IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 76 OF 2004

WITH

X-OBJECTION NO. 5889 OF 2004

IN

FIRST APPEAL NO. 76 OF 2004

1. The State of Maharashtra
   Through the Secretary,
   Food and Agricultural Department,
   State of Maharashtra, Mantralaya,
   Mumbai.
2. The Dy. Commissioner (Supply),
   Maharashtra State, Aurangabad
   Division, Aurangabad.
3. The Additional Collector.
4. The Tahsildar
5. Ramrao Singare
6. The District Supply Officer
7. Bapurao Rakshaley s/o B.P.
   Rakshaley ... Appellants
   (original defendants)

Versus

M/s Gajanan Oil Industry and Dal
Mill, Khairgaon Naigaon Bazar,
Through its Sole Proprietor,
Taluka Biloli, District Nanded ... Respondent

(original plaintiff)

...

Mr. V.J. Dixit, Senior Counsel i/b Mr. B.V. Virdhe, A.G.P. for the appellants.
Mr. P.R. Katneshwarkar, Advocate for the respondent.

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CORAM : **SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 20.02.2023

Judgment pronounced on : 24.04.2023

Judgment :

1. The State of Maharashtra and it's officers, who are the original defendants in Special Civil Suit No. 38/99, have challenged the judgment and decree in the said suit passed by the learned Civil Judge (Senior Division), Biloli, District Nanded (hereinafter referred to as "the learned trial Court") on 12.09.2003. Under the impugned judgment and decree, the learned trial Court has held the present respondent M/s Gajanan Oil Industry and Dal Mill, Khairgaon Naigaon, Taluka Biloli, District Nanded i.e. the original plaintiff, entitled for recovery of Rs. 71,17,925/- alongwith the interest at the rate of 9% per annum from the date of suit till its realization. However, the amount of Rs. 8,54,481/- is directed to be deducted from the decretal amount being already received by the respondent plaintiff. To avoid the ambiguity, I have referred the parties as per their original status in the suit. The appellants are referred to as the "defendant-State" and the respondent is referred as "plaintiff-Mill". Plaintiff-Mill filed the aforesaid suit for recovery of an amount of Rs. 1,03,23,804.24 ps. towards the price of pulses seized by the

defendant – State on 05.05.1996 which is also inclusive of interest, damages, losses, etc.

2. The background facts are as under :

The plaintiff-Mill is a registered Firm and carrying the business under the name and style as “M/s Gajanan Oil Industry and Dal Mill” on the given address. Plaintiff-Mill carries wholesale business of producer, seller and miller in various kinds of pulses (दाल) products under Licence No.5/94. On 05.05.1996 defendant No.7 being a Supply Officer of that area paid surprise visit to the plaintiff-Mill and seized stocks of Moong Dal, Toor Dal, Toor produce, Toor Chunni, Moong Chunni worth of Rs. 43,57, 925/- under the panchnama. On 06.05.1996 a show-cause notice was issued to plaintiff-Mill mentioning therein about violation of the prevailing regulations and proposing an action of confiscation of seized the property alongwith prosecution of plaintiff-Mill. Plaintiff-Mill replied the said notice on 15.05.1996, but defendant No.3 issued another notice under Section 6-B of the Essential Commodities Act (for short, “E.C. Act”) on 20.07.1996. The said notice was also replied by plaintiff-Mill on 03.08.1996. However, defendant No.3, without any opportunity to the plaintiff-Mill, ordered confiscation of seized stock on

27.09.1996 and also recommended prosecution of the plaintiff-Mill under Section 7 of the E.C. Act. However, despite such order of confiscation, defendant No.3 did not sell the seized stock at the prevailing market rates by taking diligent steps to that effect.

3. Plaintiff-Mill had preferred an appeal before the Deputy Commissioner (Supply) i.e. defendant No.2 against the order dated 27.09.1996, but it was disposed of on 24.10.1996. Plaintiff-Mill then filed Writ Petition No.579 of 1996, but it was also disposed of on 23.12.1996. In the meantime, defendant No.7, under letter, suspended licence of plaintiff-Mill on 15.05.1996 and the offence under Section 7 of the E.C. Act was also registered against plaintiff-Mill vide Crime No.16/96. On 17.01.1998, the learned Special Judge, Nanded acquitted the plaintiff-Mill and others from criminal liabilities in respect of the aforesaid incident by observing that the alleged action dated 05.05.1996 in respect of the seizure of pulses stock at the hands of defendant No.7 i.e. the District Supply Officer, was arbitrary and illegal and specially against the settled principle of law.

4. According to plaintiff-Mill, the aforesaid illegal action tarnished it’s status and also affected it’s goodwill in

the market. Likewise, the plaintiff-Mill suffered from huge monetary loss in the business due to consistent torture by the defendants officers of State. He had to pay charges of his employees in form of salary and also maintenance charges in respect of the machinery. In addition to that plaintiff-Mill also suffered mental torture which resulted into issuance of legal notice by the plaintiff-Mill to the defendants under Section 80 of the Code of Civil Procedure to make good the financial losses incurred by plaintiff-Mill. Defendant No.3 falsely replied the notice on 14.07.1998. Thus, the plaintiff-Mill was constrained to file the aforesaid suit for recovery of Rs. 1,03,23,804-24 ps. as aforesaid.

5. The defendants, under their written statement (Exh.55), denied all the allegations levelled by plaintiff-Mill against them and supported their action. According to them, an appeal was preferred before the Hon'ble High Court against the discharge of plaintiff-Mill in Crime No. 14/96. They claimed that the suit of plaintiff was filed with malafide intention and without any documentary evidence. They also denied that the stock seized from the plaintiff-Mill was sold at meager rate in collusion with the respective purchasers. According to them, the alleged illegal act of seizure of pulses

stock was done by them in discharge of their official duties and in the course of their employment, and therefore, it cannot be questioned in any Court of law. They also claimed that the suit of plaintiff-Mill is not maintainable and barred by limitation.

6. Learned trial Court tried the said suit and considering all the oral and documentary evidence on record, passed the impugned judgment and decree as aforesaid directing recovery of Rs. 71,17,925/- alongwith interest at the rate of 9% per annum as aforesaid. Hence, this appeal.

7. Learned Senior Counsel for the defendant-State filed short synopsis giving the details of chronological events and nature of document produced alongwith the names of witnesses. He submits that the action taken by the officers of defendant-State was correct and appropriate since the plaintiff-Mill was having excessive pulses stock than the prescribed limit. According to him, the suit of plaintiff-Mill itself is not in limitation. He pointed out that as per Article 74 of the Limitation Act, there was only one year limitation available to the plaintiff after the cause of action. According to him, the plaintiff was discharged on 17.01.1998 from the criminal prosecution under the E.C. Act, but the suit was

filed on 25.01.1999 i.e. after the prescribed period of one year. He further submitted that the learned trial Court compared nothing to ascertain the losses and granted certain compensation amount under various heads only on presumption. He also submitted that the learned trial Court wrongly granted interest at the rate of 9% per annum instead of 6% per annum. According to him, there was no question of granting interest on the amount of Rs. 8,54,481/- which was to be deducted from the decretal amount. Moreover, there was no bifurcation in respect of the consumption of energy by the plaintiff-Mill and without any evidence it was held by the learned trial Court merely under presumption that there were 10 to 15 employees. Further, according to him, there was no averment from the plaintiff-Mill that the action taken by the officers of the defendant State was with malafide intention. He relied on the following judgments :

(i) ***Bhaskar Narhar Deshmukh vs Kisanlal Sadasukhdas and another, AIR 1968 BOMBAY 21***

(ii) ***State of Kerala and others vs Jagadamma and other 2002 AIHC 4346***

(iii) ***State of Maharashtra and another vs Shriram Babulal Churasiya, 1992 (3) Bom.C.R. 201***

(iv) ***P. Ramchandra Chettyvs Secretary, Ministry of Food, Government of India, New Delhi and others, 1978 Andhra Law Times Reports 212***

8. On the contrary, learned Counsel for the plaintiff-Mill, who is the respondent in this appeal, has supported the impugned judgment and decree and claimed that the learned trial Court in fact considered all the documentary evidence in proper perspective and awarded fair compensation. He pointed out that despite seizure of stock on 05.05.1996 no auction had taken place in respect of the same for about two years. The price of the seized stock is mentioned in the plaint as determined by the defendant-State in their notice. On the aspect of limitation, it is submitted by the learned Counsel for plaintiff-Mill that the plaintiff-Mill has not filed any suit for malicious prosecution, but the suit is in fact filed for recovery of compensation and damages in respect of the loss caused to the plaintiff-Mill on account of negligence of the officers of defendant-State. He pointed out that the learned Counsel for the defendant-State without specifying any legal position, claimed that the suit was not any limitation. However, thereafter at the time of argument in the appeal itself, he came with the case of malicious prosecution despite there being any specific defence to that effect in the written statement. According to him, the suit of the plaintiff – Mill for recovery of compensation and damages on account of

negligent behaviour of Government Officers is very much maintainable and within the prescribed period of limitation of three years. With these submissions, he prayed for dismissal of the appeal. He also relied on the judgment in the case of ***N. Nagendra Rao and Co. vs State of A.P.*** reported in ***(1994) 6 Supreme Court Cases 205***.

9. With the assistance of respective Counsel of the rival parties and the learned A.G.P., I have gone through the impugned judgment and order alongwith all the documentary and oral evidence in the record and proceeding of the aforesaid suit. I have also considered the submissions from the respective Counsel and the judgments cited by them.

10. It is significant to note that the plaintiff-Mill has claimed total compensation of Rs. 1,03,23,804.24 ps. towards damages and loss caused to it due to negligence of the officers of defendant-State. The plaintiff-Mill has bifurcated the aforesaid total claim under various heads. Plaintiff-Mill is claiming an amount of Rs. 38,57,925/- towards the market price of all the commodities seized by defendants on 05.05.1996. Further, the plaintiff-Mill has also claimed recovery of amount of Rs. 14,61,670/- towards the price of commodities under seizure on the date of suit alongwith

interest at the rate of 16% per annum from the date of seizure i.e. 05.05.1996 till its realization. Plaintiff-Mill has also sought following amounts under the heads mentioned below :

1)	Loss suffered due to stoppage of mill and business activities from 5.5.96 to 31.12.97	: Rs. 3,00,000/-
2)	Loss caused towards maintenance and payment of salaries to the employees.	: Rs. 1,01,665/-
3)	Charges paid towards electricity bills.	: Rs. 94,594.24
4)	Maintenance of machinery	: Rs. 7950/-
5)	Interest paid on purchases made by the mill from agriculturists and loss of sales.	: Rs. 8,00,000/-
6)	Loss of goodwill	: Rs. 12,00,000/-
7)	Loss of reputation	: Rs. 20,00,000/-

However, against the aforesaid claim of plaintiff-Mill the learned trial Court has allowed certain amounts only in respect of some of the aforesaid heads. On perusal of the judgment, it is evident that the learned trial Court has granted an amount of Rs. 43,57,725/- as market value of the goods at the time of seizure. Further, the learned trial Court has granted damages towards such illegal seizure of Rs. 25,00,000/-. Moreover, the learned trial Court has also granted an amount of Rs. 30,000/- each in respect of the heads for energy charges and payment of salary to the staff. Learned trial Court has also granted interest amount of Rs. 3,00,000/- in respect of the purchase made by Mill from the agriculturists and loss of sales. Thus, the learned trial Court has granted total claim of Rs. 71,17,925/- alongwith interest at the rate of 9 % per annum from the date of suit till its final realization. Thus, it can be seen that nothing has been granted by the learned trial Court under the heads of loss of goodwill and loss of reputation though claimed by plaintiff-Mill.

11. Learned Senior Counsel for the defendant-State strongly submitted that the suit of plaintiff-Mill itself is not maintainable since it is barred by law of limitation. For that purpose he relied on Article 74 of the Limitation Act. Under the said Article, the period of limitation for seeking compensation for malicious prosecution is of one year and it starts from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. As such, he claimed that in the instant case the plaintiff was discharged from the criminal prosecution under the provisions of E.C. Act on 17.01.1998, but the suit filed by the plaintiff-Mill on 25.01.1999 which is definitely after the period of limitation of

one year as per Article 74 of the Limitation Act. As against this, the learned Counsel for plaintiff-Mill strongly opposed such submission and claimed that the suit is not for compensation in respect of malicious prosecution, but it is in fact filed for damages and compensation on account of negligence of State Officers since their illegal act resulted into loss of business of plaintiff-Mill in various ways. For that purpose he placed reliance on the judgment of the Hon'ble Apex Court in the case of ***N. Nagendra Rao and Co. vs State of A.P.*** (supra).

12. Admittedly, as per Article 74 of the Limitation Act the period of limitation is one year from the date when the plaintiff is acquitted or the prosecution against him is otherwise terminated. There is no dispute about the said period of limitation for claiming compensation for malicious prosecution. Moreover, it can be seen from the record that the plaintiff was discharged on 17.01.1998 and the suit filed by plaintiff-Mill on 25.01.1999 was definitely after the period of one year. However, it is importance to note that the defendant – State in the written statement itself did not specify that they are claiming the suit being barred the period of limitation especially relying on Article 74 of the Limitation

Act. Moreover, there is no specific pleading by the defendant-State that it was a suit for compensation for malicious prosecution. It is only stated in the written statement that the suit of the plaintiff-Mill is barred by limitation, without quoting specific details. On the contrary, the title of the suit itself indicates that it is a suit for recovery of claim amount towards prices of pulses seized by the Government on 05.05.1996 alongwith the interest, damages, losses, etc. Nothing is mentioned that the suit is for compensation in respect of malicious prosecution. Further, the learned trial Court, in the opening para of the judgment itself, has observed that it is a suit for recovery towards illegal seizure made by the Officers of the defendant-State and loss sustained by plaintiff-Mill thereby. In fact, there was no argument on behalf of the learned Counsel for defendant – State before the learned trial Court that the suit was barred under Article 74 of the Limitation Act. It is for the first time in the appeal, such ground has been raised by the defendant-State.

13. It is significant to note that the Hon'ble Apex Court in the case of ***N. Nagendra Rao and Co.*** (supra) has observed that the suit against State for compensation for negligence or

misfeasance on the part of it's officers in discharge of public duty under a statute conferring powers incidental or ancillary to and not primary or inalienable function of State and seeking compensation or damages, is maintainable and negligent officer being personally liable and the State vicariously. It is further held that the State immune only in cases of acts of State like defence of the country, administration of justice, maintenance of law and order and repression of crime except when Article 21 is breached.

In the instant case, the plaintiff-Mill has contended that the State Officials, despite seizure of pulses stock on 05.05.1996, belatedly sold the same which resulted into losses. As such, there was negligence on the part of State officials in disposing the pulses stock and thereby causing the deterioration in the quality of stock which could have been sold on higher rate had it been sold immediately. As such, the aforesaid observation of the Hon'ble Apex Court squarely applies to the filing of present suit by plaintiff-Mill. On the contrary, nothing appears from the pleadings that the present suit has been filed for compensation in respect of malicious prosecution as claimed by the learned Senior Counsel for the defendant-State.

14. Learned Senior Counsel for the defendant-State pointed out that since the plaintiff has claimed an amount of Rs. 32,00,000/- under the heads of loss of goodwill and loss of reputation, it can safely be inferred that those amounts are claimed since the plaintiff-Mill suffered due to malicious prosecution in the form of criminal prosecution under E.C. Act. However, in absence of specific pleading on the part of defendant – State, such inference cannot be drawn and even otherwise also, the learned trial Court has refused to grant the aforesaid claimed amount of Rs. 32,00,000/- under those heads. Therefore, I do not find any substance in the submission made by learned Senior Counsel for the defendant- State that as per Article 74 of the Limitation Act the suit is not maintainable. On the contrary, it appears that the suit is very much within limitation since the damages are claimed for the negligent and illegal act of the officials of defendant – State for which the period of limitation of three years. Thus, the judgments of this Court in the cases of ***Bhaskar Narhar Deshmukh vs Kisanlal Sadasukhdas*** and ***State of Kerala vs Jagadamma*** (supra) are not helpful to the defendant – State on the aspect of limitation.

15. The learned Senior counsel for the defendant – State strongly submits that the plaintiff – Mill was found in excessive stock which was beyond the prescribed limit, and therefore, the defendant – State was justified in taking action of seizure on 05.05.1996. However, it is significant to note that the officials of defendant-State were also not sure as to how many items were actually seized. The panchnama (Exh.71) had indicated 8 articles of the commodities whereas show-cause notice (Exh.135) issued by District Supply Officer, Nanded indicated only 6 articles. Further, the notice dated 20.07.1996 served by Deputy Collector, Nanded had indicated 9 items. But the notice (Exh.142/2) reflected only 2 items. The copy of Roznama of District Collector at Exh. 164 reflected 7 items worth Rs. 41,36,500/-, whereas the same Roznama at different place reflected 8 items. Further, the certified copy of Gazette at Exh.173 dated 10.02.1993 has indicated the limit of respective articles having been enhanced under Amendment dated 10.02.1993. It was found that 39 quintal of sunflower oil and 31 kgs groundnut oil in 675 bags was attached and it was 209.26 quintal. The sunflower oil attached was in 22 bags, each of 50 kg, and therefore, equivalent to 11 quintal. Thus, the total stock of edible oil under attachment was of 220.26 quintal. After adding to it

the waste item Khapli of 40 quintal, the total quantity becomes 260.26 quintal. If the prescribed limit in the table for wholesale dealer as per the Central Government Amendment accorded by the Governor of Maharashtra is considered, then the prescribed limit was 1000 quintal for wholesaler or miller or producer. The licence of plaintiff-Mill clearly indicates that the plaintiff-Mill is not only wholesaler or dealer, but also a miller and producer. As such, the stock of oil found at the time of raid of 260.26 qunital was well within the prescribed limit. The sunflower oil weighing about 39 quintal was thus under the prescribed limit.

16. It is significant to note that under panchnama dated 05.05.1996 the District Supply Officer Shri Rakshaley had attached Moong Dal of 533 quintal, Toor Dar weighing 732 quintal alongwith Turi and Toor seeds weighing 200 quintal, totally aggregating 1465 quintal. The maximum limit prescribed in the table is 1000 quintal for the dealer. However, plaintiff-Mill is a wholesale dealer, producer and miller and in that capacity was entitled to possess the stock of pulses as per the prescribed limit. It is revealed from the judgment of the learned trial Court at that the capacity of plaintiff-Mill for one shift of 8 hours was 60 quintal and as

per the capacity of Mill, for a month was 1800 quintal, equivalent to annual capacity of 21600 quintal. Thus, on such 1/24 of such annual capacity, the monthly capacity of the plaintiff – Mill would be 900 quintal. As such, the plaintiff-Mill being a Miller, was entitled to possess stock of 900 quintal plus the limit of 1000 quintal. Thus, the total stock which was permissible to be held by the plaintiff was 1900 quintal. As such, at the relevant time of the raid the plaintiff-Mill was having total stock well within the prescribed limit.

17. It is extremely important to note that it has been observed by the learned Additional District and Sessions Judge, Nanded in this judgment that on 11.09.1996 the Investigating Officer had issued a letter to the District Supply Officer, Shri Rakshaley raising some queries on this aspect of prescribed limit. However, the said District Supply Officer, under his letter dated 25.09.1996, avoided to satisfy those queries since he was transferred and further advised the Investigating Officer not to make any further correspondence with him in that regard. These observations had indicate that the District Supply Officer Shri Rakshaley clearly avoided to answer whether the stock held by the plaintiff-Mill was

excessive and beyond the prescribed limit. Thus, it can safely be said that the stock found on 05.05.1996 at the time of alleged raid on the plaintiff-Mill was well within prescribed limit and there was no excessive stock as claimed by the defendant-State and it's officials. All these facts clearly indicate that the officials of defendant-State unnecessarily raided the plaintiff – Mill and orders of confiscation of stock were passed. Further, the auction was also made belatedly in the negligent manner. As such, the observation of Hon'ble Apex Court in the case of ***N. Nagendra Rao & Co.*** (supra) about maintainability of the suit in respect of negligent and illegal behaviour of the officer of State squarely applies. The material on record thus clearly indicates that the plaintiff-Mill was prosecuted despite being found holding the stock within the prescribed limit. Moreover, District Supply Officer Shri Rakshaley also did not pay any heed to the queries raised by the Investigating Officer about the stock being under the prescribed limit. As such, the negligence on the part of the defendant-State and its officials is apparent on the face.

18. The plaintiff-Mill has also sought damages on account of wastage of energy for production of stock. For that purpose, the plaintiff-Mill has produced electric bills on

record at Exhs.81/1 to 81/42 and the same indicated that the electricity of 65.50 HP was consumed for production of pulses as well as oil. These bills stand in the names of Ram and Pandurang, who are the part and parcel of Partnership Firm. Moreover, they were also accused in the criminal case under E.C. Act. As such, it can be inferred that the aforesaid electricity was consumed for production of pulses and oil.

19. Learned Senior Counsel for the defendant-State vehemently argued that the learned trial Court granted compensation in respect of the electricity only on presumption. However, it can be seen here that the plaintiff-Mill had claimed amount of Rs. 96,000/- on account of consumption of electricity, but the learned trial Court has granted an amount of Rs. 30,000/- in that respect. Therefore, considering the consumption placed on record by way of electricity bills, the amount of Rs. 30,000/- granted by the learned trial Court appears quite reasonable and there cannot be any doubt for the same.

20. Further, the plaintiff-Mill has also claimed loss sustained due to illegal seizure of articles by the officials of defendant-State. According to the plaintiff-Mill, it sustained loss of Rs. 39,51,369/-. It appears that the learned trial, by

relying upon the order passed by Commissioner of Income Tax (Appeals), Aurangabad has determined the amount of loss to the tune of Rs. 25,00,000/-. Further, the learned trial Court has also exhibited the said order initially at Article 'B' at Exh.104/A since under the provisions of Income Tax Act the orders of tax officers are admissible in the evidence. On perusal of the said order, it appears that for the assessment year 1997-98 the plaintiff-Mill had claimed loss of Rs. 39,59,369/-, However, the Assessing Officer i.e. Joint Commissioner of Income Tax, Special Range-2, Aurangabad vide order dated 02.05.2000 had initially determined the said loss to the extent of Rs. 5,45,434/-. However, the said order was challenged by the plaintiff-Mill before the Commissioner of Income Tax (Appeals), Aurangabad and the said appellate Authority, by passing a reasoned order, upheld the claim of plaintiff-Mill in respect of business loss to the extent of Rs. 39,51,370/-. Such determination has come from appropriate Authority under a reasoned order. Defendant-State has not challenged the said order further. Moreover, it is extremely important to note that the learned trial Court did not fully rely on the said order, but applied its own mind and reduced the said business loss of Rs. 25,00,000/- by raising the initial determined loss of Rs. 5,00,000/- by five times to the tune of

Rs. 25,00,000/-. Thus, such observation of the learned trial Court cannot be said to be without any base. On the contrary, it seems that the learned trial Court had even reduced the amount of loss which was determined by the Commissioner Income Tax (Appeals), Aurangabad. Thus, the same appears quite reasonable. Further, the loss is based on the value of goods seized i.e. Rs. 43,57,925/- which is determined by the defendant-State itself. Therefore, I do not find any reason to interfere such finding. Further, it appears that though the plaintiff-Mill was closed due to cancellation / suspension of licence on 05.05.1996 till 31.12.1997. Thus, it can be seen that the licence was being suspended for about 17 months, and therefore, the aforesaid loss observed by the learned trial Court appears quite normal.

21. Plaintiff-Mill has also claimed amount of Rs. 1,01.665/- on account of salary paid to the staff. There can be no dispute that the plaintiff-Mill was in production business since 1982, and therefore, there might be at least 10 to 15 employees. The learned trial Court has observed that PW-2 Ram produced on record the statement in respect of salary of the staff and labourers which indicates that an amount of Rs. 96,000/- was paid to that effect. However, the

learned trial Court has not granted the claim amount of Rs. 1,00,000/-, but only found that plaintiff is entitled for an amount of Rs. 30,000/- against the said claim. As such, there is reasonable reduction in the amount what was claimed by the plaintiff-Mill on account of salary of staff and labourers. Moreover, the claim in respect of maintenance of machinery of Rs. 7980/- has been rightly rejected by the learned trial Court for want of supporting evidence.

22. So also the learned trial Court has not granted full claim of plaintiff-Mill regarding interest of Rs. 8,00,000/- on the purchase made by him from the agriculturists and loss of sale. It is significant to note that revenue record is also placed by plaintiff-Mill which indicates that it had made purchase from the agriculturists. Roznama at Exh. 164 of the State indicates that the plaintiff-Mill had produced on record receipt of sale and purchase before the concerned Authority, but the same was not placed on record by the learned A.G.P. It appears that the learned trial Court has also reduced the said claim of interest to the tune of Rs. 8,00,000/- to Rs. 3,00,000/-. Considering the condition of business of plaintiff-Mill, award of such interest i.e. Rs.3,00,000/- by learned trial Court appears justifiable. I

have already mentioned earlier that the major claim of plaintiff-Mill of Rs. 32,00,000/- i.e. Rs. 12,00,000/- for loss of goodwill and Rs. 20,00,000/- for loss of reputation has been negatived by the learned trial Court for want of substantial evidence.

23. Further, though the plaintiff-Mill had claimed compensation amount at the rate of 16% per annum till its realization, but the trial Court has found that it was not proper to grant such rate being a commercial transaction. The learned trial Court has granted interest at 9% per annum which appears to be the prevailing interest rate at the relevant time. As such, the grant of interest at the rate of 9% per annum on the compensation and damages from the institution of suit till its final realization is quite appropriate.

24. Thus, it appears that the learned trial Court, by relying upon the observations of the Hon'ble Apex Court in the case of ***N. Nagendra Rao and Co.*** (supra), has rightly determined the compensation amount without any exaggeration. On the contrary, it appears that such determination is supported by the relevant documents and in addition to that, the learned trial Court has used its discretion to reduce the claim of plaintiff-Mill by refusing

certain heads. Further, it appears that the compensation is granted at lowest possible rate. Therefore, taking into consideration all the aforesaid aspects, this Court comes to the conclusion that there is no reason to interfere with the impugned judgment and decree passed by the learned trial Court. As such, the appeal stands dismissed.

25. It appears that the plaintiff-Mill has also filed Cross Objection for enhancement of compensation granted by the learned trial Court. However, the record shows that the Cross Objection was dismissed for want of removal of office objections initially, but vide order dated 02.08.2016, this Court had restored the said Cross Objection. However, the office note dated 22.08.2022 indicates that despite such restoration, the learned Counsel for the plaintiff-Mill failed to remove the office objections inclusive of the payment of deficit court-fees. As such, in view of such non removal of office objections, the aforesaid Cross Objection (St) No. 5889 of 2004 stands dismissed. Pending Civil Applications, if any, are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

Later on

26. The learned AGP requested to grant stay to the operation of the impugned judgment for further period of four weeks. The learned counsel for the respondent strongly opposed the request made by the learned AGP. However, it appears that there was interim relief in favour of the appellant – State during pendency of appeal. Now the appellant -State wants to challenge judgment of this court before the superior court. In view of the same, the interim relief granted during the pendency of this appeal, is continued till further period of four weeks.

(SANDIPKUMAR C. MORE, J.)

VD_Dhirde