in paragraph No. 18 of its judgment dated 05.09.2016 reversing the judgment and decree dated 01.10.2015 passed by the learned Civil Judge (Jr. Div) Malout on the ground that the case was barred by limitation is legally sustainable or not.

2. Brief facts of the case leading to the filing of the instant appeal are that the appellant procured food grains on behalf of the Food Corporation of India on 10.08.2010. Bill for the supplies made was raised on the same day.

Respondent Food Corporation of India released payment of the bill so raised on 24.09.2010, less amount of Rs.3,07,518/-. The appellant continued corresponding with the respondent Food Corporation of India but did not receive any response thereto, except for communication dated 24.05.2011 i.e. Annexure A-3 wherein the respondent Food Corporation of India denied liability to make payment of Rs.3,07,518/- as claimed by the appellant.

3. Learned Lower Appellate Court by taking into account the aforementioned dates held that once payment had been made on 24.09.2010, limitation commenced and the subsequent communication (Mark DX) i.e. letter dated 24.05.2011 at page No. 95 of the paper book was of no relevance since the letter neither acknowledged the previous amount nor acknowledged liability to make payment.

4. By taking into account the judgments cited by learned counsel for the Food Corporation of India in *Janta Panjola, CASS, Panjola, Tehsil and District Patiala and another Versus M/s Daulat Ram, Kishori Lal, Commission, Agents, Balbera and another, 2009(2), R.C.R. (Civil) 728 and M/s Daulat Feeds Distributors Versus M/S Razvi Brothers and another, 2006 (4) ALL MR*, the learned lower Appellate Court held that the finding recorded by the learned trial Court with regard to the suit having been filed within limitation was based on conjectures and surmises as neither any specific date had been seen or discussed. On the basis of the same the learned Lower Appellate Court held that the suit was not within limitation and thereby reversed the finding on issue No.3.

5. I have heard learned counsel for the appellant and am of the considered view that no case is made out warranting interference with the well reasoned order passed by the learned lower Appellate Court reversing

the judgment of the learned trial Court dated 01.10.2015.

6. Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgment in writing where, before the expiration of the prescribed period for institution of a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability, in which case a fresh period of limitation begins and limitation is to be computed from the time when the acknowledgment was so signed.

Section 18 of the Limitation Act, is reproduced as under :-

“18. Effect of acknowledgment in writing.

1. Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

2. Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

7. A perusal of the record reveals beyond an iota of doubt that communication “Mark DX” dated 24.05.2011 did not in any way acknowledge the liability of the Food Corporation of India to make payment of amount claimed by the appellant.

8. Needless to mention that had there been any acknowledgment of liability by the Food Corporation of India, a fresh period of limitation would have began to run from the date of communication. However this is not the position here, consequentially, by no stretch of imagination Section 18 of the Limitation Act can be pressed in support of the claim being within limitation.

9. In the circumstances, Section 18 of the limitation Act, 1996 has no applicability whatsoever. Consequently no fresh period of limitation began to run from the date of letter dated 24.05.2011 i.e. Mark DX. Since limitation had begun to run initially from 24.09.2010, therefore in the circumstances the suit could have been filed within 3 years from 25.09.2010. The same not having been so filed, no fault can be found with the well reasoned order passed by the learned Lower Appellate Court. In the circumstances, the substantial questions of law framed by the appellants are answered against the appellants.

10. Accordingly, the Regular Second Appeal being bereft of merit is dismissed in limine.

(B.S.WALIA)
JUDGE

November 13, 2017
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| 1. | Whether speaking/reasoned: | Yes/No |
| 2. | Whether reportable: | Yes/No |