IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.38 of 2001

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Food Corporation of India, a Body Corporate Constituted under the Food Corporation of India Act, 1964 having its registered office at No. 16/220, Barakamba Lane, New Delhi and carrying on its business inter alia at No. 10 Midleton Row, Calcutta, through the Senior Regional Manager, F.C.I., Patna

……………………..plaintiff……………..... ... Appellant

Versus

1. Punjab National Bank, a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1976 having its office at No. 5 Parliament Street, New Delhi and carrying on business inter alia, in its branch office at Motihari, East Champaran, Bihar, through Manager, Punjab National Bank, Motihari, East Champaran, Bihar

…………………Defendant …………Respondent

2. The Sugauli Sugar Works Ltd., an existing company within the meaning of the Companies Act, 1956 and having its registered office at 3/5 Raj Mohan Street, Calcutta and carrying on business at Sugauli, East Champran, Bihar within the said jurisdiction

……………..Proforma Defendant ….... Respondent

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Appearance :

For the Appellant	:	Mr. Prabhakar Tekriwal, Advocate
		Mr. Shashidhar Jha, Advocate
For the Respondents	:	Mr. Dr. Pankaj, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 16-02-2018

The instant appeal has been preferred against the judgment and decree dated 31st August, 2000 passed by Sri Vijay Kumar Sinha, the then Subordinate Jude IV, East Champaran at Motihari in Money Suit No. 5 of 1988 whereby the suit was partly decreed on contest with cost against the defendant no. 1. The plaintiff is the appellant and the defendants are the respondents.

2. The plaintiff has filed filed the aforesaid Money suit for money decree of Rs. 25,09,544.95/- with interest at the rate of 18 % per annum till the date of realization.

3. Briefly stated, the case of the plaintiff is that the defendant no. 2 Sugauli Sugar Works Limited on or about 07.01.1980 filed a writ petition before the Hon'ble High Court of Calcutta challenging the fixation of price of levy sugar by the Sugar (Price Determination for 1978-79 Production) Order 1979 and the Sugar (Price Determination for 1979-80 Production) Order 1979 and after hearing, the order was passed on 07.01.1980 which was modified by another order made by Hon'ble High Court of Calcutta on 29th January, 1980 with the following terms and conditions: (a) the petitioner no. 1 would furnish Bank Guarantee for securing the amount of difference between the price claimed by the petitioner and the amount fixed by the Government under Sugar Order 1979 referred above, (b) the petitioner no. 1 shall be entitled to realize the price upon furnishing the Bank Guarantee in respect of the quantity covered by the release order for each month. The petitioner no. 1 shall keep Bank Guarantee renewed from time to time till disposal of the Rule. The Bank Guarantee to be furnished are to be renewed two moths before their expiry, (c) the petitioner no. 1 shall intimate the facts of furnishing the Bank Guarantee and renewal thereof to the respondent Food Corporation of India within four weeks before the expiry of the existing Bank Guarantee and in case of failure to so intimate, the Food

Corporation of India can enforce Bank Guarantee forthwith, (d) in case the Food Corporation of India do not take delivery of the levy sugar, the petitioner no. 1 would be at liberty to sell such sugar in the market and the difference between the price realized on such sale and the price fixed by the Sugar Order would be secured by the Bank Guarantee. The Hon'ble High Court also directed that in default of furnishing Bank Guarantee or renewing the same as provided the interim order shall stand vacated.

4. The further case of the plaintiff is that pursuant to the said order of the Hon'ble High Court the defendant no. 2 furnished to the Registrar appellate side of the Hon'ble High Court, Calcutta, 11 Bank Guarantee Bonds in favour of the plaintiff upon Punjab National Bank, Motihari Branch and the Bonds were dully accepted by the Registrar High Court, Calcutta. The said Bonds were executed between 12.05.1980 to 28.04.1981 for different amounts. The said Bank Guarantee 1/80 to 5/80 have been renewed from time to time. By the renewed Bond dated 15.03.1985 the Bank Guarantee Bonds no. 1 to 4 aforesaid have been renewed up to 12th May, 1986 and the Bank Guarantee Bond no. 5 has been renewed up to 30th May 1986. The Bank Guarantee Bonds no. 6 to 10 have been renewed from time to time by the last Bank Guarantee Bond dated 28th July, 1985. The Bank Guarantee

Bond no. 6 has been renewed up to 07.07.1986. The Bank Guarantee no. 7 was renewed up to 11.08.1986. The Bank Guarantee Bond no. 8 was renewed up to 08.09.1986. The said Bank Guarantee bounds contained the following conditions:- “If the rule in the said case being C.R. No. 174 (w) of 1980 is made absolute or if the said Rule be discharged and the petitioner i.e. the defendant no. 2 pays the demand made by the plaintiff to the extent of the amounts secured by the said Bonds or if the said demand to the extent of the amount secured by the said bounds are otherwise satisfied in full and the same is recorded by the orders of the Hon’ble High Court, Calcutta then, and, in such case the said Bonds or obligations shall be void and inoperative. The same shall remain in full force and virtue. So far as defendant no. 1 bank concerned, its liability under the said Bonds will be restricted to the amounts of the said Bonds respectively. The Bank Guarantee under the said bonds shall remain in full force and virtue for a period of one year from the dates of the said Bonds respectively. In case the petitioner i.e. the defendant no. 2 failed to renew the said Bonds within two months before their respective dates of expiry and to intimate the facts of such renewal to the plaintiff within four weeks before their respective expiry of the said Bank Guarantee then in that event the plaintiff shall be entitled to enforce the Bank

Guarantee Bonds forth with. Unless the suit or an action to enforce a claim under these Bonds is filed against the defendant bank within six months from the date of expiry of those Bonds respectively all claims under the said bounds shall be forfeited and the defendant bank shall be relieved of all the liabilities under the said Bonds. The plaintiff further states that the defendant no. 2 failed and neglected to renew the Bank Guarantee Bond no. 6/80 dated 07.07.1980 amounting to Rs. 2,31,963.52/- after 06.07.1984 and the Bank Guarantee Bond no. 7/80 dated 11.08.1980 amounting to Rs. 1,34,680/- after 10.08.1985 as per terms and conditions of the said Bank Guarantee bonds. According to the said order of the Hon'ble High Court, Calcutta, as a result thereof in terms of the said order of the Hon'ble High Court Calcutta, the interim order granted have stood vacated and the plaintiff has become entitled to enforce the said 11 Bank Guarantee Bonds in terms of the provisions of the said Bank Guarantee Bonds.

5. Further case of the plaintiff is that on 20.08.1985 the District Manager, Food Corporation of India, Muzaffarpur for and on behalf of the plaintiff preferred a claim with the Manager of the defendant Punjab National Bank at Motihari for encashment of all the 11 Bank Guarantee Bonds, but in spite of demands, the defendant bank has failed and neglected to pay the sum secured by the said Bank Guarantee Bonds amounting to Rs. 17,18,899.18/- or any part thereof. On and from 21.10.1985 the defendant no. 2 has been taken over by the State of Bihar and they are placed under Bihar State Sugar Corporation Limited and under the provisions of clause 3 (4) (i) of Bihar Ordinance No. 38 of 1985 liability of the scheduled undertaking in respect of any period prior to the appointed day shall be the liability of the respective company shall be enforceable against such company and not against the State of Bihar on the said Corporation. So under the circumstances, the defendant no. 2 is also liable to pay the said amount of Rs. 17,19,899.18/-.

6. The defendant no. 1 Punjab National Bank appeared and filed written statement. Briefly stated, the case of the defendant no. 1 is is that this Court has no jurisdiction to try the suit and also the suit is bad for misjoinder of cause of action and non-joinder of parties because in this case the defendant no. 2 ceased to exist on 04.12.1985 and the entire assets and liabilities of the defendant no. 2 was taken over by the Government of Bihar but the State of Bihar and Bihar State Sugar Corporation had not been made party to the suit. This suit has been filed against 11 Bank Guarantee letters but all these 11 Bank Guarantee letters have been executed separately and they are the out come of independent contract. It has alleged breach of contract in respect of only two Bank Guarantee letters no. 6/C and 7/ C but it has filed the suit for all the Bank Guarantee letters which is wrong. Original owner of Sugauli Sugar Works ceased to have any contract with the Sugauli Sugar Works towards the end of the year 1985 when the said Sugar Works were taken over by the Government of Bihar and so thereafter the original owner were not bound to execute any Bank Guarantee or renew any Bank Guarantee. It is further case that the liability of the defendant under the Bank Guarantee existed only for one year from the date of the issuance of their respective Bonds. The plaintiff would have claimed any payment from the defendant only if the Sugauli sugar works had continued to be the property of the previous owner of Sugauli Sugar Works Limited and further when the said owners failed to inform the plaintiff within four weeks of the expiry of the Bank Guarantee letters and further the plaintiff can enforce the Bank Guarantee only when the suit or claim is filed within six months of the expiry of those Bonds and because the suit or claim has not been filed within six months and so the plaintiff's claim is barred by limitation. All the Bank Guarantee letters ceased to be effective on the enforcement of Bihar Act 12 of 1985. The claim for interest by the plaintiff is false and baseless. The Bank never contracted to pay any interest.

The defendant further denied that any alleged letter of demand dated 20.08.1985 alleged to have been given by the plaintiff was not actually sent or delivered to the defendant or any of its employee of East Champaran, Motihari branch.

7. The learned court below for adjudication framed the following issues:

(i) Is the suit as framed maintainable ?

(ii) Is the suit bad for law of limitation ?

(iii) Is the suit hit by principle of estoppel, waiver and acquiescence ?

(iv) Has the plaintiff got any cause of action for the suit ?

(v) Whether the claim of the plaintiff is barred under any provision of law ?

(vi) Whether the suit is bad for non-joinder of necessary party ?

(vii) Whether this Court had jurisdiction to try the suit ?

(viii) Whether the claim of the plaintiff is correct and plaintiff is entitled to a decree of Rs. 25,09,544.95/- principal and interest and further entitled to interest at the rate of 18 % per annum till realization ?

(ix) To what relief or reliefs the plaintiff is entitled ?

8. The learned court below took up issues no. viii and ii together and decided the same partly in favour of the plaintiff and against the defendant holding that the plaintiff is entitled to claim the amount of Bank Guarantee no. 6/80 and 7/80 only and the plaintiff cannot claim any interest on this count because the guarantee is not a loan of any kind. Thereafter, issue no. vii was taken and it was decided in favour of the plaintiff and against the defendant holding that the court has jurisdiction to try the suit. Issue no. i and iv were taken together and it was held that the plaintiff has got good cause of action for the suit and the suit as framed is maintainable and accordingly, decided the same in favour of the plaintiff and against the defendant. Issue No. iii, v and ix were not pressed and accordingly, the suit was partly decreed on contest with cost against the defendant no. 1 directing the defendant no. 1 to pay to the plaintiff a sum of Rs. 3,66,643.52/- within 30 days from the date of judgment and as the defendant no. 2 was only the proforma defendant so no any order was passed against the defendant no. 2.

9. The plaintiff being aggrieved and dissatisfied with the part decree, preferred this appeal challenging the part judgment and decree. According to the plaintiff appellant, as the defendant no. 2 failed to renew the two Bank Guarantee, resulting, the interim order of Calcutta High Court was vacated, and as the defendant no. 1 has issued 11 Bank Guarantees and as such the defendant no. 1 was liable to pay the amount of all the 11 Bank Guarantees with interest. The judgment and decree allowing the plaintiff the amount only of two Bank Guarantee is not good and the plaintiff should have been allowed the amount of all the 11 Bank Guarantee with interest as claimed.

10. Learned counsel for the appellant has submitted that 11 Bank Guarantees were issued as per the order of the Hon'ble High Court of Calcutta and, two Bank Guarantees were not renewed as per the terms of the order of the Hon'ble High Court of Calcutta, and, as such the order of Hon'ble High Court, Calcutta stands vacated and the plaintiff became entitled to claim the amount of all the 11 Bank Guarantees and accordingly, the suit was filed when the defendant no. 1 did not pay the amount in spite of demand made by the plaintiff under registered letter. The case of the plaintiff is well proved but the learned court below failed to consider that all the 11 Bank Guarantees were issued in terms of the order of Hon'ble High Court of Calcutta and as such the plaintiff is entitled to claim the amount of all the 11 Bank Guarantees with interest thereon. It has further been argued that the defendants no. 1 has not preferred any cross-objection and as such the defendant no. 1 is not entitled to object the findings of the learned court below. The defendant no. 1 by not preferring cross-objection has admitted the judgment and decree passed by the learned court below and as such the defendant no. 1/respondent no. 1 is not entitled to argue against the judgment and decree.

11. On behalf of respondent no. 1/ defendant no. 1 it has been argued that the learned court below has rightly passed the part decree as all the Bank Guarantees are separate to each other and have been executed on a different dates for different amounts. The plaintiff cannot claim the amount of all the 11 Bank Guarantees. The learned counsel for the respondent no. 1 has further argued that the suit as framed is not maintainable and the plaintiff has got no valid cause of action. In my opinion, such argument is not maintainable in view of the fact that the respondent no.1 has not challenged the judgment and decree by preferring cross-objection.

12. The only point for consideration in this appeal is as to whether the plaintiff is entitled to claim the amount of all the 11 Bank Guarantees with interest thereon.

13. It is an admitted fact that the defendant no. 2 , pursuant to the order of High Court of Calcutta, from time to time furnished different Bank Guarantees Bonds to secure/cover the difference to be realized between the price fixed by the Sugar (Price Determination for 1978-79 Production) Order 1979, Sugar (Price Determination for 1979-80 Production) order 1979 and the price to be realized in terms of the order of the High Court, Calcutta excluding the excise duty. The Bank Guarantees no. 1/80, 2/80, 3/80, 4/80, 5/80, /81, 6/80, 7/80, 8/80, 9/80 and 10/80 were furnished on different dates of different amounts having different date of expiry which were further re-validated and renewed. The defendant no. 2 failed and neglected to renew the Bank Guarantee Bond no. 6/80 dated 07.07.1980 amounting to Rs. 2,31,963.52/- after 0.7.1985 and the Bank Guarantee Bond no. 7/80 dated 11.09.1980 amounting to Rs. 1,34,680/- after 10.08.1985, as per the terms and conditions of the said Bank Guarantee Bonds and said order of High Court of Calcutta as a result thereof in terms of the said order of the High Court of Calcutta the interim orders granted therein was vacated and the plaintiff has become entitled to enforce the said 11 Bank Guarantees Bonds in terms of the provisions of the said Bank Guarantee Bonds. On 20.08.1985 the District Manager, Food Corporation of India, Muzaffarpur for and on behalf of plaintiff preferred a claim with the Manager of Punjab National Bank, Motihari for encashment of the 11 Bank Guarantee Bonds covering the total amount of Rs. 17,19,899.18/- furnished by the said defendant no. 2 in C.R. No. 174 (W) of 1980. But in spite of demand the defendant Bank has failed and neglected to pay the said sum secured by the said Bank Guarantee Bonds amounting to Rs. 17,19,899.18/- or any part thereof and as such the plaintiff is entitled to claim the amount of Rs. 17,19,899.18/- from the defendant no. 1. So far the interest is concerned, it is true that the Bank Guarantees were not loan but as the defendant no. 1, in spite of claim put forward by the plaintiff within time, failed to discharge his liability and as such the plaintiff is entitled for simple interest of Rs. 6 % per annum from the said respective dates of demand till payment. The plaintiff claimed for interest at the rate of 18 % per annum appears excessive and not justified. All the 11 Bank Guarantees are in the terms of one of the order of the High Court, Calcutta and as such the findings of the learned court below that the plaintiff is entitled for amount of two Bank Guarantees appears not tenable. It is true that the Bank Guarantees have been executed on different dates for different amount but the plaintiff has successfully satisfied the court that the claim was lodged actually on 20.08.1985 when the plaintiff sent a registered letter to the Manager, Punjab National Bank, Motihari to claim the amount. It is also clear that the defendant no. 1 has received the registered letter on 30.08.1985 but the defendant no. 1 did not pay the amount. The plaintiff, thus, is entitled not only for the amount under Bank Guarantee no. 6/80 and 7/80 rather for all the 11 Bank Guarantees i.e. total amounting to Rs. 17,19,899.18/- and also simple interest at the rate of 6 % per annum with effect from 20.08.1985 till its realization and it will meet the ends of justice. Accordingly, the judgment and decree of the learned court below to that extent is hereby set aside and the suit of the plaintiff is hereby accordingly, decreed on contest with cost against the defendant no. 1. The defendant no. 1 is hereby directed to pay to the plaintiff a sum of Rs. 17,19,899.18/- and simple interest at the rate of 6 % per annum with effect from 20.08.1985 till its realization within 60 days from today. The defendant no. 2 is only a proforma defendant, so no order is required to be passed against respondent no. 2.

14. In the result, this appeal is partly allowed on contest but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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