IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4995 of 2019 (O&M)
Date of decision: 11.02.2020

Punjab State Coop. Supply & Marketing Federation Limited

... Appellant

versus

M/s Guru Teg Bahadur Rice & General Mills, Jagraon & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vishal Moudgill, Advocate,
for the appellant.
**

ARUN MONGA, J.

CM-14223-C-2019

For the reasons mentioned in the application, the same is allowed and delay of 34 days in filing the appeal stands condoned.

RSA-4995 of 2019

1. Having suffered concurrent adverse findings by the Courts below, defendant-appellant Punjab State Cooperative Supply and Marketing Federation Limited (for brevity, MARKFED) is in second appeal before this Court assailing the judgments and decrees passed by the trial Court as well as First Appellate Court, whereby the judgment and decree of trial Court has been upheld.

2. Civil suit giving rise to the appeal herein was filed by plaintiff/ respondent M/s Guru Teg Bahadur Rice and General Mills seeking a declaration that an order dated 13.06.2013 passed by the Managing Director of appellant MARKFED directing the former to pay a sum of Rs.3,66,903/-

towards cost of rice and gunny bags along with interest at bank rate and VAT is null, void and illegal along with consequential relief of permanent injunction restraining the MARKFED to recover the said amount. The other suit was filed by the appellant for recovery of Rs.3,66,903/- along with interest.

3. Brief facts as noted by the first Appellate Court are that plaintiff-respondent entered into an agreement dated 12.10.1994 for custom milling of paddy for the year 1994-95 with defendant MARKFED. As per agreement, MARKFED was to supply paddy to the plaintiff and in turn rice was to be delivered by plaintiff to Food Corporation of India(FCI) in the account of defendant MARKFED by milling/ converting the said paddy into rice. Parties had entered into the said agreement governing *inter se* commercial relations. Defendant MARKFED invoked arbitration proceedings on the basis of arbitration clause contained in the commercial agreement and filed a claim petition for recovery of Rs.34,97,643/- along with interest @ 21% per annum. The arbitration proceedings were invoked claiming that plaintiff had caused loss to the defendant MARKFED on account of non-milling, deficient sale of paddy and costs of gunny bags, interest on un-milled paddy, penal interest on sale of paddy and delayed submission of documents, rice, quality cuts and income tax. After conclusion of arguments before the learned Arbitrator, at a belated stage, defendant MARKFED filed additional revised claim for Rs.9,29,011/-. The Arbitrator gave an award as per claim petition in favour of the defendant MARKFED as well as accepted the revised claim of Rs.9,29,011/- and allowed the same also in the award. Plaintiff filed a petition under Section 34 of Arbitration and Conciliation Act challenging the award before the

District Judge, Ludhiana and vide judgment dated 03.02.2011 the petition was accepted and the award was set aside. However, the defendant MARKFED issued another notice dated 19.07.2011 whereby another claim of Rs.3,66,903 was raised towards cost of paddy, gunny bag and quality cut. The plaintiff replied to the notice and thereby denied any liability to pay the amount, as claimed, towards cost of paddy, gunny bag and quality cut on the ground that pursuant to the policy of the MARKFED, the plaintiff had purchased the paddy and paid the amount, as such the demand raised was arbitrary. However, the defendant MARKFED stuck to their demand, leading to the filing of the suit.

4. The defendant contested the suit to justify the recovery notice. It was claimed that though the award was set aside by the learned District Judge, but while deciding the case, a liberty was given to the Managing Director to proceed in the matter as per law. Consequent thereto, the matter was heard by the Managing Director and demand for recovery was rightly imposed upon the plaintiff vide order dated 13.06.2013.

5. Further when the plaintiff-respondent herein failed to pay the amount demanded vide order dated 13.06.2013 of the Managing Director, on scrutiny of his reply, the appellant chose to file the suit for recovery of Rs.3,66,903/- along with interest which was contested by the respondent herein on the same ground.

6. Both suits filed by the respective parties were consolidated vide order dated 02.11.2016. Based on the pleadings of the parties, the trial Court framed the following issues in the main case:-

> *"1. Whether plaintiff is entitled to relief of declaration as prayed for?OPP*
>
> *2. Whether the present suit of the plaintiff is liable to be*

rejected for want of notice under Section 79 of Punjab Cooperative Societies Act, 1961 ?OPD

3. Whether the court has got no jurisdiction to entertain and try the present suit?OPP

4. Whether no cause of action has accrued to the plaintiff?OPD

5. Whether the suit is not properly valued for the purpose of court fee?OPD

6. Relief."

7. Following issues were framed in second suit:-

"1. Whether the plaintiff is entitled to recover the sum of Rs.3,66,903/- along with pendentelite and future interest and VAT?OPP

2. Whether suit of plaintiff is hopelessly barred by time?OPD

3. Whether plaintiff is estopped by his own act and conduct to file the present suit?OPD

4. Whether the suit filed by plaintiff is without any cause of action?OPD

5. Relief."

8. Both the parties adduced their respective oral and documentary evidence in support of their case and to discharge their respective onus as per issues *ibid.*

9. After analyzing the oral as well as documentary evidence adduced by the parties, the trial Court decided issue No.1 framed in both cases in favour of respondent herein and against the appellant MARKFED. The trial Court, *inter alia,* held that out of 38601 bags weighing 25090.65 quintals of paddy supplied to plaintiff, the plaintiff milled 9982 bags weighing 6489.30 quintals, whereas 28619 bags weighing 18601.35 quintals of unmilled paddy was kept by the miller in its custody. During relevant period, the Central Government invited tenders for sale of

remaining paddy on "as is and where is" basis. The plaintiff firm offered to purchase the said unmilled paddy and the said offer of purchase was accepted by the Government and deliveries were made by issuing the release order. The payment against the said purchase was duly received by the Central Government agency. Whether or not paddy was misappropriated or was converted into rice without authorization could not be proved on record. Nor physical verification seemed to have been carried out. Regardless, the trial Court was of the opinion that plaintiff had already purchased the left over paddy vide sale offered by the Government and, therefore, the defendant MARKFED had no concern with the unmilled paddy once the same was purchased by the plaintiff. In nutshell, it was, thus, held that unmilled paddy was sold to the plaintiff firm and the money was received by FCI against the said sale. Subsequent to the purchase of unmilled paddy by the plaintiff, the same did not remain property of defendant and, therefore, the question of misappropriation by the plaintiff did not arise, the plaintiff having legitimately purchased the same from the Government. In the premise, the trial Court found that defendant was not entitled to seek any recovery from the plaintiff qua the un-milled paddy. As regards issue Nos. 2 to 5 the same were not pressed by the defenandant MARKFED and the same were accordingly decided in favour of the plaintiff/ respondent. The appellant's suit was dismissed and that of the respondent herein was decreed by the trial Court.

10. In the first appeal filed by the MARKFED, the Appellate Court reaffirmed the findings returned by the trial Court and based thereon upheld the judgment and decree passed by the trial Court and dismissed the appeal. The findings of the learned First Appellate Court have been summoned up

in the concluding part of the judgment and relevant whereof is extracted hereinbelow:-

> *"23. Further, the physical verification should have been done at the time when the paddy was to be sold to the miller as per the scheme, whereas verification report mark A shows that it was done on 25.08.1995. much after the sale of the remaining unmilled paddy and there was no reason or occasion for the officials to conduct verification when the paddy already stood sold to the miller. No official who had conducted the physical verification has been examined. No previous physical verification reports have been brought on the record nor the sale order was brought on the file. The entire plaint is also silent as regards any such physical verification having been conducted and moreover, no such physical verification report has been produced on file. The release order could have been easily placed on record but it has not been done by the appellant.*
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> *24. What is apparent from the entire above document is that the alleged physical verification which is stated to have taken place on 25.08.1995 infact was conducted after the sale of balance un-milled paddy having been made to the millers in pursuance of government policy in this regard. Once the sale of un-milled paddy has also been made to the respondent by the appellant and admittedly the purchase price had also been paid towards the same by the miller, there was no reason or occasion for physical verification to be got conducted. Moreover, even otherwise, the said physical verification has not been proved by the appellant to have taken place as towards any such un-authorised conversion of 4108 bags having been made by the miller-respondent with an intent to cause any loss to the appellant. Moreover, once the un-milled stock already stood sold to the millers, then there was no reason or occasion for conducting physical verification. If the paddy had been sold to the millers, he might have got the same*

converted into rice and it cannot be stated to be illegal or unauthorized conversion.

25. Now adverting to the contention of the counsel for the appellant that the decision of the Managing Director, passed in terms of the agreement in question, was final and binding on the parties and the same had been wrongly ignored and discarded by the Trial Court. Reference was made by learned counsel for the appellant to clause 6(iii) of the agreement Ex.P1, wherein it has been recorded that "....in the event of his failure to supply the rice within the stipulated period, he shall be liable for interest @ 21% on the basis of economic cost of left quantity/ stocks of paddy/ rice. The decision of the Markfed Managing Director in this behalf shall be final." However, the above stipulated condition does not come into operation in the case in hand, as the same was to come into operation in the eventuality of failure of the respondent-miller to supply the rice within the stipulated period. Herein, the admitted fact shows that the period for supply of the milled paddy already stood extended from 28.02.1995 to 31.08.1995 and much prior to the said date 31.08.1995 the un-milled paddy was sold under the government policy to the miller/ respondent. Thus, the miller was under no liability to supply any further milled paddy to the appellant society. In these circumstances, clause 6(iii) does not come into operation and could not be read or held against the respondent-miller."

11. I have heard learned counsel for the appellant and have perused the judgments under challenge vis-a-vis the grounds of appeal raised before this Court. In my opinion, correct conclusions have been drawn by the learned trial Court and the learned first Appellate Court in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by

appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

12. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

14. Pending applications stand disposed of.

15. No order as to costs.

(ARUN MONGA)
JUDGE

February 11, 2020
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No