

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4578-2016 (O&M)

Date of Decision: 17.5.2018

Punjab State Civil Supplies Corporation (PUNSUP) and another
....Appellants.

Versus

Kapoor Singh and another
...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Aman Sharma, Advocate for the appellants.

AJAY KUMAR MITTAL, ACJ.

1. This Regular Second Appeal filed by the plaintiffs-appellants arises from the judgment and decree dated 30.11.2015 passed by the District Judge, Faridkot, affirming that of the Civil Judge (Junior Division), Faridkot dated 31.3.2014, vide which the suit of the plaintiffs for recovery of ₹ 6,44,043/- along with future interest, was dismissed.

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein are that during the crop year 1995-96, defendant No.1 was posted at Baghapurana Centre as Inspector Grade-I, PUNSUP and during the said period, he had purchased the paddy on behalf of the plaintiffs for entrustment to the different rice shellers for its milling. Defendant No.2 was posted at Moga Sub Division and as such remained there upto 15.4.1998. The defendants did not discharge their duties due to

shellers within the stipulated period. The plaintiffs had to transfer 28334 bags weighing 18417.10 quintals of paddy from Baghapurana to other Districts and had suffered loss of ₹ 6,44,043/- on account of transportation charges. The defendants were separately charge sheeted vide memos dated 23.10.2001 and thereafter a regular enquiry was conducted against them. Plaintiff No.1 found the defendants guilty for causing the financial loss to the plaintiffs and vide order dated 26.2.2007 ordered for recovery of the said amount. Since the defendants had failed to pay the said amount, the plaintiffs filed a suit for recovery of the amount in question. Upon notice, the defendants filed a written statement raising various preliminary objections. It was pleaded therein that as per instructions issued vide letter dated 17.12.1999, plaintiff No.2 was not authorized to file the suit. The claim of the PUNSUP was only on the report of audit or statement of accountant without any cogent proof. It was further pleaded that according to PUNSUP manual in Godown storage in Grade-I can be done for one year wherein in Grade-II Godown storage can be done for 5 to 7 months. However, in the present case, in open plinths the storage can be done only for few days but the paddy in question had been stored for a longer period in open and unscientific plinths which were not fit for either for longer storage or short storage. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff department is entitled to recover ₹ 6,44,043/- from the defendants, as prayed? OPP

2. Whether present suit is not maintainable? OPD
3. Whether the suit is not within limitation? OPD
4. Whether plaintiffs have not come to the court with clean hands, if so its effect? OPD
5. Relief.

4. Both the parties led evidence and on appreciation of the oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the plaintiffs had to independently establish their claim by leading cogent evidence that how the amount had been assessed to be the amount regarding which they wanted decree. Accordingly, the trial Court vide judgment and decree dated 31.3.2014 dismissed the suit of the plaintiffs. The conclusion recorded by the trial court on issue No.1 which is material reads thus:-

“19. Plaintiff-Corporation was required to refer the matter before Arbitration and the same was done. Vide order dated 23.9.2004 Sole Arbitrator found that a sum of ₹ 34,725/- was recoverable.

20. Milling of paddy was the responsibility of the Millers with whom agreement was entered into. On the one side plaintiff corporation is resorting to arbitration proceedings regarding the same loss and on the other hand when they were not successful in getting the recovery through arbitration proceedings they resorted to civil suit for making good the deficiency from their employees. No exact accounts have been produced by the plaintiff corporation from where liability of

defendants can be assessed. Department inquiry, though, have been conducted by the plaintiff corporation but merely the same cannot be made the basis of decreeing the suit. Even though the inquiry was conducted but the same was not binding upon the court. The plaintiffs have to independently establish their claim by leading cogent evidence that how the amount have been assessed to be the amount regarding which they want decree to be passed in their favour. So, this issue is decided against the plaintiffs and in favour of defendants. In the considered opinion of court no recovery can be made out from the defendants.”

5. Feeling aggrieved, the plaintiffs filed an appeal and the lower appellate Court finding no illegality and infirmity in the findings of the trial Court, dismissed the appeal vide judgment and decree dated 30.11.2015. The findings of the trial court on issue No.1 were affirmed with the following observations:-

“17. At this juncture, it is important to refer to certain clauses of the agreement entered into between the PUNSUP and the millers. Clause 14 (vi) of the agreement states that the delivery of the rice shall be deemed to have been completed by the millers after the stocks are loaded into wagons or delivered into godowns as per directions of authorized/responsible official of the PUNSUP, after necessary weighment and approval of the quality in accordance with the prescribed procedure of

the FCI/State Government at the cost of the Miller. It also reveals that all the expenditure including labour, transportation and any other incidental expenditure etc. incurred in connection with the lifting of the paddy from storage points or any other place and delivery of rice, shall be borne by the miller and payable by the Government. The miller shall submit necessary documents in his regard to the PUNSUP in time. Further, clause 20 of the agreement says that all the disputes and difference arising out of or in any manner touching or concerning this agreement, whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the arbitration. As per the aforesaid clause of the agreement, the plaintiff Corporation was required to refer the matter before the Arbitrator and the matter was actually referred to the Arbitrator and vide order dated 23.9.2004, the Arbitrator has found that a sum of ₹ 34,725/- was recoverable from the concerned millers. From the evidence led on record, it stands proved that the milling of paddy was the responsibility of the millers, with whom an agreement was entered into. It also comes out that on the one hand, the plaintiff Corporation has resorted to arbitration proceedings for the loss allegedly occurred to it and on the other hand, when they failed to recover the loss through arbitration proceedings, they

filed a civil suit for making good the losses from its employees i.e. defendants No.1 and 2. Further more, the plaintiffs have also not produced the exact accounts, from where the liability of the defendants can be worked out. Although it has been established on the record that the plaintiff Corporation has conducted a departmental enquiry against the defendants but merely on the basis of said enquiry, the suit of the plaintiff Corporation cannot be decreed and the said enquiry report is not binding upon the Civil court. It was incumbent upon the plaintiff Corporation to prove by leading cogent evidence that in what manner the amount, to be recovered from the defendants, has been assessed. In the light of the aforesaid discussion, I am of the considered opinion that no liability can be fastened upon the defendants regarding the alleged loss occurred to the plaintiff Corporation and, as such, the plaintiff Corporation is not entitled to recover the amount in question from the defendants, as observed by the learned Trial Court. As such, the findings of the learned Trial Court on issue No.1 do not call for any interference by this Court and are hereby affirmed.”

6. Hence, the present appeal claiming the following substantial questions of law:-

“a. Whether it was incumbent upon the courts below to give specific finding on issue No.1, considering the admitted position of facts?

- b. Whether the Arbitration proceedings entered into with the Rice Millers can be a bar to institute suit for recovery against the delinquent officer?
- c. whether it was incumbent upon the Ld. Court below to appreciate evidence led by the appellant/defendant?
- d. Whether the orders passed by the courts below are illegal, warranting the same to be set aside?"

7. I have heard learned counsel for the appellants and have gone through the judgments and decrees with his assistance.

8. Learned counsel for the appellants has made efforts to persuade this Court to come to a different conclusion than that of the courts below but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this Court in the regular second appeal. The courts below had concurrently held that since the plaintiffs had failed to recover the loss through arbitration proceedings, they filed a civil suit for making good the losses from its employees, i.e. the defendants. Still further, the courts below had recorded a finding that the plaintiffs had not produced the exact accounts from where the liability of the defendants could be worked out.

9. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

10. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE