

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT Nos.1570 & 1575 of 2003

COMMON JUDGMENT:

These appeals are filed against the Common Judgment and Decree of the trial Court in O.S.No.59 of 2000 and O.S.No.62 of 2000 dated 30.04.2003.

2. One Kandibanda Rama Rao filed suit in O.S.No.59 of 2000 against the Regional Manager and the District Manager of Food Corporation of India (hereinafter referred as 'F.C.I') for recovery of Rs.4,24,938/-. Whereas, the F.C.I filed suit in O.S.No.62 of 2000 against the said K. Rama Rao for recovery of money arising out of the contract stating that there was a transit loss of Rs.7,22,644/-. After adjusting the amounts kept with F.C.I as security, the said Rama Rao has to pay balance of Rs.4,85,144/-. The trial Court considering the entire evidence on record and the arguments of both sides dismissed O.S.No.59 of 2000 and decreed the suit in O.S.No.62 of 2000 for Rs.4,85,144/- and also held that F.C.I is entitled to recover the same with costs as there is no interest stipulated in the agreement Ex.B1, no interest is being awarded on the decretal

amount. Aggrieved by the said Judgment present appeals are preferred.

3. The appellant mainly contended that the trial Court erred in dismissing the suit filed for recovery of Rs.4,24,938/- claiming refund of security deposit along with interest accrued on it and it was also wrongly held that there was a transit loss. In fact, transit loss was minimal and less than 0.25%. He stated that the trial Court failed to consider the certification of bills from time to time without any claim of transit loss recoverable from the appellant. The trial Court ought to have seen that the very issuance of “no demand” and “no due” certificates and payment of all the bills of freight charges and the defendants are claiming the transit loss. The claim of the defendants in defence is hit by Section 10 of the Carriers Act of 1865. The trial Court erred in giving a finding that the appellant/plaintiff is not entitled for suit claim though there was no counter claim by the respondents/defendants to set off against admitted amounts entitled by appellant/plaintiff. He further stated that the admission of D.W.2 was not properly appreciated regarding allowable transit loss. Therefore, requested the Court to set aside the Common Judgment and Decree of the trial Court in

O.S.No.59 of 2000 and O.S.No.62 of 2000 dated 30.04.2003. He also raised the same grounds in A.S.No.1575 of 2003 along with the ground that trial Court erred in relying on Ex.B4 to B9 for the purpose of passing a decree and the District Manager is not competent to represent the Corporation.

4. The plaintiff K.Rama Rao in O.S.No.59 of 2000 was running a transport business by maintaining 5 to 10 lorries from the past 25 years. He was given a contract work for transportation of sugar, food grains, fertilizers etc., from Central Warehousing Corporation godown, Suryapet to Food Corporation of India godowns, Khammam as per Tender No. S & C 15/12/95 CONT-I, dated 28.04.1995 with effect from 16.10.1995 for a period of two years i.e, till 15.10.1997 and an agreement was also executed in favour of defendant No.1. A cash security of Rs.2,50,000/- is to be paid to F.C.I. The plaintiff deposited Rs.1,25,000/- towards half of the security deposit and the balance half is to be adjusted from the bills payable to the plaintiff from time to time at the rate of 5% of bill per month. This amount of Rs.1,25,000/- was adjusted within two months of the contract. This security deposit of Rs.2,50,000/- is to be refunded after the completion of contract.

As per Circular No.F/1/1/80 dated 13.04.1970, F.C.I considered 0.25% loss in transit as negligible and it is not recoverable. The plaintiff stated that till the completion of contract, there was no loss found by the F.C.I and no demand was made by them, as such he is entitled for refund of security deposit amount. The fixed deposit amount of Rs.1,25,000/- which was deposited in F.D.R became Rs.2,04,679/- by 12.04.2000. The plaintiff got issued a notice on 06.09.2000 demanding refund of the amount. The defendant Nos.1 & 2 issued a reply notice on 27.09.2000 demanding Rs.7,22,644/- alleging that there was transit loss for the period from December, 1995 to February, 1997. The reply given by F.C.I shows a quantity of M.T.5.833 was found to be transit loss amounting to Rs.1,02,661/-. The plaintiff got issued a reply notice on 09.10.2000, denying the transit loss and also filed suit for recovery of Rs.4,24,938/-.

5. The defendants stated that Circular is not binding on them and contract prevails over it. The trial Court extracted the relevant conditions of the contract for the sake of proper appreciation of the facts. The trial Court considering the entire evidence on record found that there was a transit loss of 56

Metric Tonnes which is valued at Rs.7,22,644/-. It was also the admitted fact that from the time of lifting the stocks contractor is responsible for all the losses, he had not obtained copy of the “No Demand Certificate” from the defendants and also not filed copy of Truck Slips before the Court. Even in the clearance certificate these stock deficits are mentioned and demand notice was issued only for the losses found in the transit. The defendants issued notice under Exs.B2 and B3 on 12.01.1999 and reply notice was given to it and Exs.B1 to B9 are admitted by the plaintiff and no protest letter was given by him for transit loss recorded in truck slips. He also admitted the abstract of Truck Chits maintained by defendants at receiving point from 13.12.1995 to 19.12.1995 and he received notice under Ex.B10 and got issued reply. The D.W.2 deposed before the Court on behalf of the D.W.1 and stated that Ex.B12 is acknowledgement for plaintiff and Ex.B13 is the abstract of transit loss. The last Bill paid to said Rama Rao on 21.07.1997 which terminates contract. After the completion of contract period, “No Demand Certificate” and “Six Point Certificate” are issued. Such certificates will not be issued if there is any transit loss found as per normal practice.

6. The trial Court considering the oral and documentary evidence held that there was transit loss and accordingly security deposit was adjusted and the balance was claimed by the F.C.I, as such the question of refund of security deposit does not arise. The trial Court considering the evidence on record at length, discussed each and every point in detail and rightly dismissed the suit in O.S.No.59 of 2000 and decreed O.S.No.62 of 2000 for Rs.4,85,144/- and subsequently F.C.I is entitled to recover the same with costs and interest was not granted as there was no interest stipulated in Ex.B1 but appellant filed appeal only to prolong the litigation and points raised by him before this Court are already considered by the trial Court in detail. He mainly contended that mandatory notice was not issued under Section 10 of the Carriers Act of 1865, but the said fact was not raised before the trial Court at the earliest point of time. The issue of limitation was also discussed at length, and the trial Court held that suit is within the limitation. Therefore, both the appeals filed against the suits in O.S.No.59 & 62 of 2000 have no merits and are dismissed with costs.

In the result, appeals are dismissed with costs confirming the Common Judgment and Decree of the trial Court in O.S.No.59 of 2000 and O.S.No.62 of 2000 dated 30.04.2003.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 06.01.2023

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