

RSA-3668-2019

2024:PHHC:017347

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

RSA-3668-2019 (O&M)

Reserved on : 29.01.2024

Pronounced on : 08.02.2024

Punjab State Cooperative Supply and Marketing Federation Ltd. ..Appellant

VERSUS

M/s Sandeep Rice Mills and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shailesh Aggarwal, Advocate for the appellant.

ALKA SARIN, J.

CM-10001-C-2019

This is an application under Section 5 of the Limitation Act for condonation of delay of 39 days in filing the appeal.

For the reasons stated in the application, delay of 39 days in filing the appeal is condoned.

CM stands disposed off.

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1. The present regular second appeal has been preferred by the plaintiff-appellant (MARKFED) against the concurrent findings of both the Courts below whereby it's suit for recovery has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for recovery of Rs.23,17,478/- averring in the plaint that defendant-respondent No.1 is a proprietorship firm and defendant-respondent No.2 is its proprietor. During the year 2000-01 the plaintiff-

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appellant procured paddy at the support price as one of the procuring agencies of the State Government for custom milling of the paddy and delivery of milled rice to the FCI in the central pool. It is further averred that the District Food and Supplies Controller, Ferozepur vide letter dated 11.10.2001 allotted the defendant-respondents rice mill to MARKFED and an agreement was executed between the parties and the defendant-respondents firm was to mill the paddy for the year 2000-01 as per the terms and conditions of the agreement. It is further the case that the plaintiff-appellant supplied 52,620 bags weighing 25,841.23 quintals of fine variety paddy to the defendant-respondents against receipt and the defendant-respondents were required to deliver the stocks of rice till 28.09.2002 as per the agreement. However, they failed to adhere to the schedule and hence had committed a breach of the contract and were liable to pay compensation as stated in the agreement. It is further the contention that despite repeated requests, the defendant-respondents failed to pay the amount and an Arbitrator was appointed who passed an award dated 16.05.2015. Aggrieved by the said award, an objection petition was filed before the District Judge, Ferozepur who accepted the objections and the award was set aside and liberty was granted to the Managing Director, MARKFED to proceed with the matter in accordance with law. It is further the case that the matter was thereafter put up before the Managing Director who passed the order dated 23.12.2011 whereby the defendant-respondents were held liable to pay an amount of Rs.23,17,478/- plus interest.

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3. Upon notice the suit was contested by the defendant-respondents stating that there was no agreement between the parties. The factum regarding appointment of the Arbitrator and the filing of the objection petition by the plaintiff-appellant was admitted. It was, however, the stand taken that the Managing Director was not competent to pass the order dated 23.12.2011 as the matter was already time barred.

4. On the pleadings of the parties the following issues were framed :-

- I) Whether the plaintiff is entitled to recover the suit amount along with interest as prayer for ? OPP
- II) Whether the suit is false ? OPD
- III) Whether the suit of the plaintiff is time barred ? OPD
- IV) Whether the present suit has not been filed by competent person ? OPD
- V) Whether the plaintiff is stopped by their own act and conduct to file the present suit ? OPD
- VI) Relief.

5. The Trial Court vide judgment and decree dated 05.04.2017 dismissed the suit. Aggrieved by the said judgment and decree an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 07.12.2018. Hence, the present appeal.

6. Learned counsel appearing for the plaintiff-appellant would contend that earlier an Arbitrator was appointed who had given an award on

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16.05.2015. Thereafter the defendant-respondents filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 wherein the award was set aside and the Managing Director was directed to take a decision in the matter and the Managing Director passed an order dated 23.12.2011 and the plaintiff-appellant was held entitled to recover an amount of Rs.23,17,478/- plus interest. It is further the contention that once the Court had directed that the Managing Director should take a decision, the said decision taken by the Managing Director on 23.12.2011 was binding upon the parties.

7. I have heard the learned counsel for the plaintiff-appellant.

8. In the present case both the Courts below have concurrently found that though the recovery was sought to be made on the basis of the account statements (Ex.P-7 and Ex.P-8), however, the person who had prepared the said statements was not examined. There was no evidence on the record to show how the computation of the amount had been arrived at. No accounts register, account books or any other document was produced on the record. It was further held that the proceedings before the Managing Director were also not produced. On a query put by the Court as to the order passed by the District Judge on the petition under Section 34 of the Arbitration and Conciliation Act, 1996, learned counsel has very candidly admitted that except for the order passed by the Managing Director nothing had been produced on the record. In the absence of any evidence, both the Courts below have rightly non-suited the plaintiff-appellant. Learned counsel for the plaintiff-appellant has not been able to convince this Court

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that the plaintiff-appellant was entitled to recover the amount as claimed. No other point was argued.

9. 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 for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

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