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

**RSA No.4236 of 2018 (O&M)
Date of Decision: 02.05.2019**

**Punjab State Civil Supplies Corporation Ltd. (PUNSUP)
and anotherAppellants**

Vs

**Partap Singha and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. G.S. Sandhu, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Plaintiffs are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for recovery of Rs.14,57,492/- on account of loss caused to the plaintiffs due to negligence of the defendants in performance of their duties.

[2]. Defendants were the officials of the plaintiff-Corporation. Defendant No.1 was Inspector Grade-II and posted in the office of District Manager, PUNSUP, Kapurthala. At the time of filing of the suit, defendant No.2, defendant No.3 and defendant No.4 had already retired from the plaintiffs-Corporation as Field Officer, Deputy District Manager and

District Manager respectively. Negligence was attributed in respect of their duties, supervision and their failure to get the paddy milled from the allotted rice millers and transporting the same to other rice millers out of District for custom milling and resultant loss of transportation charges along with *pendente lite* and future interest were also claimed against the defendants.

[3]. The suit was contested by the defendants on numerous grounds. The suit was hit by non-joinder of M/s Jai Durga Grains Private Ltd. as necessary party. Defendant No.1 purchased the paddy of crop year 1998-99 and paddy was to be milled through allotted rice millers and to get the rice delivered to the FCI for central pool from the allotted rice miller. Defendant No.1 was to supervise Zira Punsup, Sub-Division which included Makhu Centre. Defendant No.3 was Field Manager. He was to supervise the whole District Ferozepur. Defendant No.4 was incharge and head of Punsup District Ferozepur and was to get the rice millers allotted from Food and Supply Department. The licence of milling was to be issued by the Food and Supply Department to the millers for the purpose of custom milling. Defendant No.2 was to perform the supervisory duties to ensure that the subordinate staff in his sub-division were working as per norms. There was no such duty to recommend the delivery of paddy to the rice millers.

[4]. Both the Courts below have found that the case of the plaintiffs was not worth credence. Plaintiffs have alleged that in the departmental enquiry, all the defendants were found to be guilty as they had failed to perform their duties and to get the paddy milled from allotted rice millers and transporting the same to other rice millers out of District for custom milling. The firm M/s Jai Durga Grains Private Ltd. has taken B.K. Rice and General Mills on lease for three years.

[5]. The Courts below on the basis of material evidence found that defendant No.3 had not committed any negligence while performing his official duty for allotment of paddy for custom milling as the allotment of any rice seller to the procuring agency was made by the District Food & Supplies Controller, on the recommendation of the agency. Defendant No.3 never recommended for allotment of firm M/s Jai Durga Grains Private Ltd. to the plaintiffs-Corporation and District Food & Supplies Controller never allotted the said firm to the plaintiffs-Corporation on the recommendation of the defendant. Defendant No.3 remained on medical leave from 09.10.1998 to 31.10.1998 and he only joined the duty on 01.11.1998. Ramesh Puri PW-4 has specifically admitted the aforesaid fact in his cross-examination that defendant No.3 Hakam Singh remained on leave from 09.10.1998 to 30.10.1998 and on 31.10.1998 and

01.11.1998, there were gazetted holidays and during this period the Inspector posted at Makhu and adjoining Centre stored the paddy in the premises of M/s Jai Durga Grains Private Ltd. without the consent of defendant No.3. When defendant No.3 joined the duty on 16.11.1998, he visited the premises and checked the stock of paddy stored in M/s Jai Durga Grains Private Ltd.. The Courts below have also recorded the findings that defendant No.3 cannot be held liable for any loss, if suffered by the plaintiffs-Corporation, rather he had submitted the report that 12890 bags were not according to the specification in the process of purchase by the plaintiffs-Corporation and he also recommended that the paddy is not worth purchasing.

[6]. PW-1 in his examination-in-chief has admitted that M/s Jai Durga Grains Private Ltd., Makhu did not mill any paddy and delivered any rice to the FCI in the account of Punsup. As per terms and conditions of the agreement, the mill was to deliver rice till 28.02.1999 and the time was further extended to 30.04.1999. The mill did not mill the paddy till the extended period. Thereafter, vide Head office letter dated 05.05.1999, the paddy was ordered to be shifted to other millers. The defendants have proved on record the documents viz. Ex.D-5 to Ex.D-9 in the context that they were not liable to pay any

amount to the plaintiffs.

[7]. On appreciation of material on record, both the Courts below have found under issue No.1 that the plaintiffs are not entitled to recover any amount from the defendants. If some departmental action has been concluded against the defendant, the plaintiffs may take recourse to lawful proceedings, but in the absence of non-joinder of M/s Jai Durga Grains Private Ltd., the suit was held to be bad for non-joinder of necessary parties. Evidently, there was an agreement with M/s Jai Durga Grains Private Ltd. and said miller did not mill the paddy, nor delivered any rice to FCI in the account of Punsup. Even the mill did not deliver rice upto the extended date. Vide letter dated 05.05.1999, the paddy was ordered to be shifted to other millers. In the absence of M/s Jai Durga Grains Private Ltd. to be a party defendant in the suit, no proper adjudication could have been made by the trial Court as the alleged omission on the part of the aforesaid mill could not be deliberated with reference to any evidence on record.

[8]. Even if the defendants have been proceeded against in departmental proceedings, the suit for recovery has to be decided on the basis of preponderance of probability. No incriminating material has come on record to prove the culpability of the defendants for providing the amount in

question to the plaintiffs. M/s Jai Durga Grains Private Ltd. was allotted rice for custom milling. The failure on the part of the aforesaid mill would have resulted in legal action against such mill, but the plaintiffs did not implead the aforesaid mill for the reasons best known to it. The recommendation of the name of the M/s Jai Durga Grains Private Ltd. even if, taken to be on its face value that does not advance the case of the plaintiffs in order to implicate the defendants by any legal means.

[9]. As per the agreement between the Punsup through District Manager and M/s Jai Durga Grains Private Limited (Ex.P-5) the clauses No.7(i) and 14, the miller shall be responsible for the safe custody of the paddy lifted till the delivery of rice and also to make good the losses during transit. The failure on the part of the miller would have resulted in a action arising out of bilateral obligation. The Punsup could have forfeited the security of the miller after granting opportunity and the work could have been executed at the risk and cost of the miller. As per letter written by Head office of Punsup to the District Manager, Punsup Ferozepur (Ex.P-8), Punsup Ferozepur was allotted to shift paddy of 107844 bags stored in the premises of M/s Jai Durga Grains Private Ltd., Makhu and to transport the same to other millers namely M/s Guru Rice Mills, Khai PHEME Ke or other miller of Patiala and Sangrur, where the

milling capacity was available with the millers. Terms and conditions of the said letter as per clause 2 clearly provided that the paddy stocks were shifted at the risk and cost of the miller.

[10]. Perusal of the aforesaid material would show that it was the miller, who was to make good the transit loss of paddy from Makhu to Khai PHEME Ke and other mills of Patiala and Sangrur as the paddy was not milled by M/s Jai Durga Grains Private Ltd. Even the award Ex.D-1 has already been passed for recovery of the said amount against the miller i.e. M/s Jai Durga Grains Private Limited, Makhu and its partners for losses suffered by the plaintiffs. Still M/s Jai Durga Grains Private Limited was not impleaded as party defendant in the suit. Paddy was allotted to the aforesaid miller for the year 1998-99 and the suit came to be filed only on 28.01.2010.

[11]. The findings recorded by the lower Appellate Court on the point of limitation and non-joinder of necessary parties cannot be nullified by any stretch of imagination.

[12]. Learned counsel for the appellants could not show as to how the findings recorded by the Courts below are perverse or the result of misreading of evidence. The findings recorded by the Courts below are based on evidence. Re-appreciation of the evidence in the Regular Second Appeal cannot be made. No law point worth cognizance is involved in the present appeal,

the same is accordingly dismissed in *limine*.

[13]. Since the appeal is dismissed in *limine*, therefore, there is no need to decide the pending applications. The same are accordingly disposed of.

May 02, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No