IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4148 of 2009(O&M)

Date of decision: 11.2.2019

M/s Midda Rice Mills Etc. …..Appellants

VERSUS

Food Corporation of India .....Respondent

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. B.R. Gupta, Advocate for the appellants.

Mr. Atul Gaur, Advocate for the respondent.

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REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for recovery filed by Food Corporation of India (hereinafter referred to as 'FCI') was decreed for recovery of Rs.3,73,462/- with interest at the rate of 12% per annum from 23.06.1995 till realization by the trial Court and appeal preferred by the unsuccessful defendants/appellants was dismissed by the Additional District Judge, Amritsar.

FCI staked its claim for recovery of Rs.4,76,008/- on the allegations that District Manager, FCI invited tenders in the month of June, 1993 for sale of sub-standard paddy i.e. 1350 quintals. The appellant submitted tender for purchase of 1060 quintals paddy at the rate of Rs.153/- per quintal which comes to Rs.1,62,180/- and 290 quintals at the rate of Rs.130/- per quintal i.e. Rs.37,700/- and deposited Rs.10,000/- as earnest money in favour of FCI. The tender was opened and accepted on

16.06.1993 in the Regional Office of FCI at Chandigarh. Intimation regarding acceptance of tender was given to the appellants vide telegram dated 16.08.1993 whereby the appellants were to deposit cost of paddy within 7 days from acceptance of tender and was required to lift stock of paddy within 30 days from the date of release order. The appellants did not deposit the amount of paddy as per terms and conditions of tender agreement and failed to perform their part of the contract. The paddy is a perishable article. Due to passage of time, paddy became more inferior and weight was reduced to 618 quintals. The respondent/plaintiff was left with no alternative except to issue notice calling upon the appellants to deposit the amount and lift the paddy but to no response. Finding no other alternative, fresh tenders were invited and Jagjit Singh was the highest bidder whose bid was accepted at the rate of Rs.51/- per quintal. On account of calling fresh tender, FCI suffered loss.

The appellants/defendants filed the written statement and raised preliminary objections inter alia that the suit is not maintainable; plaintiff has no locus standi to file the suit; there has been no contract between the parties to the suit and the plaintiff is estopped by its act and conduct from filing the suit. On merits, it is averred that the plaintiff is not a body corporate and the suit has not been filed by a competent person. All material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues, reproduced in para 4 of the judgment.

To prove its case, the respondent examined Narinder Pal Singh Kohli, Deputy Manager PW-1, Gajraj Singh, Assistant Grade II PW-

2, Tejinderpal Singh, TA-I, PW-3, Pawan Singh Deputy Manager PW-4, Hazara Singh, Manager PW-5.

Ashok Kumar, one of the partners of M/s Midda Rice Mills appeared in the witness box to rebut evidence adduced by the respondent.

Counsel for the appellant has assailed the judgments passed by the Courts on the following grounds:-

1. There was no concluded contract between the parties in view of recitals in the telegram dated 16.08.1993, therefore, respondent cannot enforce any right of recovery on the basis of an unconcluded contract.
2. Suit filed by the respondent seeking recovery in October 1996 is clearly barred by limitation.

To substantiate his contention that there was no concluded contract between the parties, it is submitted that acceptance of offer made by the appellants for purchase of sub-standard paddy was required to be unconditional and unqualified but the same is not there. For this purpose, counsel has pointed out towards contents of telegram dated 16.08.1993. In support of his contention, he has relied upon judgment of this Court **Food Corporation of India Vs. M/s S.D. Rice Mills, Jallalabad through Sohan Lal (deceased) through LRs and others, (2018-2) 190 PLR 698** wherein this Court while interpreting the telegram Ex.P5 and letter dated 12/15.09.1984 has held that there was no absolute contract between the parties enabling any cause of action in favour of the appellant/plaintiff to recover the amount.

With regard to suit being barred by limitation, counsel would urge that as per telegram dated 16.08.1993, the appellants were called upon to deposit price of paddy within 7 days from the date of acceptance of tender and the said 7 days expired on 24.08.1993. It is argued that cause of action for the first time accrued to the respondent – FCI in August 1993, therefore, instant suit filed on 19.10.1996 is clearly beyond period of 3 years from the date of accrual of cause of action, thus, barred by limitation. For this purpose, reference has been made to judgments of Hon'ble the Supreme Court **V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao, 2005 (2) PLR 743** and **Bogidhola Tea and Trading Company Ltd. and another Vs. Hira Lal Somani, 2008(2) Apex Court Judgments 740**. Further reference has been made to judgment of Delhi High Court **Bhajan Singh Hardit Singh and Company Vs. Karson Agency (India) and others, AIR 1967 Delhi 101**

Counsel representing the respondent, on the contrary, has supported the concurrent findings recorded by the Courts upholding plea of the respondent for recovery of Rs.3,73,462/- along with interest. It is further argued that tender submitted by the appellants was accepted unconditionally but in the telegram there is only reference to payment of price of paddy within 7 days from the date of acceptance of tender and the appellants were called upon to lift the stock of paddy within 30 days from the date of release order. It is argued with vehemence that recitals in the telegram, by no stretch of imagination, can be termed as any conditions imposed by the respondent while accepting the tender. Rather, FCI accepted the offer given by the appellants for purchase of sub-standard paddy at the rates quoted by the appellants.

With regard to plea of the appellants that suit is barred by limitation, it is argued that though the appellants failed to discharge their obligation to deposit price of the paddy within the stipulated period but damages have been claimed by FCI after disposal of the stocks on the basis of fresh tender invited in the year 1995 and stocks of paddy were lifted by Jagjit Singh, the highest bidder, who offered to purchase the paddy at the rate of Rs.51/- per quintal. It is further argued that issue qua limitation was answered against the appellants by the trial Court in view of its findings in para 14 under issue No.4. Before the Appellate Court, counsel for the appellants has not given much stress upon issues No.2 to 4 and accordingly findings of the trial Court on the said issues were affirmed as has been noticed by the Appellate Court in para 15 of the judgment.

I have heard counsel for the parties, perused the paper-book and records.

Counsel for the appellants has relied upon telegram dated 16.08.1993 in order to contend that offer given by the appellants was not accepted unconditionally, therefore, there was no concluded contract between the parties which can be enforced or on the basis whereof suit for recovery can be maintained by FCI.

As the whole case of the appellants hinges upon the contents of telegram dated 16.08.1993, it is imperative to reproduce the same for ready reference:-

> "M/S MIDDA RICE MILLS
> C/O ASHOK KUMAR
> SON OF SH. NANAK CHAND,
> W.X. 50, GANESH NAGAR,
> BASTI-9, JALLANDHAR

NO.S&S11(6)/93-NZ STOP REFYRTENDER OPENED ON SIXTEENTH JUNE 1993 FOR PURCHASE OF SUBSTANDARD PADDY STOP YOUR OFFERS FOR PURCHASE OF TWENTY NINCE TONNES OF STACK NUMBER D-12 @ RUPEES ONE HUNDRED THIRTY AND ONE HUNDRED SIX TONNS OF STACK NO.D-15 @ RUPEES ONE HUNDRED FIFTY THREE PER QUINTAL EX SIDHU OPEN COMPLEX BHIKHIWIND ARE ACCEPTED STOP DEPOSIT SECURITY TOGETHER WITH FULL COST OF ABOVE QUANTITY OF SUBSTANDARD PADDY AFTER ADJUSTING EARNEST MONEY ALONGWITH TAXES IF ANY WITHIN SEVEN DAYS FROM THE DATE OF ISSUE OF THIS ACCEPTANCE AS PER TENDER TERMS ALONGWITH REQUISITIE DOCUMENTS WITH SRM PUNJAB AND LIFT STOCKS WITHIN SPECIFIED PERIOD SHOWN IN RELEASE ORDER.

ZONEFCI
NEW DELHI

N.T.B.T.

The Food Corporation of India
Zonal Office (N), Ansal Bhawan,
16-Kasturba Gandhi Marg, New Delhi.

No.S&S.11(6)/93-NZ
DATED:- 16-8-93

(T.R. KAPOOR)
DY MANAGER(COMMERCIAL)
FOR ZONAL MANAGER (NORTH)

P.C.C.

M/S Midda Rice Mills, care of Ashok Kumar, son of Shri Nanak Chand, W.X. 50, Ganesh Nagar, Basti-9, Jallandhar (Pb.).

Copy to:-

1. The SRM, FCI, RO Punjab (Chandigarh). Please ensure that the required documents are obtained from the party at the time of receiving security.
2. Distt. Manager, FCI, Amritsar (Punjab).
3. The Manager (Sales), FCI, HQs, New Delhi.

FOR ZONAL MANAGER (N)”

Perusal of the aforesaid extract leaves no manner of doubt that offer given by the appellants for purchase of sub-standard paddy at the price quoted by the appellants was accepted without any further condition. However, the telegram makes reference with regard to liability of the appellants to deposit security together with full cost of quantity of sub-standard paddy mentioned therein after adjusting earnest money along with taxes, if any, within 7 days from the date of issue of acceptance, as per the tender terms along with requisite documents and to lift stocks within specified period shown in release order.

Taking into consideration the contents of telegram Ex.P2, it is difficult to accept contention of the appellants that either the offer was accepted conditionally or no concluded contract came into existence between the parties on the basis of telegram Ex.P2. That being so, the appellants cannot derive any advantage to their contention from the judgment in **Food Corporation of India's case** (supra) decided by this Court in view of peculiar facts and circumstances of the case particularly the contents of telegram Ex.P5 and letter dated 12/15.09.1984 Ex.P3 subject matter of the said litigation. In the referred authority, in the telegram Ex.P5 it has been mentioned that the purchaser shall attend

District Office to complete formalities and deposit amount within 7 days, no replacement of existing gunnies to be done or no additional gunnies will be supplied. However, the contents of letter dated 12/15.09.1984 are not reproduced in the judgment for appreciation by this Court. In this view of the matter, by relying upon the judgment in **Food Corporation of India's case** (supra), it is not open for the appellants to contend that no concluded contract came into existence between the parties in view of contents of telegram Ex.P2, reproduced hereinbefore.

This brings the Court to the question of suit being barred by limitation. There is no denying that vide telegram Ex.P2, the appellants were called upon to deposit price of paddy within 7 days from acceptance of tender which the appellants failed to deposit. FCI has claimed damages on the basis of price at which the paddy in question has later been sold in view of tender issued in the year 1995. Since FCI has claimed the difference of price at which the paddy was agreed to be sold to the appellants and actual returns received from the subsequent purchaser, cause of action to claim damages ascertained by FCI accrued in the year 1995. This apart, indisputably the issue of limitation was answered by the trial Court against the appellants. The Appellate Court in para 15 of the judgment has made observations with regard to issues No.2 to 4. A relevant extract therefrom reads as follows:-

> "15. So far issues No.2, 3 and 4 are concerned i.e. whether the suit is maintainable, locus standi and barred by limitation, the Lower Court has already determined all the issues against the appellants and in favour of the respondent. The onus to prove these issues is upon the appellants. During the course of arguments appellants counsel not able to convince this Court how the suit is not maintainable or the plaintiff has no locus

> standi and how the suit is barred by limitation. Moreover, during the course of arguments learned counsel for the appellants has not given much stress upon these issues. Accordingly, findings of Lower court on these issues are confirmed."

Perusal of the grounds of appeal raised before this Court makes it evident that there is not even a whisper to assail observations of the Appellate Court recorded in para 15 of the judgment wherein it has been held that counsel for the appellants has not given much stress upon issues No.2 to 4. Analyzed from any angle, I do not find any merit in contention of the appellants that suit for damages filed by the respondent after sale of paddy which was previously agreed to be sold to the appellants is barred by limitation.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed with costs.

FEBRUARY 11, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no