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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA NO. 1584 of 2021 (O&M)
DATE OF DECISION: 21.03.2023**

**The Punjab State Cooperative Supply & Marketing
Federation Limited** **...Appellant**

Versus

M/s Jai Hanuman Traders and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rishabh Gupta, Advocate
For the appellant.

ARUN MONGA, J. (ORAL)

CM-6279-C-2021

Allowed, as prayed for, subject to all just exceptions.

MAIN CASE

Having suffered adverse concurrent findings by the two Courts below, plaintiff/appellant herein is in second appeal against the judgment and decree dated 18.12.2018, as upheld by learned First Appellate Court vide its judgment and decree dated 16.11.2019, vide which suit for recovery of Rs.1,17,992/-, was dismissed.

2. Briefly stated, facts as noticed by Courts below are that plaintiff-The Punjab State Co-operative Supply & Marketing Federation Limited (for brevity, 'Markfed') through its District Manager filed a suit for recovery of money. It was stated that defendant No.1 is proprietorship firm and defendant No.2 is its proprietor. In the year 1994-95, plaintiff and defendants entered into an agreement vide which defendant firm was to shell paddy. Plaintiff-Markfed supplied 5707 bags weighing 3744.00

quintals of PR-106 Superfine paddy to defendant firm against receipt and defendant was required to deliver stocks of rice till 28.02.1995 to FCI in Markfed account. Defendants failed to mill the paddy within stipulated period and, therefore, violated the terms and conditions of contract/agreement.

2.1 Initially an Arbitrator was appointed who passed Award dated 20.06.2003 in favour of plaintiff. Defendants challenged said Award by way of proceedings under Section 34 of Arbitration and Conciliation Act, which were accepted by learned District Judge, Ferozepur vide order dated 17.11.2010 and liberty was granted to Managing Director of plaintiff to proceed in the matter by getting record of the case. After following due procedure, Managing Director, Markfed passed an order dated 20.12.2011, allowing the claim of plaintiff-Markfed and defendants were held liable to pay a sum of Rs.1,17,992/- plus interest from the year 1994-95 onwards till its payment. Hence, the suit.

3. Upon notice, defendants appeared and filed written statement taking preliminary objections that suit was hopelessly time barred; plaintiff was estopped by its own act and conduct to file the suit; alleged agreement was illegal and invalid; suit was filed without any Resolution of Board of Directors and that it did not bear the signatures of authorized person etc.

3.1. On merits, the averments contained in plaint were denied and prayer was made for dismissal of suit.

4. Replication was filed.

5. Based on rival pleadings, following issues were framed:

“(1). Whether the plaintiff is entitled to recover the amount of Rs.1,17,992/- with interest? If so, at what rate? OPP

- (2) *Whether the suit of the plaintiff is hopelessly time barred? OPD*
- (3) *Whether the suit of the plaintiff is not maintainable? OPD*
- (4) *Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD*
- (5) *Relief.”*

6. Parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided in favour of defendants and against plaintiff. Issues No.2 to 4 were taken up together and were also decided in favour of defendants. Consequently, suit of plaintiff was dismissed with costs vide impugned judgment and decree dated 18.12.2018.

8. Feeling aggrieved, plaintiff-Markfed went in appeal which was dismissed by learned First Appellate Court vide impugned judgment and decree dated 16.11.2019, resulting in Regular Second Appeal by plaintiff before this Court.

9. I have heard the learned counsel for the appellant and perused the judgments of both the learned Courts below.

10. Learned counsel argues that both the assailed judgments herein are liable to set aside, primarily on the grounds, that the suit had been filed within limitation; defendant No.1 having signed the arbitration agreement, could not avoid the same; and that vide his order dated 30. 12.2011 the Managing Director, Markfed had held the defendants liable to pay the amount for which the plaintiff's suit was maintainable, and yet, it has

been non-suited by the learned Courts below by recording wrong findings against the plaintiff in this behalf. It has been also pointed out that the arbitration agreement in this case provides *inter alia* that all disputes and differences arising out of or, in any manner, touching or concerning the said agreement, whatsoever, shall be referred to the sole arbitration of the Managing Director or any person appointed by him in this behalf, whose award shall be final and binding on the parties. He contends that, since the Managing Director had already passed an order dated 30.12.2011 holding the defendant liable to pay the amount Rs. 1,17,992/- with interest, the suit for recovery of this amount was legally maintainable.

11. Let us have a look at the judgment rendered in first appeal at this juncture. Paras 22, 24 and 26 of the impugned judgment dated 30.12.2011 passed by the learned First Appellate Court/Additional District Judge read as under :

“22. Even for the argument sake, the present agreement has been taken into consideration, even then it does not help the case of plaintiffs. As per agreement, there is arbitration clause for settlement of dispute between the parties and it has been clearly mentioned in the above stated agreement that all the disputes and difference arising out of or in any manner touching or concerning this agreement what soever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sale arbitrator of the M.D or any person appointed by him in this behalf it will be no objection to any such appointment that the person appointed is or was an employee of Markfed or that he had to deal with the matters in which the contract creates and that in the course of his duties such an employee of the Markfed or that he had to deal with the matters in which the contract relates and that in the course of his duties such an employee of the Markfed he had expressed on all or any of the matters in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. In the case in hand, there is no dispute regarding this fact that arbitrator was appointed and he has passed the award in the present case

on 20.06.2003 and then corrected award on 27.02.2004. The defendants preferred appeal against the above stated award which has been set aside by the then learned District Judge vide order dated 17.11.2010 the certified copy of which is Ex.A7 on record and it is not disputed by plaintiff also. Vide above stated order, the petition of the defendants was accepted and award dated 20.06.2003 has been set aside with liberty to the Managing Director of plaintiff corporation to receive back the record of Arbitration Proceedings and proceed with the matter in accordance with law. It has also admitted between the parties that no appeal has been filed by the plaintiff department against the above stated order and this order has attained finality.

xx xx xx

24. Whether, the above stated order Ex.P5 has been passed as per law needs adjudication. As per the arbitration clause in the agreement, the Managing Director has never been authorised to take any final decision. The Managing Director in order Ex.P5, has stated that as per the terms and conditions of the agreement the Managing Director Markfed was to take a decision. But the learned counsel for plaintiff failed to point out that how MD of the plaintiffs department has power and jurisdiction to decide the dispute between the parties when there is a specific arbitration between the parties and in entire arbitration clause it has never stated that MD is to take the final decision. But in the case in hand, MD has assessed the liability of the plaintiffs after hearing the District Manager, Ferozepur only. The only legal remedy available to the plaintiffs department is to proceed with law as per the direction given by learned District Judge in its award to appoint another Arbitrator as per agreement between the parties. The plaintiffs have also the opportunity to file the appeal against the above stated order before the appellate authority but they have not undertaken any such proceedings rather MD assumed himself to be adjudicating authority and after hearing the Managing Director of Ferozepur Markfed, passed the order which is not legal as the appropriate remedy of the plaintiff is to file appeal against the order passed by learned District Judge on 17.11.2010 or initiate fresh Arbitration proceedings as per law as mentioned in the agreement itself.

xx xx xx

26. As already discussed, the order passed by Managing Director which is Ex.P7 on record is not legal as per the agreement between the parties, so the present suit cannot be instituted on the basis of the above stated order passed by the Managing Director.”

12. The learned Additional District Judge noted, and rightly so, that
in terms of the order dated 17.11.2010 passed by the learned District

Judge, the appropriate remedy of the plaintiff was either to file appeal against the said order dated 17.11.2010 or to initiate fresh arbitration proceedings as per the agreement. Instead of doing so, the MD, Markfed assumed himself to be the adjudicating authority and passed the order dated 30. 12.2011 holding the defendant liable to pay the amount Rs. 1,17,992/- with interest. The learned Additional District Judge, therefore, held that the said order was not legal.

13. To my mind, the aforesaid view taken by the learned Additional District Judge on appreciation of the record is factually correct and legally sound. I am, therefore, inclined to agree with the same.

14. Under section 36 of the Arbitration Conciliation Act, 1996, the arbitrator's award is enforceable as a decree of the civil Court. The plaintiff's conduct in filing the suit for recovery of money on the basis of order dated 30. 12.2011 passed by the MD, Markfed shows that the said order was not an award of the arbitrator or, at least, the same was not treated by the plaintiff himself as an arbitrator's award. In other words, order dated 30. 12.2011 (holding the defendant liable to pay the amount Rs. 1,17,992/- with interest) could not be made the basis of the plaintiff's suit for recovery of the said amount. Position being so, I have to necessarily, reject the contention that on the basis the said order, the suit for recovery of money was maintainable.

15. Even assuming, as the counsel contends, that the suit had been filed within limitation and defendant No. 1 having signed the arbitration agreement, could not avoid the same, even then, the fact still remains that the plaintiff's suit for recovery of money on the basis of order dated 30. 12.2011 passed by the MD, Markfed was not maintainable.

16. In the premise, my opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

17. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

18. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

19. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of the Civil Procedure Code.

20. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

21. Pending application/s, if any, shall also stand disposed of.

22. No order as to costs.

MARCH 21, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No