IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.2564 of 1999
Date of decision:03.08.2018

The District Manager, Food Corporation of India ... Appellant

Vs.

Smt. Kiran Bala and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Goel, Advocate and
Mr. Atul Gaur, Advocate
for the appellant.

Mr. S.K.Singla, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-Food Corporation of India (for short "FCI) is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court dated 22.03.1999, whereby, the suit seeking rendition of account dismissed by the trial Court, has been decreed.

The respondent-plaintiff/Kiran Bala instituted the suit for mandatory injunction directing the defendants to make the payment of outstanding amount alongwith interest, as damages at the rate of ₹1.80 paise w.e.f. 22.4.1987 till the date of recovery after deduction of ₹ 7,46,315/- paid through cheques as per the paddy milling account for the year 1978-79 to 1985-86 in possession of defendant no.2, i.e. Senior Regional Manager, Food Corporation of India and in the alternative for rendition of accounts in respect of aforementioned account in view of the Negotiation Settlement dated 22.4.1987 and to make payment of the amount which was found due towards defendants no.1 to 3, on the premise, that plaintiff was into business of Rice Mills under the name and style of M/s Jindal Rice Mills Malerkotla and Kiran Bala was its sole proprietor Kewal Krishan Jindal, husband, being her attorney entered into a contract with FCI for shelling paddy rice during the years 1978-79 to 1983-84.

In pursuance to the terms and conditions of the contract, the plaintiff-firm started work of milling the paddy in the year 1978-79 and continued doing so, upto May 1984. The paddy of different varieties was delivered by FCI to the plaintiff's representatives at Malerkotla but the defendants did not make the payment of rice milling to the plaintiff and was constrained to institute the suit for recovery of ₹10,99,972.93 paise on 15.06.1985.

Defendant nos.1 and 2 contested the suit by filing written statement. However, during the pendency of the suit, parties arrived at settlement and negotiations were reduced into writing on the points referred to therein. The plaintiff withdrew the suit on 26.05.1987. The defendants on account of settlement made the payment of ₹3,72,890.54 paise through draft dated 26.5.1987; ₹2,56,019.48 paise through cheque dated 6.6.1987 and ₹1,17,408.98 paise through cheque dated 09.10.1987:total ₹7,46,315/- but withheld the remaining amount without any cause. Legal notice was served upon the defendants, wherein they admitted the factum of settlement and rendition of balance account but had taken a plea of loss to the tune of ₹2,58,600/-, therefore, a cause of action accrued to institute the suit.

The suit aforementioned was contested on the ground of maintainability etc. On merit, FCI admitted that plaintiff milled the paddy for the crop year 1978-79 under the agreement entered into between the parties and also for the subsequent years but plaintiff had made a tender for purchase of substandard paddy from FCI. The plaintiff offered to purchase the paddy at the rates given therein and was required to deposit full costs amounting to ₹3,05,750/- within seven days from acceptance but failed to deposit the full costs of the sub-standard paddy and instead deposited a sum of ₹37,650/- on 25.04.1985 and ₹9500/- in the Regional Office, therefore, the stocks could not be released. As a result of default of the party to lift paddy stocks, the costs/price of the substandard paddy deteriorated and damaged and FCI had no other choice but to dump the stock, thus, suffered a loss of ₹2,58,600/- which was debited to the account of the plaintiff. The plaintiff was liable for the payment of huge loss to FCI. The suit was also stated to be barred under the provisions of Order 23 Rule 1 CPC.

Since the parties were at variance, the trial Court framed the following issues:-

"1. Whether the plaintiff is entitled to rendition of accounts for the year 1978-79 to 1985-86?OPP

2. Whether the plaintiff is entitled to mandatory injunction as prayed for?OPP

3. Whether there was any settlement out of court dated 22.4.1987 between the parties, if so its effect?OPP

4. Whether the plaintiff is entitled to interest from 22.4.1987 onwards, if so to what rate and to what amount?OPP

5. Whether the defendants suffered a loss of ₹2,58,600/- on act of omission and commission of the plaintiff, if so, to what effect?OPD

6. Whether the suit is not maintainable in the present form?OPD

7. Whether this Court has no jurisdiction?OPD

8. Whether the suit is within limitation?OPD

9. Whether the suit is barred under Order 23 Rule 1 read with Section 11 of CPC?OPD

10. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD

11. Whether the defendants are stopped to any claim from the plaintiff by their act and conduct? OPP

12. Relief."

Both the parties in support of pleadings led evidence. The trial Court on the basis of evidence brought on record, dismissed the suit by holding that suit of the plaintiff was not maintainable as it was tantamount seeking recovery without payment of court fee, much less on the limitation. The appeal laid before the Lower Appellate Court as indicated above has been allowed by taking into consideration the terms and conditions of settlement. The reasoning of the trial Court with regard to maintainability of the suit on the premise that defendants in reply to the legal notice did not dispute the adjustment of the amount and had not set up any counter claim claiming the loss to the extent of ₹2,58,600/-.

Mr. Sumeet Goel and Mr. Atul Gaur, learned counsel appearing on behalf of the appellant has drawn the attention of this Court to the order dated 17.07.2004, whereby, this Court, while admitting the appeal framed the following substantial question of law:-

> "Whether the plaintiff could file a suit for rendition of accounts having withdrawn the suit for specific amount in the year 1987?"

To lay emphasis with regard to adjudication of the aforementioned question of law, it was submitted that suit for rendition of account was not maintainable as remedy was to seek revival of the previous suit which was withdrawn to seek recovery of ₹10,00,000/- an odd amount. In pursuance to the settlement dated 22.04.1987 (Ex.P18) already arrived at between the parties, payment of ₹7,46,315/- had already been paid. The plaintiff failed to deposit the complete amount as per the previous agreement for the year 1978-79 as referred to in the written statement, thus, loss was quantified in terms of money to the extent of ₹2,58,000/-. The suit was not maintainable as it tantamounts to seeking the same relief which was sought in the previous suit under the garb of mandatory injunction without affixing the court fee. There was no settlement due amongst the parties and the remedy for the plaintiff, if aggrieved, was to assail the findings qua payment of ₹7,46,215/-. The finding of fact arrived at by the trial Court is not required to be interfered with as it was based upon the appreciation of oral and documentary evidence.

No permission has been granted in the previous suit while withdrawing the suit on 26.05.1987 to file fresh one, therefore, the suit was hit by the provisions of Order 23 CPC. Repetitive suit on the same subject matter cannot be entertained particularly when earlier suit was withdrawn. Section 25 of the Contract Act had no relevancy with the facts of the present case. The settlement dated 22.04.1987 was mutual settlement between the parties and cannot be adjudicated if barred by law of limitation.

The Lower Appellate Court abdicated in arriving at finding that settlement dated 22.4.1987 was not part of the earlier suit but failed to notice that loss of ₹2,58,000/- caused on account of tender submitted by the plaintiff for lifting the damage food grains which subsequently failed to lift had been adjusted at the time of settlement and thus, urged this Court for setting aside the judgment and decree of the Lower Appellate Court.

Per contra, Mr. S.K.Singla, learned counsel appearing on behalf of the respondents laid emphatic reliance upon the settlement, *ibid* to submit that the trial Court failed to notice the penultimate paragraph of the settlement, for, the plaintiff mandatorily required to withdraw the previously instituted suit, therefore, it did not lie in the mouth of FCI to raise objection with regard to maintainability of the suit. FCI was under the obligation to render the account but by sending an amount of ₹7,46,315/- on three different occasions, *ibid,* failed to render the heads under which the aforementioned amount was paid. On account of breach of the obligation, mandatory injunction was sought, for, no court fee was required to be paid under the admitted liability. In order to prevent the prolongation of litigation, alternative relief for rendition of account was sought so that the Court could grant the mandatory injunction to the defendants to make the payment.

Preceding to filing of the suit, legal notice was served upon FCI which was duly replied. The finding of the Lower Appellate Court is based upon the aforementioned admission which was erroneously not noticed by the trial Court. FCI failed to claim the alleged loss of ₹2,58,000/- by setting up the counter claim or in an independent suit or place on record any statement of account enabling the Court to ponder upon for the purpose of rendition of account. An application for production of record in this regard was also submitted and in reply dated 08.06.1990 FCI conceded for producing the available record and the original record was not produced. Another application in January 1992 in this regard was also moved which was allowed by the trial Court as per the zimni order dated 04.01.1993.

In the instant suit, it was a separate cause of action, therefore, could not be clubbed with the previous suit to bring the suit within the realm of Order 23 CPC or *doctrine akin to res judicata* and thus, urged this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Gaur. The reason is not one but many:-

The trial Court abdicated in not referring to settlement, Ex.P18. The Lower Appellate Court being the last Court of facts and law enjoined upon an obligation to advert each oral and documentary evidence. Having referred to the same, in my view, there cannot be any fault, error or perversity. Ex.P18 settlement arrived at between the parties has not been denied. For the sake of brevity, contents of the settlement reads as under:-

> "Minutes of negotiations held with M/s Jindal Rice Mills, Malerkotla on 22nd April, 1987 regarding settlement of their accounts of paddy shelling for the year 1978-79 to 1983-84. The following points were under dispute on which negotiations were held:-
>
> 1. Settlement of gunny accounts.
> 2. Labour charges claim
> 3. compensation on account of interest and other damages.
> 4. Implementation of decision on account of storage charges and penalty for the year 1978-79 and 1979-80 already taken.
> 5. Settlement of rice account.

6. Consideration of relief on account of storage charges and penalties not considered earlier.

The committee took the following decisions:-

1. On the basis of evidence produced by the party, it was felt that wherever the gunnies issued to the party were cut and torn with minor holes, the same may be accepted and no objection on account of defective return of gunnies be raised.

2. As per terms and conditions of agreement, the paddy is required to be issued for custom milling at scale point. The party produced necessary evidences to show that they were not issued Ex.Scale point on account of labour trouble and the same was lifted by them from the stocks by deployment of their own labour. It was thus felt that the Distt. Office should reimburse the amount of the party at the HTC Scheduled rates applicable for the relevant period.

3. It was felt that no relief or compensation for any notional loss is allowable.

4. It was agreed to restore the relief on account of storage charges and penalty which has earlier been waived off but withheld due to audit objection.

5. The party insisted for the return of their excess rice. The committee was not agreeable. However, it was felt that there was no justification in withholding the rice in 84-85 when no rice was due from the party. In case of non return of

> rice, the party insisted for economic rate/market rate prevalent at the time of payment of the excess rice. In the alternative, the party was insisting for the interest at 18% per annum from the date of payment fell due to them. Taking into consideration the fact that neither the rice of 1984-85 can be returned now nor the payment of interest is desirable in principle, it is felt that the maximum relief which could be given is payment for the excess rice at the levy rate applicable for 86-87, if agreed to by the party.
>
> 6. The committee agreed to consider on merits if any further relief was due to the party on account of storage charges and penalties.
>
> The above recommendations will, however, be subject to withdrawal of the case by the party from the Court unconditionally."

In paragraph 6, the settlement was only subject to the unconditional withdrawal of the suit filed by the party, thus, there was no occasion for the plaintiff to seek permission to file the fresh suit. It does not lie in the mouth of appellant to raise a plea with regard to maintainability as per the provisions of Order 23 CPC, for, it cannot prevent the aggrieved party seeking vindication of the grievance having submitted to terms and conditions of settlement.

No explanation has come forward as to how and why a sum of

₹7,46,315/- on different occasions had been paid, much less adjustment of ₹2,58,000/- on account of loss. Though on the plain and simple reading of the written statement, loss was attributed to the previous agreement but not after the compromise of 1987. In this regard, I would be failing in my duty in not extracting the relevant part of the written statement attributing the alleged loss. Para 12 of the written statement read as under:-

> 12. That in reply to para 12 of the plaint, it is denied that the defendants withheld any payment due to the plaintiff. In fact, the matter is that the plaintiff had made a tender for purchase of substandard paddy from FCI at Malerkotla as per details given below:-
>
> | **Variety** | ***Qty in MT*** | ***Rate per qtl.*** | ***Crop year*** |
> |---|---|---|---|
> | IR-8 | 500 | ₹23/- | 1980-81 |
> | PR-106 | 500 | ₹23.50 | 1980-81 |
>
> and on negotiation on dated 16.1.1985, the party offered to purchase following qty. of substandard paddy from Malerkotla and at the rates mentioned below:-
>
> | **Variety** | ***Qty in MT*** | ***Rate per qtl.*** | ***Crop year*** |
> |---|---|---|---|
> | IR-8 | 500 | ₹23.50 PQ | 1980-81 |
> | PR-106 | 750 | ₹25.10 PQ | 1980-81 |
>
> The negotiation offer/tender of the plaintiff was accepted vide acceptance telegram No.D/22(4)/Sub-Std/80-82/vol.V/388 dated 4/6.2.1985, photostat copy of acceptance telegram, tender and negotiation sheet are enclosed. As per terms and conditions

of tender, the plaintiff was required to deposit full cost amounting to ₹3,05,750.00 of substandard paddy within seven days from its acceptance. But the plaintiff failed to deposit the full cost of the substandard paddy. But instead he deposited amount of ₹ 37650-00 on dated 25.4.1985 and ₹9500/- as earnest money deposited in Regional Office against which he lifted 728-35 qtls of sub-standard paddy. As the plaintiff had failed to deposit cost of sub-standard paddy under terms and conditions of tender, therefore, stocks could not be released. As a consequence of default of the party to lift paddy stocks on payment of balance cost/price, the sub-standard paddy deteriorated and become damaged and the FCI had to dump the stocks. Due to this, FCI had suffered loss of ₹2,58,600/- and has been debited to the account of the party. The plaintiff is liable for the payment of this loss of ₹2,58,600/- to the FCI which was caused to FCI by default of the plaintiff. Copy of loss statement is enclosed. Rest of the plaint as stated is not admitted."

Admittedly, tender/agreement to sell was in existence and once FCI failed to make the payment during the pendency of the suit, settlement Ex.P18 was arrived at, thus, it gave a fresh cause of action to institute the present suit. FCI being the instrumentality of the Central Government cannot be permitted to approbate or reprobate or wriggle out of such agreement. It was incumbent upon them to place on record the material, particularly, statement of account to show that there was adherence to the settlement Ex.P18. In the absence of the same, the Lower Appellate Court, in my view, correctly drew the adverse inference. This is what has been import of the judgment and decree of the Lower Appellate Court.

As an upshot of my findings, I do not find any illegality and perversity in the findings of the Lower Appellate Court being the last Court of facts and law which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of of the present appeal.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 03, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No