

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:18.9.2019

RSA No. 3334 of 2012 (O&M)

Punjab State Warehousing Corporation and others

---Appellants

vs.

M/s Aggarwal Trading Company

---Respondent

RSA No. 3662 of 2012 (O&M)

Punjab State Warehousing Corporation and others

---Appellants

vs.

M/s Bansal Rice and General Mills

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.D.S.Sukhija, Advocate
for the appellant(s)

Mr. I.D.Singla, Advocate
for the respondent in both the appeal

Rekha Mittal, J.

This order will dispose of RSA Nos. 3334 and 3662 of 2012 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 3662 of 2012.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for recovery filed by M/s Bansal Rice and General Mills, Badhni Kalan, District Moga was

decreed by the trial court vide judgment and decree dated 26.3.2011 that came to be affirmed in appeal by the Additional District Judge, Moga vide judgment and decree dated 30.3.2012.

Counsel for the appellants would fairly inform that the appeal has been filed to assail findings of the courts only on issue No. 3 pertaining to limitation that has been answered in favour of the respondent-plaintiff. To bring home his contention, it is argued that earlier the respondent-plaintiff filed suit for permanent injunction on 5.6.1998 in respect of the same cause of action and in the said suit, respondent filed an application for amendment of plaint in order to convert the suit for injunction to that of recovery in respect of value of rice allegedly delivered in advance to appellant No. 1 but application for amendment of plaint was dismissed. The respondent filed civil revision before this court to challenge the order dismissing application for amendment of plaint. The revision petition was decided by this court wherein the respondent was permitted to withdraw the suit with liberty to file a fresh one on the same cause of action. It is argued that even if the respondent was allowed to withdraw the earlier suit and file a fresh suit on the same cause of action, limitation law is not affected by the first suit and as such respondent can not derive any advantage of pendency of the earlier suit in regard to question of limitation for filing of the instant suit. It is further argued that the courts without appreciating that this court while disposing of the revision petition did not allow any fresh limitation for filing suit for recovery, have wrongly held the instant suit to be within limitation by relying upon the order passed by this court whereby the respondent was permitted to withdraw the suit

with liberty to file a fresh one on the same cause of action.

Another submission made by counsel is that even in the earlier suit for injunction, a plea was raised by the respondent in para 7 that defendants have sold some of the rice to third person, as such, cause of action to file suit for recovery was also available to the respondent at the time of filing suit for permanent injunction, therefore, instant suit for recovery is otherwise hit by the provisions of Order 2 Rule 2 of the Code of Civil Procedure (in short “the Code”).

Counsel representing the respondent-plaintiff, on the contrary, has supported consistent findings of the courts negating plea of the appellants that suit for recovery is barred by limitation while determining issue No. 3 in favour of the respondent and against the appellants. It is further argued that respondent filed suit for permanent injunction restraining the defendants therein from shifting, lifting or alienating to anyone the stock of rice of plaintiff from godown No. 2 situated in Badhni Kalan forcibly, illegally. Though in para 7 of the plaint, an averment was raised that defendants have sold some of the rice to third person but the defendants therein in response to para 7 have controverted the allegations with regard to sale of rice to any third person with the plea that defendants have not sold rice to any third person nor they intend to. It is further argued that as cause of action to file suit for recovery was not available at the time of institution of suit for permanent injunction and the same accrued during pendency of the said suit, necessity arose to amend the plaint and for that reason, application for amendment of the plaint was filed but the same was dismissed by the trial court. It is further argued that a specific plea has been

raised by the respondent that stock of rice has been sold by the appellants on 17.6.1998, thus, the present suit filed on 10.1.2001 within a period of three years of accrual of cause of action to claim recovery is clearly within limitation and has rightly been so held by the courts.

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

There is no dispute with regard to the facts on record qua earlier litigation between the parties initiated on 5.6.1998 wherein this court permitted the respondent to withdraw the suit with liberty to file a fresh suit on the same cause of action. Counsel for the appellants is right in his submission that merely because the respondent was permitted to withdraw the earlier suit with liberty to file a fresh one on the same cause of action, limitation law is not affected by the first suit. In this context, a relevant extract from Rule 2 of Order 23 of the Code, reads as follows:-

“Limitation law not affected by first suit.- In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.”

Counsel for the appellants is also right in his submission that this court while granting liberty to file a fresh suit on the same cause of action did not advert to the question of limitation qua the suit to be filed. Nevertheless, question for consideration is, whether suit for recovery filed in January 2001 is barred by limitation irrespective of the liberty given to file a fresh suit on the same cause of action.

Indisputably, application for amendment of plaint to convert

the suit for permanent injunction to that of recovery was not allowed by the trial court. The order passed by the trial court was not set aside by this court in revision but the respondent was only given liberty to file a fresh suit on the same cause of action. As per allegations raised in the application for amendment, cause of action to file suit for recovery accrued to the respondent in view of changing scenario/subsequent event. Though the respondent in the suit for injunction had raised a plea in para 7 that defendants had sold some part of rice but the said fact had been denied by the defendants (appellants herein) in response to para 7 of the plaint and written statement was filed by the defendant therein on 15.6.1998 meaning thereby that there was no cause of action with the respondent to file a suit for recovery at the time when the miller instituted suit for permanent injunction on 5.6.1998. If respondent did not have a cause of action to file suit for recovery even on 5.6.1998, contention raised by counsel for the appellants that suit for recovery filed on 10.1.2001 is barred by limitation is patently misconceived and liable to be rejected. On the contrary, in the instant case, a specific plea has been raised by the respondent that the appellants disposed of the rice on 17.6.1998 and the suit has been instituted well before expiry of three years from the date of sale of rice. In this view of the matter, I find it difficult to accept contention of the appellants that either determination of issue No. 3 by the courts is faulty or suit filed by the respondent is barred by limitation even if the respondent is not extended benefit of filing of earlier suit for injunction in June 1998 which was allowed to be withdrawn with liberty to file a fresh one on the same cause of action when examined in the light of what has been envisaged in Rule 2

Order 23 of the Code, extracted hereinbefore.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

18.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No

\