

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1330 of 2018 (O&M)
Date of Decision: November 19, 2018

M/s Khalsa Rice Mills

...Petitioner

Versus

Punjab State Civil Supplies Corporation Ltd. & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kanwal Goyal, Advocate for
Mr. Mukand Gupta, Advocate,
for the petitioner.

Ms. Deepali Puri, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order dated 19.01.2018 (Annexure P-5), whereby the application moved for converting the mandatory injunction into suit for recovery of ₹ 19,74,362/- along with interest @ 18% per annum w.e.f. 01.01.2012 by paying court fees, has been dismissed.

Mr. Kanwal Goyal Advocate for Mr. Mukand Gupta, learned counsel appearing on behalf of the petitioner submitted that the defendants had admitted receipt of ₹ 40,00,000/- but wrongly adjusted the same towards the crop year 2011-12, whereas it should have been adjusted towards the crop year 2010-11. Earlier, proceedings were stayed by this court and, therefore, the plaintiff could not move the application.

On the other hand, Ms.Deepali Puri, learned counsel for the

respondents submitted that the paddy was allotted in the month of October, 2011 and the payment made on 26.12.2011 cannot be construed for the crop year 2010-11. Arbitration award has already been passed against the plaintiff firm and they want to wriggle out of the same by seeking amendment.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the amendment, as sought, would not be barred by law of limitation as there was a stay granted by this court in Civil Revision No.7256 of 2014 vis-a-vis dispute qua dissolution of partnership. The same reads thus:-

“Learned counsel for the petitioners inter alia contends that in the judgment relied upon by the trial Court i.e. Sukanya Holdings (P) Ltd. Versus Jayesh H.Pandya and another, (2003) 5 SCC 531, the dispute was pertaining to dissolution of partnership firm and accounts. It is further contended that the plea about bar to the suit before the Civil Court in terms of Section 8 of the Arbitration and Conciliation Act, 1996 was taken at the first instance in the written statement itself.

Notice of motion for 11.2.2015.

In the meanwhile, proceedings before the trial court shall remain stayed.

Process dasti as well.”

The trial court has not taken into consideration the aforementioned fact and, therefore, there is illegality and perversity. The amendment sought will not change the nature of the suit. Moreover, respondent-defendants would have a right to rebut the same by way of written statement.

As an upshot of aforementioned findings, the order under challenge is set-aside. Application for amendment is allowed subject to

payment of 5,000/- as costs. Amendment sought to be incorporated in the
plaint is permitted. Revision petition stands allowed.

However, it will not preclude the defendants to take all possible
objections in accordance with law.

November 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No