

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 6721 of 2016
Date of Decision:21.11.2019

ICICI Bank Limited

...Petitioner

versus

Punjab Agro Foodgrain Corporation and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. Sandeep Suri, Advocate
for the petitioner.

Mr. Anupam Sharma, Advocate
for respondent no.1.

Ms. Simran Grewal, AAG, Punjab

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RAJIV NARAIN RAINA , J (Oral)

1. The basis of the writ petition for approaching Court by way of this writ petition under Article 226 of the Constitution was the complaint by the ICICI Bank alleging high-handedness of the Punjab Agro Foodgrain Corporation (in short 'PAFC') and others to have appropriated its paddy from the respondent Miller upon wrongful interference by the Deputy Commissioner, Gurdaspur directing the Tehsildar to break open the locks for the respondent Punjab Agro Foodgrain Corporation to lift paddy stocks lying in the premises of the Miller which were under hypothecation agreement with the respondent Miller. No one enters appearance for the Miller. The partner through whom it was made party respondent has died. The lady respondent remains unserved as she is not to be found. In view of the proposed order offering hearing to them is not found necessary. It would also delay the proceedings.

2. In the reply of the State, the role of Tehsildar is shown limited to physical inspection of the stock.

3. The petitioner's case is that it had entered into a hypothecation agreement with respondent no.5-M/s Shiva Roller Flour & Rice Mills, Batala through its partners on 09.05.2014. The hypothecation agreement was based on extending loan against release of food grains which were the hypothecated goods. The agreement was entered with Shiva Food Industries on 09.10.2015 for milling of paddy meant for public distribution system. The core purpose in the prayers does not appear to exist anymore which was for verification of quantity of wheat and paddy. ICICI Bank's agreement was for both wheat and paddy while PAFC had rights over paddy alone, both lying under the same roof. This issue can only be determined on evidence.

4. Mr. Sandeep Suri, Advocate for the petitioner enters another disputed area saying that the filled up weight of their hypothecated stock was in bags of 35 Kgs, while the PAFC/Government bags weigh 35.7 kgs. as per policy of the relevant year.

5. When this Court had passed an order on 18.11.2019, Mr. Sandeep Suri took time to study the matter from the angle whether the case can be decided in the writ jurisdiction as it involves disputed question of fact. He has made his submissions today arguing that the deputy Commissioner had no jurisdiction to have ordered breaking of locks and lifting of stock by PAFC. The hypothecation agreement of ICICI Bank with the Miller was prior to the PAFC milling contract.

6. I have heard Mr. Sandeep Suri and Mr. Anupam Singla for the respective parties and am convinced that the multiple issues raised in this writ petition are grounded in disputed questions of fact which can best be decided by leading documentary and oral evidence and not in the summary jurisdiction under Article 226 of the Constitution of India where evidence is not to be adduced and recorded on oath. Thus, the appropriate forum would be the civil court or any other forum to resolve the disputed questions of fact by parties leading evidence. Therefore this court expresses no opinion on the merits of the case so as not to prejudice the disputing parties.

7. Without expressing any opinion on the merits of the case so that no prejudice is caused to the parties, the petitioner is relegated to the alternative and equally efficacious remedy in the civil court or in any other forum or tribunal exercising jurisdiction, as advised, with a right to take up all the pleas of fact and law taken in this petition.

8. Needless to say, for the time spent in prosecuting this litigation from the date of filing on 4.4.2016 till today and two months thereafter, the petitioner will have the benefit of exclusion of limitation by way of exemption under Section 14 of the Limitation Act, 1963 because it was pursuing with due diligence, in a bona fide manner, this petition. Two months extra time is granted on the request of counsel for the petitioner Bank as it is found reasonable period for it to prepare and present its case in the appropriate forum against the respondents, if so advised.

9. The writ petition stands disposed of with the liberty.

21.11.2019
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No