IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2649-LPA-2022 and
CM-2650-LPA-2022 in/and
LPA-1087-2022 (O&M)
Date of Decision: 23.02.2023

The Punjab State Cooperative Supply and Marketing Federation Limited

......Appellant

Vs.

M/s Jagdambay Rice and General Mills, Sahnewal, District Ludhiana through its Proprietor Darshan Lal and another

.........Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Vikas Singh, Advocate, for the applicant-appellant.

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G.S.SANDHAWALIA, J. (ORAL)

CM-2649-LPA-2022

By this application, the applicant-appellant seeks condonation of delay of 71 days in re-filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit of Sh. Amandeep Singh, Law Officer, of the appellant, the application is allowed and the delay of 71 days in re-filing the appeal is hereby condoned.

CM-2650-LPA-2022

By this application, the applicant-appellant seeks condonation of delay of 20 days in filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit Sh. Amandeep Singh, Law Officer, of the appellant, the application is allowed and the delay of 20 days in filing the appeal is hereby condoned.

LPA-1087-2022 (O&M)

The consideration is to the order dated 27.05.2022 of the learned Single Judge, passed in CWP-24501-2017, wherein the writ petition filed by the respondents, was allowed and resultantly, directions were issued to refund the amount of ₹41 lakhs to the petitioners, within the period of 08 weeks from the date of the receipt of the certified copy, along with interest @ 7% per annum from the date of encashing the bank guarantee by it till the date of refund. In case, the same was not done within the period stipulated, the present appellant was liable to pay interest @ 9% per annum.

The reasons which weighed the learned Single Judge to allow the writ petition were that the bank guarantee of ₹41 lakhs had been furnished under protest as a guarantee for the payment of interest amount which was regarding a dispute at an earlier point of time whereby a sum of ₹9,28,507/- along with interest was pending consideration *inter se* for the custom milling rice for the crop year 1994-95. The learned Single Judge came to the conclusion that the bank guarantee was an independent contract between the bank and the beneficiary and the parties were bound by the terms and conditions and the invocation had to be in terms of the bank guarantee. The same had been encashed unilaterally in the absence of any decree from the court which was condition precedent. It was noticed that the present appellant had lost in the civil proceedings to recover the amount of ₹9,28,507/- along with interest with the trial Court and in the lower appellate Court and the insistence on the Bank Guarantee was only to secure the amount of interest as a condition precedent to allot paddy for the subsequent year 2016-2017. Reliance was placed upon the judgments of the Hon'ble Apex Court in **Food Corporation of India vs. Kamdhenu Cattle Feed Industries** (1993) 1 SCC 71 and **New Horizons Limited and another vs. Union of India and others** (1995) 1 SCC 478, that the Government cannot act arbitrarily at its sweet will and like a private individual and thus, directions were issued for refunding the amount.

Learned counsel for the appellant-society has argued that a Regular Second Appeal has been filed against the judgment of the lower appellate Court, dated 28.02.2019 (Annexure P-10) and therefore, the matter requires consideration in case the said appeal is allowed.

In our considered opinion, a short question only arises in the present appeal that the appellant having lost in the civil proceedings at two stages, could the appellant have encahsed the bank guarantee inspite of a finding adverse to it by the Civil Court? The categorical answer has to be 'No' since apparently the appellant has successfully executed the decree which has never been passed in its favour by the Civil Court, by encashing the bank guarantee.

In such circumstances, we are of the considered opinion that once the suit for recovery of ₹9,28,507/- which was based on the order dated 21.06.2013 passed by the Managing Director had itself been dismissed after a proper trial wherein the Civil Court had held that there was no proof to show that any loss was caused to the appellant-society due to the non-supplying of converted rice and that neither the paddy was converted into the rice unauthorisedly and mis-appropriated. Rather finding was recorded that the balance paddy left over sold was to the defendants mill on the basis of price of paddy received by the FCI and there was no paddy left to the plaintiff after its purchase. Therefore, the recovery was held not permissible and even on the issue of limitation it was held that the suit, as such was barred as cause of action had accrued on 31.10.1995 and the suit could only be filed up-to 31.10.1998 whereas it was filed on 25.04.2014.

In such circumstances, we are of the considered opinion that the learned Single Judge is well justified in allowing the writ petition. It is however, made clear that in case the Regular Second Appeal is allowed, it is always open to the appellant to execute it, in accordance with law and any observation made in these proceedings will not stand in the way of the appellant.

The appeal is accordingly, dismissed with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

February 23, 2023 **(HARPREET KAUR JEEWAN)**
nitin **JUDGE**

Whether Speaking Yes
Whether Reportable No