

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

101

RSA-6373-2017

Date of decision: 15.05.2019

PUNJAB STATE WAREHOUSING CORPORATION LTD.

...APPELLANT

VS.

R.N.DHIR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S.Bedi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Kapurthala dated 28.02.2014, whereby the suit for recovery of ₹66,40,444/- from the respondent-defendant on account of loss suffered by the appellant-plaintiff due to defalcation by the respondent during his course of employment with the appellant as determined by the plaintiff vide order dated 11.02.2004 along with future interest @ 18% per annum from the date of filing of the suit till the date of recovery, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the learned Additional District Judge, Kapurthala vide judgment dated 05.05.2017.

It is the contention of the learned counsel for the appellant that the findings recorded by the Courts below with regard to the suit of the appellant-plaintiff being barred by limitation cannot sustain in the light of the fact that the order of punishment imposed upon the respondent by the Managing Director of the appellant is dated 11.02.2004 and the civil suit

was filed on 18.07.2006. He contends that it is on the basis of the order of punishment, which has been imposed upon the respondent, that the suit for recovery has been filed. He, therefore, contends that the said suit is within limitation. Assertion has, thus, been made on this basis that the finding recorded by the Courts below that the suit is barred by limitation, is not sustainable.

On merits, it has been asserted by the learned counsel for the appellant that the findings recorded by the Courts below cannot sustain in the light of the fact that in the departmental enquiry, which has been held against the respondent-defendant, although the Enquiry Officer has exonerated the respondent but on the basis of a dissenting note, the punishing authority has proceeded to impose the punishment upon the respondent holding him responsible for the loss, which has been caused to the appellant-plaintiff. He, thus, contends that the suit, as filed by the appellant-plaintiff, deserves to be accepted and the judgments and decree passed by the Courts below set aside as they are not based upon proper appreciation of the pleadings and evidence on record.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

It is not in dispute that the charge of defalcation, which has been attributed to the respondent-defendant relating to 17,343 bags of paddy, pertains to the year 1999. The first doubt, which comes in, is the admission on the part of PW2 Sucha Singh, who has appeared on behalf of the appellant where he has admitted the factum that the respondent-defendant was on medical leave from 22.06.1999 to 06.08.1999 and had

rejoined the duty at Bagha Purana on 09.08.1999. It is also admitted that that in the absence of the respondent-defendant Sh. R.N.Dhir, one Gurbax Singh was officiating as Warehouse Manager and during the period i.e. 06.08.1999 to 08.08.1999, Gurbax Singh got lifted 4800 bags of paddy to the various places. The very basis and the quantity, for which the recovery is being sought to be effected from the respondent-defendant, thus, is put under doubt. That apart, it has come on record and admitted by PW2 Sucha Singh that the District Manager had given instructions to issue paddy to Bansal Rice and General Mills and Nauhria Food Products of Badhni Kalan. It is also come on record and admitted that 8050 bags of paddy were sent to Nauhria Rice Mills and 9293 bags were sent to Bansal Rice Mill of Badhni Kalan. If these bags have been sent on instructions from the District Manager, it is difficult to accept as to how the respondent-defendant could be held responsible for the said bags having been sent especially when during the enquiry proceedings, which were held against the respondent-defendant, the representative of the Bansal Rice and General Mills and Nauhria Food Products of Badhni Kalan had admitted to have received the respective bags of paddy at their Rice Mills. The findings recorded by the Courts below, thus, are based upon proper appreciation of the pleadings and evidence on record.

It may be added here that the Enquiry Officer, in the light of these facts, had exonerated the respondent-defendant of the charges, which have been framed against him. Nothing has been brought on record which would indicate, in the light of the above facts, that the liability, if any, was that of respondent-defendant.

It may further be added here that the suit for recovery has

already been filed against the Bansal Rice and General Mills and Nauhria Food Products of Badhni Kalan, which fact has also been admitted during the cross-examination of PW2 Sucha Singh. It is difficult to accept as to how two recovery suits for the same case property can be filed. However, in the light of the above facts, as recorded, the case of the appellant-plaintiff is based upon no evidence which would indicate any liability on the part of the respondent-defendant which would hold him liable for recovery of the amount, as has been sought to be so recovered on account of the alleged loss suffered by the appellant-plaintiff. It appears that the liability, which has been sought to be imposed upon the respondent-defendant, is with an intention to shield some officials who were actually liable and responsible as it has come on record that no proceedings, departmental or otherwise, have been initiated against Gurbax Singh who got lifted 4800 bags of paddy from 06.08.1999 to 08.08.1999 or against the District Manager who had given instructions to issue paddy to Bansal Rice and General Mills and Nauhria Food Products of Badhni Kalan. The findings as recorded by the Courts below, thus, cannot be faulted with.

As regards the suit being within limitation, as asserted by the counsel for the appellant-plaintiff, keeping in view the fact that the recovery, which is being sought to be effected from the appellant-plaintiff, is for the year 1999, the suit of the appellant-plaintiff cannot be said to be within limitation as the same was filed on 18.07.2006 which is much beyond the period of limitation. The plea, which has been sought to be taken for initiating the suit at this belated stage i.e. the order dated 11.02.2004 passed by the Managing Director of the appellant-plaintiff cannot be accepted as the evidence on record indicates that there was no

liability on the part of the respondent nor was there any defalcation on his part.

In view of the above, there being no merit in the present appeal especially in the light of the fact that the findings, which have been recorded by the Courts below, are concurrent and there is no question of law involved in this case, the appeal stands dismissed with costs of ₹50,000/- to be deposited with the High Court Legal Services Authority within 4 weeks.

May 15, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No