IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-1226-2000
Reserved on 05.09.2022
Pronounced on: 14.09.2022

Punjab Agro Industries Corporation Ltd. .....Appellant

Versus

Indian Potash Ltd. .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sumeet Goel, Sr. Advocate with
Mr. Anupam Singla, Advocate and
Mr. Aarush Neeraj Vaid, Advocate
for the appellant.

Mr. Navneet Jindal, Advocate
for the respondent.

****

MANJARI NEHRU KAUL, J.

This appeal has been filed against the concurrent findings recorded by the Courts below decreeing the suit filed by the plaintiff/respondent for recovering an amount of Rs.52,26,786.28 with pendente and future interest from the appellant/defendant.

Parties to the *lis,* hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff company may be noticed as thus: The plaintiff company deals in the business of fertilizers and distributes as per instructions of the Government of India. It sells the fertilizers on cash payments as well as on credit basis. The defendant company entered into a contract for 20,000 metric ton of urea on credit basis for 1985 kharif season, however, it came forward to obtain delivery orders for 6436.800 metric ton and actually lifted only

6290.800 metric ton. The cost of 6290.800 metric ton of urea was Rs.1,24,20,757.20 out of which the defendant company only paid a sum of Rs.49,32,762/- through cheques and the outstanding amount payable by it was Rs.74,87,995.20. The plaintiff company raised proper invoices on the defendant company for the above said transaction. The plaintiff company made repeated demands from the defendant company for clearing the outstanding dues through letters and other modes of communications, however, the defendant company instead of clearing the outstanding dues filed a reply and raised objections with respect to the quantity of fertilizers delivered and the calculations qua the pricing as a result of which a dispute arose between the parties. Thereafter, a joint meeting was held between the plaintiff company and the defendant company on 26.03.1987 wherein the defendant company admitted that an amount of Rs.74,87,995.20 was recoverable from it, but still no payment was made by it.

In its written statement, the defendant company took objections qua the maintainability of the suit and opposed the claim of the plaintiff company. The defendant company gave details of the accounts of the transactions which took place between it and the plaintiff company since September, 1984. It was also alleged that the plaintiff company had failed to supply the total quantity of 10,000 metric ton of DAP as ordered by it for which it had made an advance payment of Rs.3,03,95,000/- and as such the plaintiff company was liable to a refund of Rs.1,50,00,000/-. Thereafter, negotiations took place between them and vide letter dated 26.11.1984, the plaintiff company was asked to supply urea fertilizer before 30.01.1985 instead of DAP against the amount due from the plaintiff company which came to approximately 7,925.250 metric tons. Subsequently, there were communications exchanged between the parties for supply of urea, the rate and the rebate on the amount to be paid. When the urea was supplied, the quantity of supply made by the plaintiff company was wrongly worked out and the pricing miscalculated. It was also submitted that as per proceedings of the joint meeting dated 26.03.1987, a sum of Rs.54,78,000/- was due to the defendant company on account of un-lifted material and sums of Rs.1,42,000/- and Rs.6,74,000/- were found due. It was also agreed that both the parties shall bear charges at a uniform rate of interest on their respective claims. It was asserted that the total amount due to the defendant company including other admitted claims came to Rs.1,01,62,382.64 as on 31.05.1988.

Upon appreciation of the material and other evidence led, the Trial Court concluded that a total amount of Rs.52,26,786.28 was payable by the defendant company to the plaintiff company and accordingly decreed the suit of the plaintiff company. The appeal preferred by the defendant company was dismissed by the Lower Appellate Court. Hence, the instant appeal.

Learned senior counsel for the appellant/defendant vehemently submits that the Courts below had passed the judgment and decree contrary to the evidence led. He has submitted that this fact remained un-rebutted that the plaintiff company was liable to pay an amount of Rs.1,01,62,382.64. He further submitted that the said fact was also admitted by the plaintiff company in their joint meeting held on 26.03.1987. Therefore, it was clear that it was the plaintiff company which was liable to pay the said amount to the defendant company, however, the Courts below had erred in fastening the liability on the defendant company. He also further submitted that the defendant company incurred huge losses not only due to the delayed delivery of the fertilizer by the plaintiff company but also on account of the wrong calculations done by it. It was lastly submitted that the interest awarded by the Courts below i.e. at the rate of 20.5% was exorbitant. An alternate prayer was made by the learned senior counsel for the appellant/defendant that in case this Court was not inclined to allow the instant appeal, the rate of interest i.e. 20.5% per annum be reduced as it was on the higher side and against the underlying principles of Section 34 of the Code of Civil Procedure, 1908. He further submitted that due to economic factors, the rate of interest since the year 1985 had been fluctuating and nowadays the current rate of interest given by the banks was below 8%. It was also submitted that in compliance of order dated 03.08.2000, half of the decretal amount already stood deposited. Learned senior counsel, therefore, urged that in the light of the aforementioned, a lenient view be taken. In support of his submissions, he relied upon ***Central Bank of India Vs. Ravindra : 2002(1) SCC 367; D.D.A. And others Vs. Joginder S. Monga and others : 2004 AIR (Supreme Court) 329; Malladi Krishnayya and another Vs. Tadikonda Siva Suryaprakasa Rao (died) per LRs : 2015(2) Andh LD 34; Om Parkash Vs. State Bank of India : 2011(5) RCR (Civil) 851; UCO Bank Vs. Bhagwant Singh and others : 1996(1) PLR 570*** and ***United Commercial Bank Vs. M/s Hans Raj Saraf and others : 1989***

AIR (Jammu and Kashmir) 28.

Per contra, learned counsel appearing for the respondent/plaintiff submitted that there was no occasion for the defendant to withhold the amount due as it already stood admitted by the defendant company in the joint meeting held between the parties held on 26.03.1987. He submitted that the Court below had rightly ruled that no amount was due to the defendant by the plaintiff. It was also submitted that the defendant had already claimed the refunds and had even failed to produce non-lifting certificates from buffer stocks. Learned counsel invited the attention of this Court to the fact that the fertilizer remained un-lifted due to the defendant's own refusal. He vehemently argued that the amount had been due since the year 1985 and the plaintiff had been deprived of his rightful recovery of amount for a long time, hence, in these circumstances, no leniency be shown to the defendant qua the rate of interest. It was vehemently argued that the Courts below had rightly held and assessed the interest payable at the rate of 20.5% after considering the evidence and other material on record.

I have heard learned counsel for the parties and perused the relevant material on record.

A perusal of the judgment and decree dated 02.09.1993 of the Trial Court reveals that PW1, R.P. Kashyap, Area Manager of the plaintiff company, gave the following details of the transactions as per which an amount of Rs.52,26,786.28 was due towards the defendant company:

1.	The balance amount due from the defendant corporation for the supplies made by the plaintiff company during Kharif, 1985(as per annexure I) referred to in paragraph 7 supra and admitted by the defendant corpn.		Rs.74,87,995.20
2.	Less : adhoc payment made by defendant corporation on 31.9.1987	(-)	2,00,000.00
	Less : payment made on 24.9.86 for MDP but deal not finalized	(-)	2,750.00

			Rs.72,85,245.20

<u>Deduct</u> :

1.	value of material verified as unlifted against D.Os issued in 1983-84		29,99,469.80
2.	unclaimed credit balance lying in the account of the party		10,50,732.46

			Rs.40,50,202.26
		(-)	Rs.40,50,202.26

			Rs.32,35,042.94
3.	Add : interest @ 20.5% on above calculated in terms of clause 9 of the deliver order (i.e. from the date of despatch up to 31.51988)		Rs.19,91,743.34

	Total amount due as on 31.5.1988		Rs.52,26,786.28

The defendant was unable to rebut the claim of the plaintiff company by leading any cogent evidence. The defendant company in the joint meeting held on 26.03.1987 admitted that an amount of Rs.74,87,995/- was payable to the plaintiff company. Out of this amount a sum of Rs.29,99,469.80 was deducted as the material i.e. fertilizers worth the aforementioned amount had not been lifted by the defendant and further a sum of Rs.10,50,732/- was deducted on account of unclaimed credit balance. Therefore, it was in this background that the suit in question was filed for recovery of Rs.52,26,786.28. (Principal:Rs.32,35,042.94 + interest: Rs.19,91,743.34)

Though the defendant claimed that a sum of Rs.1,01,62,382.64 was payable by the plaintiff company as on 31.05.1988, however, no counter claim was filed by affixing appropriate Court fee, hence, the Trial Court refused to entertain its claim.

In the circumstances, the concurrent findings recorded by the Courts below cannot be faulted with in the light of the admission made by the defendant company in the joint meeting held on 26.03.1987 between the parties as well as the other evidence led by the plaintiff in support of the claim.

Coming to the alternative prayer made by learned counsel for the appellant/defendant, it needs to be observed herein that the amount payable became outstanding in the year 1985. From the year 1985 to 2000, no payment whatsoever was made by the appellant corporation. Still further, even in the year 2000, only 50% amount out of the total amount was deposited i.e. Rs.75 lakhs. The suit in question was decided on 02.09.1993. However, it is evident that the respondent/plaintiff has not been able to enjoy the fruits of decree till date. Therefore, this Court does not deem it appropriate to modify the rate of interest as assessed by the Courts below.

The case laws relied upon by the learned senior counsel would not come to his rescue in view of the peculiar facts and circumstances of this case as the transaction in question pertains to the year 1984, however, till date the plaintiff has not received the entire decretal amount.

On being pointedly asked, learned counsel for the appellant/defendant failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts.

Accordingly, the instant appeal being devoid of any merit is dismissed.

14.09.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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