IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.522 of 2018
Date of Decision : 22.10.2019

The Punjab State Co-operative Supply and Marketing Federation Limited, Chandigarh

......Appellant

Versus

M/s Bajaj Rice Mill and others

...... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

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

<u>ARUN PALLI, J. (Oral)</u>

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 3.7.2015 and as even the appeal preferred against the said decree failed and was dismissed on 20.07.2016, appellant-plaintiff is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Suit for recovery of Rs.2,93,666/- was filed by the plaintiff against the defendants plus interest as per the terms and conditions of the contract between the parties till its payment. It was submitted that defendant No.1 was a partnership firm and defendant No.2 to 5 were partners thereof. For, the crop season 1994-95, the plaintiff MARKFED procured paddy at the support price being procuring agency for custom milling. Pursuant to an agreement entered into between the parties defendants firm was assigned a contract for custom milling for the year 1994-95 and 47,344 bags weighing 30,373.60 quintals of paddy were supplied to the defendants against receipts. The defendants were required to deliver rice tiil 28.02.1995, however, it failed to adhered to prescribe schedule and committed breach of contract. Initially, the matter was referred to the Arbitrator who refused the claim of the plaintiff for lack of jurisdiction. The said order was assailed by the plaintiff and the Additional District Judge, Ferozepur, vide order dated 30.11.2000, set aside the same and directed the Arbitrator to adjudicate the dispute. But the defendants approached this Court by way of revision and the order passed by the Additional District Judge, Ferozepur was set aside on 14.03.2002. The review petition filed by the plaintiff was dismissed and likewise even the SLP preferred against the order passed by this Court was dismissed by the Supreme Court on 01.03.2007. The Managing Director of the appellant-plaintiff initiated the recovery proceedings and vide order dated 20.06.2011, defendant-firm having been found guilty, a penalty of Rs. 2,93,666/- was imposed. But as the defendants failed to deposit the said amount, thus the suit.

In the written statement preferred by defendants No.1, 4 and 5, it was pleaded that the dispute pertain to the year 1994-95 whereas the present suit was filed on 23.10.2011, and thus, it was apparently timed barred. Further, before passing the order dated 20.06.2011, the Managing Director of the appellant-plaintiff did not afford any opportunity to the defendants, and thus, it was not binding qua the rights of the defendants. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that terms and conditions of the agreement Ex.P4 envisaged that if the miller failed to supply rice within the stipulated period he would be liable to pay interest on the basis of the economic cost of the left over quantity/stock of paddy. However, perusal of order Ex.P6 revealed that not only cost of left over paddy was imposed upon the defendants firm but difference of purchase and sale price of paddy was also sought to be recovered from defendant No.1. The specific case set out by the defendants in the written statement was that for the crop season 1994-95 owing to the bumper crop during that period, crop of paddy in high quantity was damaged, due to insufficient space of storage. Resultantly, the plaintiff obtained compensation from the Central Government for the loss caused due to difference of purchase and sale price of paddy. Records revealed the said factual position was not controverted by the plaintiff. Nothing was brought on record either by the plaintiff to justify as to how defendants were liable for the loss caused to the plaintiff due to difference of purchase and sale price of paddy. Significantly, Ex. D3 was No Objection Certificate issued on 03.10.1996, by the District Manager MARKFED in favour of defendants firm which showed nothing was due against defendants for the crop year 1994-95 and 1995-96. Thus, it was concluded if at all the defendants firm was liable to compensate the appellant-plaintiff why no dues certificate (Ex.D3) was issued by the District Manager to the defendants firm. Not just that the suit filed by the plaintiff firm for recovery was predicated upon the order dated 20.06.2011 of the Managing Director however, neither the said order was proved in original nor any application was moved by the plaintiff to prove the same by secondary evidence. Once, the appellant-plaintiff failed to prove the order dated 20.06.2011, the only and the inevitable conclusion that could be reached: the appellant-plaintiff failed to substantiate its claim for lack of evidence.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently 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.

22.10.2019 **(ARUN PALLI)**
Manoj Bhutani **JUDGE**

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