IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.70 of 2018 (O&M)
Date of decision : 06.12.2021

M/s Vijay K. Gupta and Co.
.....Appellant

VERSUS

State of Punjab and others
....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aman Bansal, Advocate
for the appellant.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. K.K. Gupta, Advocate
for respondent No.4 – FCI.

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AUGUSTINE GEORGE MASIH, J.

CM-1516-LPA-2020
CM-1521-LPA-2020

Prayer in these application is for exemption from filing typed/certified copies of Annexures A-1 to A-13 and for placing the same on record by way of additional evidence.

For the reasons stated in these applications, the same are allowed. Exemption is granted from filing typed/certified copies of Annexure A-1 to A-13 and the same are taken on record, subject to all just exceptions.

CM-165-LPA-2021
CM-166-LPA-2021

Prayer in these application is for exemption from filing typed/certified copies of Annexures A-14 to A-17 and for placing the same on record.

For the reasons stated in these applications, the same are allowed. Exemption is granted from filing typed/certified copies of Annexure A-14 to A-17 and the same are taken on record, subject to all just exceptions.

CM-2315-LPA-2021

Prayer in this application is for exemption from filing typed/certified copies of Annexures A-1 to A-2.

For the reasons stated in the application, the same is allowed. Exemption is granted from filing typed/certified copies of Annexure A-1 to A-2, subject to all just exceptions.

LPA No.70 of 2018

This intra-court appeal has been filed by M/s Vijay K. Gupta & Co., which was a petitioner before the learned Single Judge, seeking a writ of *mandamus* directing the respondents to allot paddy for Custom Milling Policy of 2017-18.

The claim of the appellant was that it had leased-out its mill in the year 2004-05 to M/s Anand Foods, Moga, vide lease deed dated 01.08.2004. A dispute arose between M/s Anand Foods, Moga and the respondent(s) relating to the quality of the rice, which were supplied by it after milling and a suit for recovery was filed against the said firm by the Food Corporation of India (for short 'FCI'), which was dismissed on 20.09.2017 on the ground of limitation. The claim, therefore, if any, against M/s Anand Foods, Moga, renders it to be non-recoverable from the said forum. Since the only aspect which has been projected against the appellant is that the Proprietor of the appellant firm, namely, Reetam Gupta, had given an undertaking/guarantee to bear or deposit any amount which becomes recoverable from the miller/lessee i.e. M/s Anand Foods, Moga, while settling any amount of paddy milled by the said lessee, which has been used as a tool to declare the appellant as a defaulter under the Custom Milling Policy of 2017-18.

The said plea, as has been projected by the appellant in the writ petition, has not been accepted by the learned Single Judge and rejected the said submission by asserting that in case a debt becomes time barred, the right to exercise recovery by way of a suit may not survive but the debt does not extinguish and the creditor would be entitled to adjust from the payment of the sum by a debtor towards time barred debt. Creditor, when in possession of any adequate security, could adjust the debt from the security in his possession and custody. This conclusion of the learned Single Judge is based upon the judgment of the Hon'ble Supreme Court in **Punjab National Bank Vs. Surendra Prasad Sinha** 1992 AIR (SC) 1815. Reference was also made to the relevant clauses of the Custom Milling Policy of 2017-18, especially Clause 11 (H)(c),(d) and (f), to conclude on the basis of the undertaking/affidavit of the Proprietor of the appellant firm that the appellant is liable to pay the dues of M/s Anand Foods, Moga.

2. It is the contention of the learned counsel for the appellant that the judgment passed by the learned Single Judge is based upon wrong appreciation of the facts as also the law. It has been asserted that although the appellant had given an undertaking/guarantee but since the liability

itself against M/s Anand Foods, Moga being unacceptable as the claim was time barred, which was sought to be recovered through a civil suit filed by the FCI against M/s Anand Foods, Moga, which has been dismissed, therefore, the said claim cannot be pressed into service against the appellant despite it being a guarantor and having given an undertaking to bear or to deposit any amount which become recoverable from the miller/lessee while settling any amount of paddy milled by the said lessee. Reference to Clause 11 (h) (c) and (d) of the Custom Milling Policy of 2017-18, counsel contends that the appellant would not be covered by the said clauses as there being no default which could be pressed against the appellant for recovery. When there being no recovery, which can be effected from the principal debtor, how could guarantor be held liable for the same. Consequence thereof is that treating the appellant as a defaulter under the Custom Milling Policy of 2017-18 is misplaced. Counsel for the appellant, on the basis of this submission, asserts that the appeal be allowed by setting aside the order passed by the learned Single Judge and a writ of *mandamus* be issued to the respondents to allot paddy to the appellant for custom milling.

3. On the other hand, learned counsel for the respondents submit that the relief which has been sought by the appellant cannot be granted now as the Custom Milling Policy of 2017-18 does not hold good now as it was only for a year. Further, it has been asserted that the facts being not in dispute, the appellant being a guarantor who has given an undertaking to discharge the liability in case any amount is recoverable from its lessee, makes the appellant liable for payment thereof. Unless the said amount is

paid, allotment of paddy cannot be made to the appellant. As regards the aspect of dismissal of the suit filed by the FCI which was preferred for recovery of the amount due against M/s Anand Foods, Moga, counsel contends that the remedy of civil suit may be barred because of the dismissal thereof against the lessee of the appellant for the reason of limitation but the debt continues to exist and the guarantor is fully liable to discharge the said liability in the light of the judgment of the Hon'ble Supreme Court in *Punjab National Bank*'s case (supra) He, thus, submits that the present appeal deserves to be dismissed.

4. Having considered the submissions made by the learned counsel for the parties and on going through the pleadings and the judgment passed by the learned Single Judge, we do not find any error in the impugned judgment calling for any interference.

5. The admitted facts are that the appellant had leased-out its mill to M/s Anand Foods, Moga. FCI was not satisfied with regard to the quality of rice which was supplied by the said lessee of the appellant i.e. M/s Anand Foods, Moga. Recovery suit of Rs.24,17,410/- along with interest on account of losses suffered by FCI was dismissed being time barred claim. It is also not in dispute that the Proprietor of the appellant firm, namely, Reetam Gupta had given an undertaking/guarantee to bear or deposit the amount becoming recoverable from the miller lessee while settling any amount of paddy milled by the said lessee, therefore, the responsibility to discharge the said liability fell upon the appellant.

6. A plea which has been sought to be projected with regard to there being no liability as such of the appellant for the reason that FCI could

not effect recovery from the principal debtor cannot be accepted in the light of the judgment of the Hon'ble Supreme Court in *Punjab National Bank*'s case (supra), where it has clearly been held that a debt may be barred which would not extinguish the same may be the remedy to enforce the liability is destroyed, Section 3 of the Limitation Act refers to only the remedy but not to the right of the creditor and thus, the said right can be exercised in any other manner but by the means of suit. A creditor would be entitled to adjust from the payment of sum by a debtor towards a time barred debt by adjustment from the security in its possession and custody. Since the appellant stood a guarantor to the principal debtor although the remedy to recover the debt from the principal debtor is barred by limitation but the liability still subsists.

In the light of the above settled principle of law, the only plea which would be sustainable qua the appellant is that a suit for recovery would be barred but the other modes of making good the debt survives. The liability, therefore, subsists, from which the appellant cannot run away.

7. Once it is held that the liability qua the appellant subsists and continues, reference of Clause 11(H) (c), (d) and (f) would be necessary as the appellant intends to take the benefit under the Custom Milling Policy of 2017-18. The said clauses deal with the defaulter detailing therein different kinds of defaults which has to be taken into consideration. Any one clause, if applicable, renders a rice mill a defaulter. The relevant clause would be Clause (d), which reads as follows:-

> "(d) The rice miller(s) who stood guarantor(s) for any other miller against whom a court case/police

> case is registered or arbitration proceedings are initiated on account of embezzlement and/or on account of non-delivery of rice relating to custom milling pertaining to any crop year, shall not be considered for allotment until such miller for whom guarantee was furnished, clears the default of the concerned agency along with penal interest at the rates for the relevant year(s) as decided by the Government from time to time."

8. A perusal of the above would show that the case of the appellant would fall within this category of defaulter and therefore, being a defaulter, the appellant would not be entitled to acceptance of prayer made in the writ petition for directing the respondents to allot paddy to it for custom milling especially in the light of the fact that the Proprietor of the appellant firm had stood as guarantor and had undertaken to discharge the liability for the lessee i.e. M/s Anand Foods, Moga, which reads as follows:-

> "I am the owner of M/s Vijay K. Gupta & Co., Ferozepur Road, Dune-ke, District Moga and I take responsibility relating to paddy to be issued to M/s Anand Foods, Dune-ke, Moga which is a lessee party of M/s Vijay K. Gupta during year 2004-05 for custom milling by government or other agencies as under:-
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> 1) For balance paddy/rice/bardana or any other recoverable towards millers in respect of paddy

given by government or any other agencies.

2) For timely delivery of rice due after completion of milling according to milling policy of year 2004-05 or directions issued from time to time.

3) To deposit the amount if any becomes recoverable from miller in future after settling account of paddy milled."

9. In view of the above, we do not find any merit in the present appeal and therefore, dismiss the same.

CM-2316-LPA-2021

In the light of the dismissal of the main appeal, no order is required to be passed in this application for issuance of directions to the respondents to allot paddy to the petitioner as the same has been rendered infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

06.12.2021
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*