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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 18.12.2024

M/s Bharat Flour Mills Dalhousie Road, Pathankot

... Appellant

Versus

The Punjab State Co-operative Supply and Marketing Federation Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Anand Chhibbar, Senior Advocate with
Ms.Garima Kuthiala Prashar, Advocate and
Mr.Utkarsh Khatana, Advocate
for the appellant.

Ms.Ayushi Sharma, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

1. Challenge in the present appeal is to the judgment of the Ist Appellate Court dated 04.12.1990 vide which the appeal filed by the defendant-respondent has been allowed and the suit filed by the plaintiff-present appellant for recovery of Rs.1,58,060/- has been dismissed.

2. On behalf of the appellant, it has been submitted that in the present case, the District Manager of the defendant-Marketing Federation was posted at Gurdaspur and on 17.08.1983 had come to the premises of the plaintiff-present appellant and had made an offer on behalf of the defendant to Mohinder Pal Aggarwal, who was the Managing Partner of the plaintiff



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firm and also of M/s Jagat Flour Mills, to the effect that if the plaintiff firm and M/s Jagat Flour Mills were to lift stocks of the rejected wheat lying in the godowns of the defendant, then, the defendant would supply the plaintiff and M/s Jagat Flour Mills, Pathankot two new fresh crop wheat bags for each bag of the rejected wheat lifted by the plaintiff and M/s Jagat Flour Mills at the rate of Rs.180/- per bag of one quintal. It is submitted that the plaintiff accepted the said offer and after accepting the said offer, the plaintiff lifted 4985 bags of rejected wheat on payment at the rate of Rs.180/- per quintal from the defendant from its godown in the district, but when the plaintiff asked the defendant for issuance and supply of all the new fresh crop wheat bags, to which the plaintiff was entitled, the defendant became evasive and refused to supply the same.

3. It is submitted that thereafter, the plaintiff served a notice under Section 79 of the Punjab Cooperative Societies Act to the competent officer but to no effect and thereafter, letters were issued by the plaintiff and when the defendant finally refused to supply the new fresh crop wheat bags, the plaintiff filed the present suit. It is submitted that the trial Court after considering the evidence and documents on record had rightly decreed the suit of the plaintiff, whereas the Ist Appellate Court had illegally reversed the said judgment by reversing the findings of the trial Court on issues no.2, 3, 5 and 6.

4. It is argued that an oral agreement is as good as a written agreement and it is not necessary that there should be a written agreement

between the parties, moreso, when the subsequent conduct of the parties

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proves the oral agreement. It is further submitted that the circumstances show that the oral agreement as projected by the plaintiff was proved and thus, the trial Court had rightly decreed the suit of the plaintiff and the judgment of the trial Court deserves to be upheld and the judgment of the Ist Appellate Court deserves to be set aside.

5. Learned counsel appearing for the defendant-respondent has opposed the present appeal and has argued that in the present case, it is the admitted case of the plaintiff that there was no written agreement and that since the defendant is a statutory institution, it is inconceivable that there would be any agreement which would not be in writing. It is further submitted that even in case there was any such oral agreement, then also, it was incumbent upon the plaintiff to have filed a suit for specific performance and a simpliciter suit for recovery is not maintainable. It is further argued that even if the case of the plaintiff is taken on its face value, then also it is apparent that at best the said alleged oral agreement was with the District Manager and not with the competent authority and the said District Manager was not the competent authority to enter into any such agreement. It is submitted that no such agreement was entered into and thus, the suit of the plaintiff had been rightly dismissed. It is argued that in the present case the fact that excess amount had been paid to the defendant by the plaintiff is not in dispute and in case, fresh wheat crop was to be supplied to the plaintiff, then the question of paying excess amount would not arise as the said amount would have been adjusted against the price of fresh wheat crop.

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6. This Court has heard arguments raised on behalf of the parties and has perused the paper book and finds that the judgment of the Ist Appellate Court is well reasoned and deserves to be upheld and the present appeal being meritless, deserves to be dismissed for the reasons detailed hereinafter.

7. Brief facts of the present case are that the plaintiff-present appellant had filed a suit on the plea that an offer was made by the District Manager on behalf of the defendant to the effect that in case the plaintiff firm and M/s Jagat Flour Mills, who were both managed by Mohinder Pal Aggarwal, were to lift the stock of the rejected wheat lying in the godown of the defendant, then the defendant would supply the plaintiff and M/s Jagat Flour Mills, Pathankot two new fresh crop wheat bags for each bag of the rejected wheat at the rate of Rs.180/- per bag of one quintal against the market price of Rs.208/- per quintal and the said offer was accepted by the plaintiff and in pursuance of the same, the plaintiff lifted the rejected wheat from the defendant and in totality had lifted 4985 bags of rejected wheat on payment at the rate of Rs.180/- per quintal from the defendant from its godown and in return, the defendant was to supply new fresh crop wheat bags at the rate of Rs.180/- per quintal which were not supplied by the defendant as per the claim of the plaintiff and thus, the plaintiff after issuing notice under Section 79 of the Punjab Cooperative Societies Act to the competent authority, had filed the suit. A claim of Rs.1,58,060/- was made in the said suit by claiming that there was a difference of Rs.28/- per bag, as the rate at which new fresh crop wheat was agreed to be supplied to the



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plaintiff was Rs.180/- and the rate at which the bags were being sold in the market was Rs.208/-.

8. The defendant had opposed the said suit and had filed written statement and had taken several preliminary objections including the objections with respect to the suit being not maintainable in the present form and being barred by time and also being barred by the principle of res judicata. The plea with respect to there being an agreement with the District Manager of the defendant, as projected in the plaint, was vehemently denied in the written statement and even the plea that the District Manager had gone to the premises of the plaintiff was also denied. It was averred that the District Manager was not even competent to take the said decision. It was also vehemently denied that any allurements were given to the plaintiff for lifting the wheat crop or that the said District Manager of the defendant had promised to supply new fresh crop to the plaintiff at the rate of Rs.180/- per quintal. It was further averred that no contract was ever made and no agreement as alleged by the plaintiff was ever arrived at. It was pleaded that the plaintiff had been depositing the amount against the wheat lifted and when at one stage it transpired to the defendant that the stock of the defendant was over and the plaintiff had deposited the amount in excess, then, the same was returned to the plaintiff. Even the issuance of the letter dated 11.10.1983 was specifically denied and it was prayed that suit be dismissed.

9. The trial Court had framed the following issues:-

“1. Whether the plaintiff is a duly registered partnership



firm and Sh.Mohinder Pal is a registered partner? OPP

2. *Whether the District Manager of the defendant offered the plaintiff to supply two bags of fresh crop wheat against each bag of rejected wheat? If so, to what effect?OPP*

3. *Whether the plaintiff is entitled to any amount on account of non supply of new fresh crops wheat? If so how much? OPP*

4. *Whether the suit is barred by res judicata? OPP*

5. *If issue no.3 is proved, whether the defendant is not bound by the undertaking of the District Manager of the defendant? OPD*

6. *Whether the suit is time barred? OPD*

7. *Whether the suit is not maintainable in the present form? OPD*

8. *Whether this Court has got no territorial jurisdiction to try the present suit? OPD*

9. *Relief?"*

10. The trial Court vide judgment and decree dated 19.12.1988 while deciding all the issues in favour of the plaintiff had decreed the suit of the plaintiff for recovery of Rs.1,58,060/- with proportionate costs.

11. The Ist Appellate Court vide judgment dated 04.12.1990 allowed the appeal filed by the defendant and set aside the judgment of the trial Court and while doing so, set aside the findings on issues no.2, 3, 5 and 6 and decided the said issues against the plaintiff and in favour of the defendant. Under issues no.2 and 3, it was observed that the trial Court had decided the said issues in favour of the plaintiff on conjectures and surmises and since the defendant was statutory institution, thus, there was no scope

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the defendant, who on his own had no power to enter into such an agreement except with the approval of the Head Office and it was for the plaintiff to prove that the wheat it was lifting was not even worth Rs.180/- per bag and it was not upon the defendant to prove that the said wheat was a total loss. It was further observed that Mohinder Pal (PW-1) had admitted in his cross-examination that there was no written agreement between the parties and had further admitted that there was no document to prove that the rate of fresh wheat in those days was Rs.208/- per quintal. It was also noticed that even Sangat Singh, the then District Manager (DW-1) had denied that he had entered into any agreement as alleged by the plaintiff during his tenure as the District Manager at Gurdaspur and had further stated that he was not authorised to take any independent decision on behalf of the government and that he had sold the rejected wheat to the plaintiff as per the instructions of the government at the rate of Rs.180/- per quintal which was supplied to the plaintiff against deposit of the advance price and the excess amount deposited was refunded to the plaintiff after reconciliation.

12. It was noticed by the Ist Appellate Court that in case, fresh wheat was to be supplied to the plaintiff, as alleged by the plaintiff, then, the excess amount paid by the plaintiff to the defendant would not have been received back by the plaintiff. With respect to the letter dated 11.10.1983, it was observed that the plaintiff had not called for the official record to show that the letter was part of the record and since the plaintiff was relying upon the said letter, it was his duty to produce the record to

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show that the said document was a part of the record. It was also observed that in case, there was any oral agreement with Sh.Sangat Singh in his personal capacity, then, it was incumbent upon the plaintiff to make him a co-defendant.

13. Under issue no.5, it was observed by the Ist Appellate Court that any such oral agreement, which had not been proved on record and which allegedly was entered into with the District Manager, would not be binding upon the defendant.

14. Under issue no.6, the Ist Appellate Court had observed that the suit should have been filed within a period of three years from 17.08.1983 when the alleged agreement took place but the same had been filed on 01.09.1986 and thus, the suit was barred by limitation. The plea raised on behalf of the plaintiff to the effect that the cause of action last arose on 11.10.1983 on account of the letter was observed to be misconceived, inasmuch as, the said letter dated 11.10.1983 had not been produced to prove that it was a part of the record. Accordingly, findings by the trial Court on issues no.2, 3, 5 and 6 were set aside and the appeal was allowed.

15. The findings of the Ist Appellate Court is in accordance with law and has not been shown to be either perverse or based on any misreading of evidence or document. It is inconceivable that a statutory institution would enter into an oral agreement with the plaintiff without specifically detailing the terms and conditions in a written document. In paragraph 10 of the judgment of the Ist Appellate Court, it had been noticed

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was no written agreement between the parties and the said finding has not been shown to be perverse, rather it is the admitted case of the present appellant before this Court also that there was no written agreement and the alleged promise was oral. In order to succeed, it was incumbent upon the plaintiff to prove that the competent authority of the defendant had promised the plaintiff two fresh wheat crop bags at a lesser price, i.e., Rs.180/- per bag than the market rate of Rs.208/- per bag in case, the plaintiff was to lift the rejected wheat bag. Other than the fact that the plaintiff had accepted the lifting of the said bags at the rate of Rs.180/- per bag, none of the other aspects have even remotely been proved, apart from the fact that there was no written agreement. Nothing has been highlighted before this Court to show that the market rate of fresh wheat bag was Rs.208/- per bag of one quintal or that the plaintiff was entitled to fresh wheat bags at the rate of Rs.180/- per quintal for having lifting the rejected wheat bags at the rate of Rs.180/- per quintal.

16. In paragraph 10 of the judgment of the Ist Appellate Court, it had further been observed that even (DW-1) Sangat Singh, the then District Manager, had stated that he had never entered into any such agreement as alleged by the plaintiff and the said observations was also not shown to be perverse and thus, there is nothing on record to prove that any such alleged agreement existed. It would also be relevant to note that the said DW-1, as recorded in paragraph 10 of the judgment of the Ist Appellate Court, had further submitted that he was not authorised to take any independent decision on behalf of the government and nothing has been highlighted



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before this Court to show that even assuming there was any such oral agreement with the District Manager, then, the District Manager was authorised to take the said decision. Even the observations to the effect that the excess amount which had been deposited by the plaintiff was received back by the plaintiff has not been shown to be perverse and thus, once the excess amount has been taken back by the plaintiff, then, the same also shows that no fresh wheat bag was to be given in view of the old bags, as otherwise, the amount would not have been refunded and would have been adjusted against the price of the fresh wheat bags.

17. Keeping in view the abovesaid facts and circumstances, the judgment of the Ist Appellate Court is in accordance with law and deserves to be upheld and the present appeal being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

December 18, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No