IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA 5760 of 2019 (O&M)
Date of decision: 31.01.2020

M/s Container Corporation of India ....*Appellant*

Versus

M/s Jindal Agro Mills Private Limited ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Salil Sabhlok, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of Rs.2,78,665/- as principal amount along with interest filed by the respondent/plaintiff was decreed to the following effect:-

> *"Plaintiff is entitled to the recovery of Rs.2,78,665/- along with interest. Plaintiff is also entitled for the interest at the rate of 9% during pendency of the suit on the principle amount. Plaintiff is further entitled for the interest at the rate of 6% on the principle amount till its actual realization."*

The appeal preferred by appellant - M/s Container Corporation of India was dismissed by the Additional District Judge, Ludhiana vide judgment and decree dated 05.09.2019.

The sole submission made by counsel for the appellant is that as the appellant falls within the ambit and purview of “railway administration” defined in Section 2(32) of the Railways Act, 1989 (in short, 'the Act'), the appellant is entitle to benefit of *the Railways (Extent of Monetary Liability and Prescription of Percentage Charge) Rules, 1990* notified by the Ministry of Railways on 07.06.1990 (Annexure A2). To bring home his contention, it is argued that Government of India, Ministry of Railways, issued notification No. 89/TC(M&S)/16/92/Meeting dated 21.11.1989 setting up the appellant Corporation under the administrative control of the Ministry of Railways to develop inter modal services and an efficient and reliable infrastructure for the country's foreign trade as well as multi modal logistics support for domestic trade and industry. It is further argued that in view of definition of “railway” under Section 2(31) of the Act particularly clause (d) thereof, all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installation, staff dwellings and any other works constructed for the purpose of, or in connection with railway also fall within the meaning of “railway”, therefore, the appellant is entitle to all those benefits which are available to the railway administration. In support of his contention, he has relied upon judgment of High Court of Delhi ***Brahm Dev Gupta vs Container Corporation of India and another*** passed in exercise of original jurisdiction in Civil Suit No. OS 2033/2010 on 25.02.2015 (unreported).

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Counsel for the appellant would fairly inform that no such contention was raised by the appellant before the trial Court and as such, the same was not the subject matter of decision by the said Court. However, it has been informed that this issue was raised before the first appellate Court but has been rejected.

Before adverting to submissions made by counsel for the appellant, it is necessary to deal with definition of "railway administration" under Section 2(32) of the Act, quoted thus:-

> *"(32) "railway administration", in relation to-*
>
> *(a) a Government railway, means the General Manager of a Zonal Railway; and*
>
> *(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement."*

In the present case, the Court is concerned with clause (b) dealing with a non-Government railway. Counsel for the appellant has failed to point out any material on record to show that the appellant corporation is the owner or lessee of the railway or the person working the railway under an agreement. That being so, the appellant does not fall within the ambit and purview of clause (b) of Section 2(32) of the Act to contend that the same is railway administration. The mere fact that Container Corporation of India has been set up under administrative control of Ministry of Railways would not be sufficient to uphold plea of the appellant that the same is a non-Government railway and falls within definition of "railway administration" under Section 2(32) of the Act. In this view of the matter, the appellant cannot derive any advantage to its contention from the judgment passed by the Delhi High Court in exercise of its original jurisdiction wherein the Court has dealt with various issues/aspects.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed *in limine.*

(Rekha Mittal)
Judge

31.01.2020
Mohan Bimbra

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