IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4699-2019 (O&M)
Reserved on : 28.08.2024
Pronounced on : 03.09.2024

THE PUNJAB STATE CO-OPERATIVE
SUPPLY AND MARKETING FEDERATION LTD. ....Appellant

VERSUS

M/s DASMESH ENTERPRISES AND ORS ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankit Choudhri, Advocate for
Mr. P.I.P. Singh, Advocate for the appellant.

ALKA SARIN, J.

CM-13422-C-2019

1. For the reasons mentioned therein, the application for condonation of 36 days' delay in filing the appeal is allowed. The delay of 36 days in filing the present regular second appeal is condoned.

RSA-4699-2019

2. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 17.09.2016 passed by the Trial Court and the judgment and decree dated 03.12.2018 passed by the First Appellate Court.

3. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for recovery of ₹23,82,820 on the ground that during the year 1994-95 the plaintiff-appellant procured paddy for custom milling and delivery of milled rice to the Food Corporation of India (FCI). The defendant-respondents were allotted the paddy for custom milling and an

agreement was entered into between the parties and the defendant-respondents were to shell paddy for the year 1994-95. It is further the case that the defendant-respondents failed to adhere to the schedule and committed breach of the contract and hence compensation was claimed as per the agreement along with interest @ 21% per month. The plaintiff-appellant initially initiated arbitration proceedings. The Arbitrator held the reference to be not maintainable. The said order of the Arbitrator was challenged by the plaintiff-appellant before the Additional District Judge, Ferozepur who held the arbitration reference to be maintainable. The order of the Additional District Judge, Ferozepur was challenged in a revision by the defendant-respondents wherein the order of the Additional District Judge, Ferozepur was set aside vide order dated 14.03.2002 passed by this Court. Review petition filed by the plaintiff-appellant was dismissed and even the Special Leave Petition (SLP) preferred by the plaintiff-appellant before the Hon'ble Supreme Court was also dismissed vide order dated 01.03.2007. It is further the case that after the dismissal of the SLP by the Hon'ble Supreme Court, various notices were sent to the defendant-respondents to come present. However, they did not appear and were proceeded against *ex parte* and an order dated 10.03.2011 was passed by the Managing Director wherein the defendant-respondents were held liable to pay an amount of ₹23,82,820 plus interest. Since the amount was not paid, the present suit was filed.

4. On notice, the defendant-respondents appeared and raised preliminary objections regarding limitation and that earlier the Managing Director of the plaintiff-appellant had appointed an Arbitrator, and the

arbitration proceedings were held to be not maintainable. The said order of the Arbitrator was challenged by the plaintiff-appellant before the Additional District Judge, Ferozepur who held the arbitration reference to be maintainable. The order of the Additional District Judge, Ferozepur was challenged in a revision by the defendant-respondents wherein the order of the Additional District Judge, Ferozepur was set aside vide order dated 14.03.2002 passed by this Court. Review petition filed by the plaintiff-appellant was dismissed and even the Special Leave Petition (SLP) filed by the plaintiff-appellant before the Hon'ble Supreme Court was also dismissed vide order dated 01.03.2007. Thereafter the matter was again referred by the plaintiff-appellant to another Arbitrator, namely, Sh. K.D. Arora, nominated by the Managing Director, who also rejected the arbitration reference. It was further the case that the crop year 1994-95 was a bumper heavy crop and there was shortage of space with the Government as well as with the procuring agencies including the plaintiff-appellant and paddy was stored in the mill premises under the custody and control of the officials of the plaintiff-appellant. As per the terms and conditions, 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 but due to the poor quality of paddy, rice was not within the specifications as laid down by the Ministry of Food. The matter was reported to the Government of India and Ministry of Food decided to dispose off the paddy under the public policy declared by the Government. As per the said policy, paddy was disposed off @ ₹442 per quintal, then @ ₹395 per quintal, then @ ₹330 per quintal and thereafter @ ₹240 per quintal. It is further the case that once the matter had been adjudicated right upto the Hon'ble Supreme Court, the Managing Director had no right to re-open the same.

5. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

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

1. Whether the plaintiff is entitled to recover the suit amount as prayed for ? OPP
2. Whether the plaintiff is entitled for interest, if so, at what rate ? OPP
3. Whether the present suit of the plaintiff is time barred ? OPD
4. Whether the present suit is not filed by any competent person ? OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
6. Relief.

7. The Trial Court held the suit to be barred by limitation inasmuch as the matter was decided by the Hon'ble Supreme Court on 01.03.2007. Thereafter the matter was again entrusted to another Arbitrator, namely, Sh. K.D. Arora by the Managing Director who also rejected the reference vide order dated 09.04.2007. The present suit was filed in the year 2012 and hence it was held to be barred by limitation. It was further held that the order passed by the Managing Director dated 10.03.2011 was illegal. The Trial Court further held that PW-1, namely, Vishal Arora, Dealing

Assistant Paddy, Markfed Ferozepur had admitted that the paddy stored with the millers was under the control and custody of the plaintiff-appellant and was disposed off in terms of the Government policy. He further admitted in his cross-examination that he had no personal knowledge of the documents. The recovery in the present suit was based on the account statements (Ex.P-24 to Ex.P-26). However, the said documents were not proved in accordance with law. Even the accounts produced were not proved in accordance with law. Accordingly, the suit of the plaintiff-appellant was dismissed vide judgment and decree dated 17.09.2016. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 03.12.2018. Hence, the present regular second appeal by the plaintiff-appellant.

8. Learned counsel for the plaintiff-appellant would contend that the suit was filed on the basis of the order of the Managing Director dated 10.03.2011 wherein he had held the defendant-respondents liable to pay an amount of ₹23,82,820 along with interest. The learned counsel would further contend that several notices were issued to the defendant-respondents who failed to appear and hence the order was passed by the Managing Director.

9. Heard.

10. In the present case learned counsel for the plaintiff-appellant has not been able to convince this Court that the Managing Director of the plaintiff-appellant had any authority to pass the order dated 10.03.2011. The earlier reference to the Arbitrator was held to be not maintainable right upto the Hon’ble Supreme Court. Thereafter another Arbitrator was appointed by the plaintiff-appellant who also held that the reference was not maintainable.

Subsequently the Managing Director himself passed an order dated 10.03.2011. The learned counsel has not been able to show under what provision of law or under which agreement the Managing Director was empowered to pass such an order. The Special Leave Petition (SLP) preferred by the plaintiff-appellant was dismissed by the Hon'ble Supreme Court on 01.03.2007. The present suit was filed in the year 2012. Hence the same is clearly barred by limitation. No other argument was raised.

11. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

03.09.2024
Aman Jain

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No