IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247 **RSA No.4511 of 2017 (O&M)**
Reserved on : 13.03.2023
Date of Decision : 11.04.2023

The Punjab State Co-operative and Marketing Federation Ltd. …Appellant

Versus

M/s Bajaj Rice Mills & Anr. …..Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Naresh Gopal Sharma, Advocate for the appellant.

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ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the concurrent findings recorded by both the Courts below vide judgments and decrees dated 30.05.2015 and 15.07.2016 whereby its suit for recovery has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for recovery of Rs.62,26,702/- from the defendant-respondents along with interest on the cost of rice and bardana from the year 1994-95 onwards till its payment. As per the plaintiff-appellant, vide letter dated 27.09.1994 it allotted the defendant-respondent rice mill to Markfed for custom milling of paddy and an agreement was also executed between the parties. The defendant-respondent rice mill was required to deliver stocks of rice till 28.02.1995 however it did not adhere to the schedule and therefore the defendant-respondents are liable to pay compensation as enumerated in different clause of the agreement along with interest. Upon notice, the defendant-respondents put in appearance and filed written statement taking preliminary objection regarding the suit being beyond limitation and the suit not having been filed through an authorized person with a resolution of the board of directors. On merits it was submitted that during 1994-95 there was bumper heavy crop and there was no storage space with the Government as well as procuring agencies including the plaintiff-appellant and the paddy was stored in the mill premises under the custody and control of the officials of plaintiff. The miller was supposed to deliver the advance rice in the shape of two wagons and only thereafter the equivalent paddy was to be released out of the stored paddy. However, due to poor quality of paddy, the milled rice was not within the specifications. The Government purchased the paddy in that year from the farmers at the rate of Rs.360/- per quintal. The loss is only on account of sale of paddy due to its poor quality and not on account of breach of any terms between the parties. The plaintiff-appellant filed a replication reiterating the contents of the plaint. On the basis of the pleadings of the parties the following issues were framed by the Trial Court:

1. Whether the plaintiff is entitled to recover the suit amount as prayed for ? OPP
2. Whether the plaintiff is entitled to interest if so at what rate ? OPP
3. Whether the suit of the plaintiff is within limitation ? OPP
4. Whether the present suit of the plaintiff is not filed through the authorized person ? OPD

5. Whether the plaintiff is estopped with its own act and conduct ? OPD

6. Relief.

Vide judgement and decree dated 30.05.2015 the Trial Court dismissed the suit. The Trial Court inter-alia held the suit being filed beyond limitation, it having been filed by an unauthorized person and the plaintiff-appellant not being entitled to recover the amount from the defendant-respondents. The plaintiff-appellant filed an appeal against the decision of the Trial Court however the same was dismissed by the First Appellate Court vide its judgment and decree dated 15.07.2016. Though the First Appellate Court decided the issue of limitation in favour of the plaintiff-appellant, the findings of the Trial Court on the other issues were affirmed and the appeal was dismissed. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has urged that the Courts below have erred in dismissing the suit for recovery and that there has been mis-reading of the evidence led by the plaintiff-appellant. It is submitted that the plaintiff-appellant deserved to be compensated for the loss suffered by it.

Heard.

The suit filed by the plaintiff-appellant for recovery was based upon an order dated 28.03.2011 passed by its Managing Director. However, neither was the said order proved in original nor any application was moved by the plaintiff-appellant to prove the same by way of secondary evidence. Once, the plaintiff-appellant failed to lay the foundation of its suit the Courts below were justified in dismissing the same. Further, nothing has been pointed out from the record to justify as to how the defendant-respondents were liable for the alleged loss suffered by the plaintiff-appellant. Counsel for the plaintiff-appellant has not been able to highlight any material irregularity or illegality in the concurrent findings of fact recorded by both the Courts below.

In view of the discussion above, no question of law, much less any substantial question of law, arises for determination by this Court in the present case. The present appeal is wholly devoid of any merit and is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

11.04.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO