

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6138 of 2017 (O&M)

Date of Decision: November 21, 2018

The Punjab State Co-operative and Marketing Federation Limited,
Chandigarh

...Appellant

Versus

M/s Khalsa Rice Mills, Dharamkot & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Naresh Gopal Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.16026-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 18 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6138 of 2017

Appellant-Markfed has not been successful in claiming recovery of ₹ 36,03,121/- from the defendants along with interest as per terms and conditions of the contract entered into between the parties from the year 1994-95 onwards.

It was alleged that the defendants, vide letter dated 20.09.1994, were supplied numerous quantity of paddy by the plaintiff for custom milling and they were required to deliver the stock upto 28.02.1995, but did

not adhere to the schedule of delivery and in such circumstances, claimed the amount by way of compensation.

Defendant Nos.3 and 5 contested the suit on the premise that the Rice Mill-defendant No.1 was not in existence. Defendant No.2 Dalip Singh had already expired before filing of the suit. It was alleged that there was no space with the Government due to the bumper heavy crop for the year 1994-95 and poor quality of the paddy, much less the rice was not as per the specification as laid down by the Ministry of Foods. Execution of the alleged agreement was denied. It was alleged to be an unilateral act.

Defendant No.4 also contested the suit independently by filing written statement.

On the preponderance of the evidence, the trial court dismissed the suit and the appeal taken before the Lower Appellate Court was also dismissed.

Mr. Naresh Gopal Sharma, learned counsel appearing on behalf of the appellant submitted that both the courts below committed illegality and perversity in not appreciating the account statements Ex.P9/1 to Ex.P9/3 which established that there was loss caused to the appellant. There was no denial on behalf of the defendants with regard to the appointment of the arbitrator, matter was also referred to the arbitrator. All the witnesses have been coherent and consistent.

I am afraid, the aforementioned argument is not sustainable, for, arbitrator appointed had returned the reference owing to the existence of “Excepted Clause”. Markfed-plaintiff preferred objections under Section 34 of the Arbitration and Conciliation Act, which have also been dismissed.

Matter attained finality upto Hon'ble Supreme Court.

Plaintiff failed to place on record any evidence to establish the compensation or incurring of any loss. In the absence of the weighing receipts or quantity shortage certificate or non-supply, the court had no other occasion but to dismiss the suit. No evidence has been placed on record to prove the alleged liability of the defendants.

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

November 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No