

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

Regular Second Appeal No.480 of 1990 (O&M)
Date of Decision : 18th of March, 2024

The State of Haryana and othersAppellants

Versus

M/s Ch. Herjit Ram Balwant Singh Cotton Ginning & Pressing Factory
....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gaurav Bansal, Deputy Advocate General, Haryana.
for the appellants.

None for the respondent.

PANKAJ JAIN, J. (Oral)

Defendant-State is in second appeal.

2. Respondent-plaintiff was running cotton ginning factory.

An agreement was executed between the plaintiff and the defendant/State dated 5th of September, 1969. As per the terms thereof, State was to fill the water tank once every week. Admittedly, the rate for supply of water was agreed between the parties. Bills were to be prepared on the basis of measurement made on every filling and the payment was to be made by the plaintiff/respondent. As per clause 13 in the agreement, the term thereof was agreed to be 3 years but it continued till 17th of April, 1984 when the same was succeeded by another agreement Exhibit D1. Appellant/State served bills Exhibit P-3

dated 11th of July, 1984 upon the plaintiff for a sum of Rs.40,383/35 paise for water charges from the period from 7th of April, 1976 to 31st of December, 1983 and Exhibit P-4 dated 25th of February, 1985 for a sum of Rs.2332/80 paise for water charges for the period i.e. 1st of January, 1984 to 30th of June, 1984. The bills were challenged by way of present suit. Dispute primarily related to enhancement of rate of supply of water from Rs.1.50 paise to Rs.5.00/- per 2500 Cubic feet. Trial Court framed the following issues :

1. Whether the bills for the period from 7.4.1976 to 31.12.1983 received by the plaintiff amounting to Rs.40383/35 and bills for the period from 1.1.1984 to 30.6.1984 for Rs.2332.80 are wrong, illegal and are not recoverable from the plaintiff as alleged in the plaintiff? OPP.
 2. Whether there was agreement in between the parties for supply of water at the rate of 1.50 per 2500 C.feet on the basis of measurement made of the actual supply of water to the tank of the plaintiff? OPP.
 3. Whether the suit is bad for want of notice U/s 80 of CPC? OPD.
 4. Whether the suit is not maintainable in the present form? OPD.
 5. Whether the plaintiff is estopped by his own act and conduct to file the suit? OPD.
 6. Whether the plaintiff has no locus-standi to file the present suit? OPD.
 7. Whether the defendant are entitled to charge water charges on the basis of discharge from the outlet? OPD.
 8. Whether the defendants are entitled to charge at the rate of 5/- per 2500 C.feet? OPD.
 9. Relief.
3. In order to justify the enhanced rate of water supply the

defendant/State relied upon notification dated 7th of April, 1976 Exhibit D-2. Courts below came to the conclusion that in view of the agreed rate of supply of water between the parties, State was not justified to charge the plaintiff as per enhanced rate.

4. Counsel for the State has relied upon Section 26 of the Haryana Canal and Drainage Act, 1974. The provision reads as under :

<i>In absence of written contract water-supply to be subject to rules</i>	26. In the absence of a written contract, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed.
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5. State Counsel is not in position to dispute that there was a written agreement between the parties mentioning the agreed rate for supply of water.

6. In view of above, this Court does not find that the provision as contained under Section 26 of 1974 Act can render any aid to the case of the appellant/defendant. From the bare perusal of the aforesaid provision, it is evident that the same shall be applicable only in the absence of written contract. Once there is a written contract between the parties, the rate and the terms of supply shall be governed by such written contract and not by the rules as prescribed under Section 26 *ibid*.

7. In view of above, this Court does not find any error in the

impugned judgments passed by the Courts below. Resultantly, the present appeal is ordered to be dismissed.

March 18, 2024		(PANKAJ JAIN)
Dpr		JUDGE
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No