

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 91 of 2021 (O&M)

Date of Decision: 01.04.2022

Punjab State Warehousing Corporation and Another

... Petitioner(s)

Versus

M/s Guru Dashmesh Rice Mills

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manbir Singh Batth, Advocate
for the petitioner(s).

Mr. Raman Goklaney, Advocate
for the respondent(s).

Anil Kshetarpal, J.

1. The petitioner is a defendant in a suit for recovery of ₹17,41,883.35 ps. The first suit, filed by the plaintiffs for grant of mandatory injunction, was decided. While dismissing the regular second appeal, filed by the plaintiffs, the following observation was made on 28.02.2019:-

“The present suit is only for mandatory injunction. If permissible in law, the plaintiffs shall be entitled to initiate action for recovery of the amount from the agency which has sold the stock.

In view of the above, no ground is made out. Hence, all these three regular second appeals are dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof”.

2. Thereafter, the plaintiffs filed a suit for recovery along with an application under Section 14 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”). Section 14 of the 1963 Act enables the plaintiffs to seek exclusion of the period spent for bonafidely pursuing a matter in the Court without jurisdiction. The trial Court, while observing that the question of limitation is a mixed question of facts and law, which cannot be decided summarily, has chosen to condone the delay, but subject to the final outcome of the matter in controversy.

3. The learned counsel representing the respondents has drawn the attention of the Court to the following issues, framed on appreciation of evidence:-

- “1. Whether plaintiff is entitled for recovery of ₹17,41,883.35 p. as prayed for? OPP*
- 2. Whether suit of plaintiff is hopelessly time barred? OPD*
- 3. Whether suit of the plaintiff is not maintainable in its present form? OPD*
- 4. Whether plaintiff has not come to the court with clean hands and has concealed the true and material facts? OPD*
- 5. Whether plaintiff has got no locus standi and cause of action to file the present suit? OPD*
- 6. Whether suit is also barred under Order 2 Rule 2 CPC and deserves to be dismissed? OPD*
- 7. Whether suit is not valued for the purposes of court fee and jurisdiction? OPD*

8. *Whether suit of plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD*

9. *Relief*".

4. After having heard the learned counsel representing the parties, this Court is of the opinion that the trial Court has failed to frame proper issues. The issue should be as to whether the plaintiff is entitled to exclude the period spent while prosecuting the suit for grant of mandatory injunction, in another civil proceedings.

5. Obviously, Section 14 of the 1963 Act does not provide for condonation of delay.

6. Keeping in view the aforesaid facts, the order in question is modified. The trial Court will proceed with the case and while finally deciding the case, adjudicate upon all the issues framed.

7. With the observations made above, the present revision petition is disposed of.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 01, 2022
"DK"

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