IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3443-2016 (O&M)
Date of Decision: 19.09.2018

Food Corporation of India --Appellant

Versus

M/s Sharda Trading Company & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Samir Rathaur, Advocate for
Mr. Sumeet Goel, Advocate for the appellant.

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TEJINDER SINGH DHINDSA.J (Oral)

Food Corporation of India is in second appeal before this Court having remained unsuccessful in both the courts below.

A suit instituted by the Corporation/plaintiff for recovery of Rs.9,93,544/- along with costs and future interest @ 18% per annum against the defendants was dismissed by the Trial Court on 22.2.2014. Civil appeal preferred has met the same fate vide decision dated 8.2.2016 passed by the learned Additional District Judge, Ambala.

Brief facts of the case are that the plaintiff-appellant Corporation invited offers for storage-cum-milling of FCI paddy received from Punjab region. Defendants/respondents firm namely M/s Sharda Trading Company vide letters dated 23.1.1995 and 25.2.1995 offered to mill 500 tons of paddy. In such communication it was stated that the paddy would be stored in the premises of the defendant firm and no storage charges would be applicable. Plaintiff-appellant asserted that 3199 bags (1999.91 quintals) of fine, super fine paddy (ex-Punjab) were entrusted to the respondent firm for purposes of milling. Plaintiff-Corporation vide telegram dated 21.2.1995 is stated to have conveyed acceptance of the offer of the respondent firm for storage-cum-milling of 500 tons of paddy at FCI

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rates, terms and conditions. It was further averred that the respondent firm had deposited a sum of Rs.10,000/- as earnest money along with offer for storage-cum-milling. However, the job of custom milling of FCI paddy was not undertaken and the entire paddy stock stored in the premises of the respondent firm started to deteriorate. Ultimately, faced with no other option, plaintiff-appellant Corporation decided to dispose of the entire stock by inviting tenders. Against such backdrop the suit for recovery of Rs.5,46,455/- towards loss suffered by the Corporation was filed. Interest thereupon was computed to be Rs.4,47,089/- and as such, the total amount recoverable as per suit was 9,93,544/-.

Counsel representing the appellant-Corporation has argued that there was an implied contract between the parties and the same may be inferred from the fact that the respondent firm had accepted the paddy stock from FCI. It is urged that the respondent firm having not undertaken the job of custom milling of the FCI paddy stock, the suit for recovery of loss suffered on account of deterioration and shortfall of paddy stock ought to have been decreed by the courts below. Further contended that the courts below have erred in holding that an official of the rank of District Manager of the plaintiff-appellant Corporation was not authorized to file a suit and in this regard undue weightage has been given to the provisions of Order 29 Rule 1 CPC. No other point was urged.

Having heard counsel for the appellant-Corporation at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

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The uncontroverted factual premise is that in pursuance to the communication addressed by the respondent firm to FCI as regards milling of 500 tons of FCI paddy, the appellant-Corporation responded by way of a telegram dated 21.2.1995 Ex. P-10 and which was duly received by the respondent firm. As per Ex. P-10, the offer of milling 500 tons of paddy at FCI rates was accepted subject to deposit of cash security and execution of an agreement. In other words, it was a conditional acceptance of an offer. A witness of the appellant-Corporation i.e. R.K. Verma, PW-1 and who remained posted as Assistant Manager (Accounts) in FCI District Office, Karnal from 1981 to 1988 had admitted in his deposition before the court that in pursuance to the telegram Ex. P-10 neither any amount of security was deposited nor any written agreement was executed between the parties. Under such circumstances, the courts below have rightfully taken a view that there was no concluded contract between the parties.

Courts below while non-suiting the plaintiff Corporation have also noticed the deposition of one of the partners of the respondent firm and who had stated that the paddy stock that had been received for custom milling was from Punjab region as the millers of Punjab were reluctant to mill the said paddy on account of its poor quality. Courts have also noticed a letter dated 23.3.1995 written by Assistant Manager (Quality Control) Ex. D-6 and as per contents thereof the President of the Rice Millers' Association of Ambala had reported that the paddy stocks ex-Punjab received at Ambala were sub standard and below specifications and the same as such, could not be put to custom milling. It has also weighed with the courts below while dismissing the suit for recovery that the paddy in question was otherwise to be milled within a time frame of three months and

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yet inspite of custom milling having not been undertaken, FCI did not take any step towards getting the job undertaken from other millers or to have arranged disposal of the paddy stock expeditiously and thereby preventing further deterioration/shortage.

The reasoning adopted by the courts below would be accepted as cogent and valid and upon due appreciation of oral and documentary evidence adduced on record.

Courts below have also concurrently held that the suit had been filed by the Corporation through an official, who was not competent to do so.

Order 29 Rule 1 CPC reads as under:-

> *"**1**. Subscription and verification of pleading:- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the Secretary or by any Director or other principal officer of the corporation who is able to depose to the facts of the case."*

Clearly, a suit should have been filed on behalf of the appellant Corporation by the Secretary, any Director or any other Principal Officer. The suit had been instituted in the year 1998 and through an official of the rank of District Manager. During the course of hearing counsel has clearly conceded that it is only for the first time in the year 2000 vide notification circular Ex. D-1 issued by the FCI that officers of the rank of District Manager were declared as Principal Officers of the Corporation. No infirmity, as such, is found in the view taken by the courts below as regards the suit itself having been filed by the Food Corporation of India through an official who was not even competent to do so.

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For the reasons recorded above, no basis for interference is made out.

Appeal does not raise any question of law.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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