

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

**RSA No.2066 of 2018 (O&M)
Date of Decision : 30.10.2019**

The Punjab State Co-operative and Marketing Federation Limited

.....Appellant

Versus

M/s Setia Rice Mills through partners and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Naresh Gopal Sharma, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 04.04.2016 and as even the appeal preferred against the said decree failed and was dismissed on 04.07.2017, it is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

A suit for recovery of Rs.1,30,566 as principle amount along with interest was filed by the plaintiff, as per terms and conditions of the agreement entered into between the parties for the year 1995-96.

In brief, the case set out by the plaintiff-Markfed was that during the year 1995-96 the plaintiff society as usual procured paddy at the support price being one of the procuring agency of the State Government for custom milling. An agreement dated 26.10.1995 was entered into between the parties to shell paddy for the crop year 1995-96. Pursuant to

the said agreement plaintiff supplied 3149 bags weighing 2046.45. quintals of fine paddy to the defendants, who were required to deliver the mild rice till 28.02.1996 or within the extended period by the Government, in terms of Clause 7(iii) of the agreement. For, the defendants failed to deliver rice by the scheduled date of delivery, plaintiff-Markfed was entitled to recover losses/damages/compensation thus, the total amount recoverable was Rs.6,36,874/-. However, as Rs.5,06,308/- were payable to the defendants by plaintiff-Markfed after adjusting the said amount of Rs.1,30,566/- along with interest, were recoverable. Against the arbitral award, the defendants had filed objections under Section 34 of the Arbitration and Conciliation Act, 1996, which were dismissed by the Additional District Judge, Faridkot on 15.12.2005. However, in an appeal preferred against the said order and judgment before this Court the order dated 15.12.2005, was set aside. And the Managing Director of the plaintiff-Markfed was directed to proceed with the matter in accordance with law who allowed the claim of the plaintiff for recovery of Rs.1,30,566/- along with interest, thus the suit.

In the written statement filed by the defendants it was pleaded *inter alia* that suit was hopelessly time barred as the recovery suit could be filed within three years. Further, the present suit was filed without any resolution of the Board of Directors. The alleged resolution dated 13.07.1995 was passed by the administrator only regarding the competency of the District Manager to sign the documents on behalf of Markfed. Further, the alleged paddy was never supplied rather the file was stored in the mail premises with the mandatory conditions that the miller shall deliver

the rice in the account of the Markfed to Food Corporation of India. In the given facts and circumstances, plaintiff was not entitled for any interest as claimed in the suit. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Court concurrently concluded that plaintiff had sought to recover Rs.1,30,566/-. The agreement that formed basis of the claim of the plaintiff was executed on 26.10.1995 and the case of the plaintiff-Markfed was that paddy for custom milling was delivered to the defendants in the year 1995-96, therefore, suit for recovery, if any, could be instituted within a period of three years. Whereas the present suit was filed on 01.07.2014, and was thus, apparently barred by time. The fact that the arbitration proceedings between the parties remain pending would not enure to the benefit of the plaintiff, for, plaintiff was not stopped from filing the suit and enforcing its rights within the stipulated period of three years. Accordingly, the suit was held to be time barred. Further, the said agreement bears the signature of Birinder Singh, District Manager, on behalf of the plaintiff, but it was not clarified as to who had signed the said agreement on behalf of the defendants. The onus was upon the plaintiff to prove that 2900 metric ton of paddy was actually sent to the defendants for milling however, no such documents was brought on record to substantiate this position. Therefore, it could not be concluded that plaintiff had supplied 2900 metric ton of paddy for milling to the defendants. Undoubtedly, as per the relevant provision of the agreement plaintiff was entitled to charge interest for delayed delivery of rice but there was not any provision that entitled

plaintiff to claim interest upon interest as only simple rate of interest was chargeable in terms of clause 7 of the agreement. *Ex facie*, the claim of the plaintiff was predicated upon the order passed by the Managing Director Ex.P3, but it was equally true that the said order was passed in the absence of the defendants. Though, strangely, the order dated 28.06.2011, passed by the Managing Director, showed that counter notices filed by the miller were considered and filed being devoid of merit. Significantly, the agreement (Ex.P2), was not signed by any of the partners of the defendants firm and was rather signed on behalf of Sehtia Rice Mills by one Manager. No evidence was brought on record to prove that the said person was authorized on behalf of firm to enter into a contract. In the wake of the above, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

30.10.2019

Manoj Bhutani(ARUN PALLI)
JUDGEWhether speaking/reasoned
Whether reportableYes/No
Yes/No