IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1542-2000(O&M)
Date of decision:-16.12.2019

M/s Forbesganj Jagdish Mills Ltd., Forbesganj

...Appellant

Versus

Food Corporation of India

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pawan Bansal, Advocate
for the appellant.

Mr.K.K. Gupta, Advocate
for the respondent.

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H.S. MADAAN, J.

In nutshell, facts of the case are that plaintiff Food Corporation of India through its Regional Manager, Regional Office (Punjab), Chandigarh had brought a suit against defendant - M/s Forbesganj Jagdish Mills Ltd., Forbesganj, District Purnea (Bihar) seeking damages/compensation to the tune of Rs.37,95,570.86 on account of non-fulfilment of contractual obligations on the part of the defendant.

As per version of the plaintiff, it floated a tender enquiry dated 30.4.1982 for the sale of sub-standard paddy to the tune of 8033 MT of IR-8 variety and 2615 MT of PR-106 variety lying at Vallah Centre District Amritsar, State of Punjab; the defendant was one of the tenderers and it had quoted the rate of Rs.621/- per MT for 2700 MT of IR-8 variety and Rs.641/- per MT for 500 MT in respect of PT-106 variety of paddy; thereafter negotiations were conducted between the parties and the defendant revised rates to Rs.837.50 per MT in respect of 5000 MTs of IR-8 variety and Rs.731.10 per MT for 1600 MTs of PR-106 variety; such offer of the defendant was accepted by the plaintiff telegraphically on 27.7.1982 and 31.7.1982; a copy of the acceptance letter in respect of each variety was also sent to the defendant through post on the same dates, in that way, the contract came into existence between the parties; consequently, a sum of Rs.2,76,000/- was deposited by the defendant as security amount with the plaintiff in accordance with the terms and conditions of the contract; the defendant was to contact the District Manager, Amritsar for lifting of the paddy and for completion of the formalities, as per the terms and conditions of the contract; as per clause D(ii) of the terms and conditions of the contract, the defendant was required to deposit total cost of the paddy within 7 days from the date of issuance of the acceptance letter; as per clause (L) if the defendant did not deposit the entire cost of the contracted paddy, then it was liable to pay interest charges to the plaintiff @ 15% per annum on the amount not paid within the stipulated period; the defendant did not deposit the amount in lump sum; it paid cost of some quantity of paddy in instalments and accordingly release order for lifting of the paddy was issued by the District Manager of the Amritsar Branch of the plaintiff in favour of the defendant; the details of the amount deposited by the defendant, release orders issued and quantity lifted etc. are given in the judgment of the trial Court in para No.4.

The plaintiff further submitted that as per Clause D(ii) of the terms and conditions of the contract, the defendant was required to deposit security amount with the plaintiff; a sum of Rs.67,067/- was lying in excess with the plaintiff towards security deposit, therefore a further release order No.1/153 dated 5.10.1983 was issued by the District Manager, Amritsar of the plaintiff for a quantity of 770 quintals of IR-8 variety in favour of the defendant; the validity of this release order was upto 25.10.1983, however, the defendant did not take any steps to lift the paddy as per the release order and allowed its term to expire; the defendant also did not take any steps to lift the remaining contracted quantity of paddy, as such reminder dated 1.9.1983 was issued by the District Manager, Food Corporation of India, Amritsar to the defendant; two more letters dated 15.9.1983 and 11.11.1983 were issued by Senior Regional Manager of the plaintiff at Chandigarh but to no effect; that with the passage of time, the quality of the paddy got deteriorated, since the defendant did not come forward to lift it; the plaintiff, therefore, floated fresh tender enquiry dated 15.11.1984 for the sale of the unlifted paddy, which was contracted to be lifted by the defendant, however no fresh tender was received by the Corporation for the purchase of the damaged paddy and therefore it was dumped by the functionaries of the plaintiff as per prescribed procedure. According to the plaintiff, it has suffered loses to the tune of Rs.37,95,570.86 on account of non-fulfilment of the contractual obligation on the part of the defendant as per the following details:

i)	Cost of 4085-720 MT paddy IR-8 @ Rs.837.50 per MT which had been dumped by FCI on account of breach of contract on the part of the defendant.	Rs.34,21,790.50
ii)	Cost of 245-090 MTs paddy PR-106 @ 731-10 per MT which had been dumped by FCI on acocunt of breach of contract on the part of the defendant.	Rs.1,79,185-30
iii)	Dumping charges incurred by FCI in dumping the damaged paddy as per quantity mentioned at Sr.No.(i) & (ii) above.	Rs.1,42,916.00
iv)	Interest charges on the delayed payment of cost as per clause (L) of terms & conditions of tender	Rs.50,024.40
v)	Storage charges on late lifting of paddy as per clause (L) of tender terms	Rs.1,654.66
	Total	Rs.37,95,570.86

The plaintiff further submitted that a registered letter dated 8.7.1986 was issued by it to the defendant demanding the amount of damages, which had not been paid and the plaintiff had also demanded interest @ 14% per annum which the banks charge on commercial transactions. On failure of the defendant to concede the demand of the plaintiff, the plaintiff brought the suit in question.

On notice the defendant appeared and filed written statement contesting the suit raising preliminary objections that the suit was not maintainable since there was an arbitration clause 'O' in the agreement dated 30.4.1982 in terms of which all the disputes and differences between the parties were to be referred to an Arbitrator to be appointed by the Managing Director of the plaintiff, the proceedings of the suit were barred by the principles of *res judicata* since an earlier arbitrator appointed by the Calcutta High Court has given award on 15.6.1987, after considering the claim of the defendant and counter claims of the plaintiff, which was the subject matter of the present suit; the basis of the proceedings before the Arbitrator and the present suit was the same agreement and both the parties allege breach of the same contract; that at any rate the proceedings in the suit were liable to be stayed in view of the pendency of the earlier proceedings in Calcutta. On merits, the defendant admitted the parties having entered into a contract and the issuance of release orders by the plaintiff and lifting of the paddy in pursuance thereof by the defendant were also not disputed. It was contended that entire quantity of the paddy had been lifted, which was the subject matter of the release orders except under release order No.1/153 dated 5.10.1983 for 770 quintals. The reason given for non-lifting of that quantity was that the demand was made by the defendant for PR-106 quality of the paddy whereas the release order was issued for IR-8 variety. The reason given by the plaintiff for doing so was that PR-106 quality of paddy was out of stock at that time. The defendant further pleaded that the stock of paddy lifted by the defendant was seized by the SDO Araria (Bihar) vide order dated 27.8.1982 on the plea that it was not fit for human consumption. The defendant was further stopped by the SDO from milling, processing and sale of rice. The defendant though telegraphically informed the plaintiff on 31.8.1982 regarding such seizure by SDO Araria and requested the plaintiff to take up the matter for further clarification with the Bihar Government. The plaintiff was again requested by the defendant vide telegram dated 18.10.1982 to issue certificate regarding the paddy already lifted or to be lifted in future to the effect that the same was fit for human consumption. However, the plaintiff did not take any steps in that direction by issuing the necessary certificate. Vide its telegram dated 19.8.1982, the defendant informed the plaintiff that the paddy was damaged, burnt and not fit for human consumption. The defendant denied that the paddy had got damaged with the passage of time because of non-lifting by the defendant or that the plaintiff had suffered any loss for that reason. The defendant denied any breach of contract on its part while praying for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for damages/compensation to the tune of Rs.37,95,570.86? OPP.
2. Whether the suit is not maintainable as alleged? OPD.
3. Whether the matter in dispute was liable to be referred to the arbitrator? OPD.
4. Whether the suit is barred by principle of res judicata as alleged? OPD.
5. Whether the proceedings of the present case are liable to be stayed as alleged? OPD.
6. Whether no cause of action accrued to the plaintiff to file the suit? OPD.
7. Relief.

In order to prove its case, the plaintiff had examined Sh.K.M Neick, Assistant Manager, PW2 Sh.P. Janardhanam, Assistant Manager Quality Control and PW3 Sh.Rabinder Singh, Assistant Manager, Accounts, besides tendering certain documents.

On the other hand, the defendant had examined Sh.Raj Kumar Lohia as DW1 besides tendering certain documents.

After hearing the learned counsel for the parties, the trial Court of Sr.Sub Judge, Chandigarh decided issue No.1 in favour of the plaintiff, issues No.2 and 3 against the defendant, issue No.4 partly in favour of the defendant and partly against it, issue No.5 against the defendant, issue No.6 against the defendant. Resultantly the suit of the plaintiff was decreed against the defendant for the recovery of Rs.37,43,891.80 with proportionate costs. This was so done vide judgment and decree dated 6.3.1996.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Chandigarh, who vide judgment dated 11.10.1999 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant had filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff has appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

In this case the parties are not at variance with regard to their entering into an agreement for lifting of stock of plaintiff by the defendant and terms and conditions agreed upon between them. The plaintiff is alleging breach of the terms of the contract as per tender in lifting of part of the stock causing financial loss to it which is denied by the defendant contending that the disputed quantity of the stock had not been lifted since it was not as per release order variety and stock of paddy already lifted by the defendant had been seized by SDO, Araria, Bihar for the reason that it was not fit for human consumption and defendant had been stopped by such SDO from milling, processing and sale of rice. The trial Court on analysis of the legal as well as factual position concluded that the breach of contract was on the part of the defendant and not attributable to the plaintiff, therefore the plaintiff was entitled to damages/compensation as claimed in the suit.

The trial Court while deciding issues No.2 and 3 has observed that the defendant had earlier filed an application dated 23.2.1987 under Section 34 of the Indian Arbitration Act, 1940, which had been dismissed by Sub Judge Ist Class, Chandigarh where the matter was pending earlier, with the observations that award about claims of the defendant arising out of the contract in question had already been given by the Arbitrator, therefore, an application under Section 34 of the Act was no more maintainable and as such the order had not been appealed against and that the dispute was not liable to be referred to arbitration and further the award of arbitration had been made rule of the Court, therefore the proceedings in the suit could not be stayed. The findings are proper and appropriate and do not call for any interference.

The trial Court has noticed that on an application filed by the defendant, the Calcutta High Court had referred the dispute to arbitration and the Arbitrator had awarded a sum of Rs.4,40,000/- to the defendant as full and final satisfaction of the claims preferred in the claim petition by the defendant. The plaintiff had wanted to set up counter claim over there but ultimately filed a civil suit in the Court at Chandigarh and intimated the arbitrator that it would agitate two claims i.e. interest and storage charges. However, those two claims were dropped by the plaintiff during arbitration proceedings and included in the present suit. Therefore, all the claims of the plaintiff for set off or counter claims were taken out of the scope of the reference. The trial Court has rightly come to the conclusion that the suit is not hit by Order 2 Rule 2 CPC since in the arbitration proceedings the claimant was defendant and not the present plaintiff. Similarly as regards Order 23 Rule 1(4) CPC, no plea in that regard had been taken up in the written statement and therefore no argument beyond the pleadings could be accepted and the similar was the position with regard to objection under Order 9 Rule 9 CPC. The suit was also not barred by principle of *res judicata* because the arbitration proceedings arose at the instance of the defendant and not the plaintiff and the scope of reference was limited to only those disputes, which arose out of the paddy actually lifted by the defendant and the claims and counter claims of the parties on account of damages due to non-lifting of the remaining paddy by the defendant, as per terms and conditions of the contract, were not the subject matter of the reference nor this aspect of the matter was even otherwise touched by the Arbitrator. Nevertheless the claim of Rs.50,024.40 as interest charges on the delayed payment of costs as per clause (L) of the terms and conditions of the tender and for Rs.1,654.66 as storage charges on late lifting of paddy as per clause (L) aforesaid were found to be barred by *res judicata* since those claims pertained to the paddy already lifted by the defendant and for the excess payment thereof reference had been made by the defendant and counter claims in this regard were duly made by plaintiff but dropped thereafter.

The trial Court observed that the other amounts claimed were as per terms and conditions agreed upon between the parties.

With regard to the argument advanced on behalf of the defendant that defendant was forced to discontinue the lifting of the remained paddy due to the reason that SDO(Civil) Araria had stopped its milling on the ground that it was not fit for human consumption, the trial Court has rightly observed that the tender document and other documents on the record do not show that there was any stipulation that the paddy would be fit for human consumption. Therefore, that contention was rejected.

With regard to the contention raised that the plaintiff could exercise right of re-sale of the unlifted paddy within a reasonable time and recover damages for loss occasioned by breach of contract only after giving a notice to the defendant of re-sale; that contention was rejected observing that paddy was perishable commodity and it was not actually resold but had got damaged on account of non-lifting of the same by the defendant. Though it had been re-advertised for sale but no buyer offered to purchase it.

The First Appellate Court has been in agreement with the trial Court on all these aspects, in the process affirming the judgment and decree passed by the trial Court.

No substantial question of law arises in the appeal.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the present appeal, the same stands dismissed with costs.

Since the main appeal is dismissed, the miscellaneous application, if any stands disposed of accordingly.

16.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No