



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

**RSA-3093-1996 (O&M) &
XOBS-2-C-1999
Reserved on : 06.08.2024
Date of Decision : 21.08.2024**

M/s Ram Chand Janak Raj Spinning Mills Pvt. Ltd.Appellant

Versus

The Punjab State Electricity Board & Anr.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhishek Kaushik, Advocate for
Mr. Vijay K. Jindal, Advocate for the appellant.

Ms. Sunint Kaur, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees of both the Courts whereby it's suit for recovery has only been partly decreed. The defendant-respondent has filed cross-objections.
2. Briefly the facts of the matter are that the plaintiff-appellant was sanctioned a total load of 115.980 KW - 96.980 KW for industrial use and 19 KW for lighting. As per the plaintiff-appellant it's industrial load never exceeded 100 KW till 3.5.1985. However, for the period of August 1983 to 13.5.1985 the plaintiff-appellant was billed under the large supply category though it fell in the medium supply category. The plaintiff-

appellant requested the defendant-respondents to refund the excess amount of Rs.85041.03 but to no avail. Hence, the suit for recovery was filed on 15.06.1987 for the amount wrongly recovered by the defendant-respondents from November 1983 to May 1985. The defendant-respondents contested the suit and raised preliminary objections about maintainability, act and conduct, time barred, etc. On merits it was the stand taken that since the combined load of the plaintiff-appellant exceeded 100 KW it fell in the large supply category and not medium supply category and as such the defendant-respondents had correctly billed the plaintiff-appellant. In the replication the contents of the written statement were denied and those of the plaint were reiterated.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the recovery of Rs.85041.03 as alleged in the plaint ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether any notice was required to be given to the defendants before the filing of the suit ? If so, what was served ? OPP
4. Whether the present suit is barred under the provisions of Order 2 Rule 2 read with Order 23 Rule 1 and Section 11 of the CPC ? OPD
5. Whether the plaintiff is estopped by his own acts and conduct admission and acquiescences from filing the

present suit ? OPD

6. Whether the suit is within time ? OPP

7. Whether the defendants are entitled to receive compensatory costs under Section 35-B of the CPC ?
OPD

8. Relief.

4. Vide judgement and decree dated 06.04.1992 the Trial Court partly decreed the suit of the plaintiff-appellant for an amount of Rs.45409.57 with pendente lite and future interest @ 6% per annum. The Trial Court held that the suit for the period from June 1984 to May 1985 was within time but for the earlier period i.e. from November 1983 it was barred. Both the parties filed separate appeals challenging the decision of the Trial Court. Vide judgement and decree dated 24.05.1996 the First Appellate Court dismissed both the appeals. Hence, the present regular second appeal by the plaintiff-appellant and cross-objections by the defendant-respondents.

5. Learned counsel for the plaintiff-appellant has argued that both the Courts have erred in holding the suit to be barred for the period from November 1983 to May 1984. It is urged that since the recovery by the defendant-respondents was illegal and without jurisdiction, the suit could not have been held to be time barred for any period. Per contra, counsel for the defendant-respondents has challenged the impugned decision by contending that since there was a mechanism for settling disputes through the Dispute Settlement Committee set in place by the Board, the suit was not maintainable and ought to have been dismissed.

6. Heard learned counsel for the parties.

7. In the present case the suit was filed by the plaintiff-appellant on 15.06.1987. The period for which the dispute relates is November 1983 to May 1985. The Courts have held that the suit qua the period November 1983 to May 1984 was time barred. The time period for filing a suit for money recovery is three years from the date when the cause of action arises. It is not the case of the plaintiff-appellant that for the period November 1983 to May 1984 the payment was made by it anytime after June 1984 so as to give it a cause of action to file the suit on 15.06.1987. The payment for the period November 1983 to May 1984 have been made prior to June 1984, the suit for recovery for this period, which suit was filed on 15.06.1987, was clearly time barred. Counsel for the plaintiff-appellant has not been able to convince this Court to take a view contrary to the one taken by both the Courts.

8. The argument raised by the cross-objector defendant-respondents that the suit was not maintainable as there was a mechanism for settling disputes through the Dispute Settlement Committee set in place by the Board is liable to be rejected. Nothing has been pointed out to show that any such mechanism was already in place at the time when the suit was filed by the plaintiff-appellant. No circular of the Board has been brought to the notice of the Court whereunder pending disputes already before the civil court are to be sent to the Dispute Settlement Committee.

9. No other point was argued by the counsel for both the parties.

10. In view of the discussion above, no question of law, much less any substantial question of law, arises for determination in the present regular second appeal. The appeal being devoid of merit is dismissed. For the reasons mentioned above, the cross-objections preferred by the

defendant-respondents are merit-less and are also dismissed. Pending applications, if any, in the appeal and/or the cross-objections also stand disposed off.

21.08.2024
Ankur

(ALKA SARIN)
JUDGE

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