IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: December 07, 2018

1. RSA No.5449 of 2017 (O&M)

The Punjab State Co-operative Supply & Marketing Federation Ltd.

...Appellant

Versus

M/s Pankaj Rice & General Mills & another

...Respondents

2. RSA No.3591 of 2017 (O&M)

The Punjab State Co-operative Supply & Marketing Federation Ltd.

...Appellant

Versus

M/s Surjit Kumar & Company & others

...Respondents

3. RSA No.5598 of 2017 (O&M)

The Punjab State Co-operative Supply & Marketing Federation Ltd.

...Appellant

Versus

M/s Shiv Shankar Rice Mills & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vikas Kuthiala, Advocate,
for the appellant in all the cases.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three Regular Second Appeals bearing No.5449, 3591 and 5598 of 2017 as the common question of law and fact are involved. The facts are being taken from RSA No.5449 of 2017.

Appellant-MARKFED has not been successful in seeking recovery of different amounts on account of balance amount of surplus gunny bags (Bardana) for the years 1998-1999 and 1999-2000. The suit was based upon the pleadings that in terms of the policy promulgated by the Government, an agreement was entered into between the parties for custom milling, wherein the rice miller was required to pay the provisional rates of Bardana. Provisional cost was paid and the balance amount was sought to be recovered. As per the decision, the Government had fixed the rates in the year 2005 and in this process, cause of action accrued to raise the demand by filing the suit in 2008.

Defendants opposed the suit and asserted that the amount due was not maintainable as the security paid in terms of the agreement had already been released. Security can always be released when the accounts are settled. In such circumstances, the demand was, thus, not maintainable being barred by law of limitation.

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

> "*1. Whether the plaintiff is entitled to recover the suit amount of Rs.72,780/- from the defendant as prayed for? OPP*
>
> *2. Whether the plaintiff is entitled to charge interest, if so, at what rate? OPP*
>
> *3. Whether the suit of the plaintiff is within limitation? OPP*
>
> *4. Whether this court has got no jurisdiction to try and*

entertain the suit? OPD

5. Whether the suit has been filed through authorized person? OPP

6. Whether Smt.Chanchal Rani is not partner of defendant No.1? If so, its effect? OPD

7. Relief."

Plaintiff brought on record various documents, i.e., resolution, ledger, copies of the letters, policies and notices and even order of the High Court passed in various writ petitions, whereas the defendants brought on record licence Ex.D1 and partnership deed Ex.D2.

On the preponderance of evidence, the trial court dismissed the suit being barred by law of limitation which has been affirmed in appeal.

Mr.Vikas Kuthiala, learned counsel for the appellant-plaintiff in all the three cases submitted that when the rates were fixed by the Government, various millers in the State of Punjab had challenged the demand by filing writ petitions in this court and the same was held to be sustainable as per the order dated 08.01.2008. It is in that background, the suit aforementioned was filed. The limitation would not run from the date of the agreement or payment of the provisional prices, but from the fixation, which is an off-shoot of Clause (iv) of the policy for the agricultural years 1998-1999 and 1999-2000. Findings of fact and law are not sustainable being erroneous and perverse.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions.

The agreement entered into between the procurement agency and millers is an off-shoot of policy promulgated by the State every year. The terms and conditions of the agreement had not seen the light of the day as the same had not been brought on record. Charging provisions, referred to above, thus, remained a mystery.

Section 18 of the Limitation Act extends the period of limitation if the party from whom the amount is chargeable, acknowledges and the date of acknowledgment would be date of recurring for calculation of limitation. The alleged decision in the absence of any acknowledgment of the miller, was taken by the Government in the year 2005. The order shown to this court as Annexure A-2 has only justified the demand but not given a clean chit with regard to the rules of limitation. Clause (iv) of the policy, in the absence of the proof of acknowledgment, would be, thus, meaningless, for, miller is not a signatory of the policy.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law, which are based upon appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

December 07, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

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