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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 5811 of 2016 (O&M)
Date of Decision: 01.11.2019

Yashpal and others

-Petitioners

Vs

Food Corporation of India and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Mohan Gupta, Advocate, and
Mr. Varun Mittal, Advocate, and
Mr. Anshul Sharma, Advocate,
for the petitioners.

Mr. K. K. Gupta, Advocate,
for respondent No.1.

Mr. S.P. Garg, Advocate,
for respondent No.3.

RAJ MOHAN SINGH, J. (ORAL)

Petitioners have preferred this revision petition against the order dated 05.08.2016 passed by Civil Judge (Junior Division), Moga vide which the application filed by the alleged principle defaulter- defendant No.2 namely Satish Kumar for impleading the petitioners as alleged guarantors was allowed.

Learned counsel for the petitioners states that they were not privy to any contract between defendant No.2 and

Food Corporation of India. Even if there was any agreement between the firm M/s Garg Agro Foods and owner of Rice Mill for indemnifying M/s Garg Agro Foods for any loss in the absence of privity of contract between Food Corporation of India and the petitioners, the Food Corporation of India cannot enforce any right qua recovery against the petitioners.

Plaintiff has not impleaded the petitioners as party defendants in the suit nor they have claimed any amount from them in the pleadings. It is only at the instance of defendant No.2, the petitioners have been impleaded as party defendants in the suit.

During course of arguments, it has transpired that the suit itself has been dismissed by the trial Court on the ground of limitation and an appeal filed by plaintiff- Food Corporation of India is pending before the lower Appellate Court.

At the time of issuance of notice of motion, operation of the impugned order dated 05.08.2016 was stayed. The said order has not been implemented by the trial Court as yet.

As on date, there is no suit in existence.

In view of aforesaid peculiar situation particularly when the plaintiff has not sought any such impleadment by referring to any liability of the petitioners in accordance with law, it would be just and appropriate to dispose of the present

revision petition with an understanding that in case the appeal filed by the plaintiff- Food Corporation of India is allowed and the case is remanded to the trial Court, plaintiff or defendant No.2 would be at liberty to move an appropriate application for impleadment of the present petitioners on the strength of surety bond and interpretation attached to guarantee agreement dated 01.10.2004.

In the event of filing such an application either by the plaintiff or by defendant No.2, the trial Court would be obligated to adjudge the evidentiary value of guarantee agreement and surety bond in accordance with law and thereafter, pass appropriate order without being influenced by any statement of facts made hereinabove.

Rights of the parties in pending writ petition (if any) is not to be hampered by present decision.

01.11.2019

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No