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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4246-2018 (O&M)
Date of Decision : 13.11.2024

Punjab State Cooperative Supply & Marketing Fed. Ltd. ... Appellant(s)

Versus

M/s Jai Bharat Rice Mills & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naresh Gopal Sharma, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant against concurrent findings recorded by both the Courts vide judgments and decrees dated 17.09.2016 and 19.03.2018 whereby its suit for recovery of Rs.57,34,590/- has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for recovery of Rs.57,34,590/- from the defendant-respondents alongwith interest on the costs of rice and bardana from the year 1994-95 onwards till its payment. As per the plaintiff-appellant, vide letter dated 27.09.1994 it allotted the defendant-respondent - Rice Mill - to Markfed for custom milling of paddy and an agreement dated 26.09.1994 was also executed between the parties. The defendant-respondent - Rice Mill - was required to deliver stocks of rice till 28.02.1995, however, it did not adhere to the schedule and therefore the defendant-respondents are liable to pay compensation as enumerated in different clause of the agreement alongwith interest. Upon notice the defendant-respondents put in appearance and filed written statement taking preliminary objection regarding the suit

being beyond limitation and the suit not having been filed through an authorized person with a resolution of the board of directors. On merits it was submitted that during 1994-95 there was bumper heavy crop and there was shortage of space with the Government as well as procuring agencies including the plaintiff-appellant and the paddy was stored in the mill premises under the custody and control of the officials of plaintiff-appellant. 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. However, due to poor quality of paddy, the milled rice was not within the specifications. The matter was reported to the Government of India and the Ministry of Food decided to dispose of the paddy under the public policy declared by the Government as per which the paddy was disposed of @ Rs.442/- per Qtl., then Rs.395/- per Qtl, Rs.330/- per Qtl, and thereafter Rs.240/- per Qtl. The rate of the paddy was changed from time to time. The minimum support price of the paddy in that particular year was Rs.360/- per Qtl. It was further submitted that the paddy was disposed of not due to poor quality by the Government but to get foreign currency as the Government of India was short of funds and they had mortgaged the national reserve gold with British Government in the year 1992-93 to raise funds from International resources. The Authority had also informed the Union of India that paddy for the crop year 1994-95 was not suitable for milling due to inferior quality. The defendant-respondents admitted that the agreement was executed but alleged the same to be illegal, null and void as the same is unilateral. It was further submitted that blank agreement was obtained from the defendant-respondents. In the replication, the contents of the plaint were reiterated and those of the written statement were denied. On the basis of the pleadings of the parties, the following issues were framed by the Trial Court:

1. Whether the plaintiffs are entitled to recover the suit amount alongwith interest as prayed for ? OPP

2. Whether the suit of the plaintiff is time barred ? OPD

3. Whether the plaintiffs are estopped by their own act or conduct from filing the present suit ? OPD

4. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

5. Relief.

3. The Trial Court on the basis of the evidence on record dismissed the suit vide judgment and decree dated 17.09.2016. Aggrieved by the same, an appeal was preferred before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 19.03.2018. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit for recovery and that there has been mis-reading of the evidence led by the plaintiff-appellant. It is further the contention of the learned counsel that the plaintiff-appellant deserves to be compensated for the loss suffered by it.

5. Heard.

6. In the present case the suit filed by the plaintiff-appellant was for recovery of Rs.57,34,590/- alongwith the interest as per the terms and conditions of the alleged agreement dated 26.09.1994 between the parties. The recovery was based upon an order/letter dated 27.09.1994 whereby the defendant-respondent No.1 - Rice Mill - was allotted to the plaintiff-

appellant for custom milling of paddy. However, neither was the said order proved in original nor any application was moved by the plaintiff-appellant to prove the same by way of secondary evidence. Even the agreement dated 26.09.1994 between the parties was not proved on record by the plaintiff-appellant. The plaintiff-appellant examined PW1 - Vishal Arora - its Dealing Assistant, but the said witness during his cross-examination has denied having any knowledge about the agreement or any such order/letter stated above. This witness has further testified during his cross-examination that he was not the employee of the plaintiff-appellant at the relevant time and has no knowledge about the transaction in question as alleged by the plaintiff-appellant. Though to prove the recovery the account statements Ex.P7 and Ex.P8/1 to Ex.P8/3 were brought on record, however, the said statements have not been proved by the plaintiff-appellant in accordance with law and, thus, the plaintiff-appellant has failed to prove on record the computation of the suit amount.

7. Further, the above agreement which formed the basis of the claim of the plaintiff-appellant was executed on 26.09.1994 as per which the defendant-respondent No.1 was to shell the paddy for the year 1994-95 as per the terms and conditions thereof and thus the suit for recovery, if any, could have been instituted within a period of three years, whereas the present suit was filed on 10.01.2012 which was apparently barred by time. The fact that the arbitration proceedings between the parties remained pending and went upto the Hon'ble Supreme Court by way of a Special Leave Petition, which was dismissed on 01.03.2007, would not inure to the benefit of the plaintiff-appellant inasmuch as the plaintiff-appellant was not stopped from filing the suit and enforcing its rights within the limitation period of three

years.

8. Further, the agreement dated 26.09.1994 though bears the signatures of the District Manager on behalf of the plaintiff-appellant but it was not clarified as to who had signed the said agreement on behalf of the defendant-respondents. The onus was upon the plaintiff-appellant to prove that 12066.50 Qtls. of paddy was actually sent to the defendant-respondents for milling, however, no such record was brought on record to substantiate its claim. Therefore, it could not be concluded that the plaintiff-appellant had supplied the said paddy for milling to the defendant-respondents. Ex-facie the claim of the plaintiff-appellant for recovery of the suit amount was predicated upon the order passed by the Managing Director but it was equally true that the said order was passed in the absence of the defendant-respondents.

9. Learned counsel for the plaintiff-appellant could not point out anything from the record to justify as to how the defendant-respondents were liable for the alleged loss suffered by the plaintiff-appellant and has also not been able to highlight any material irregularity or illegality in the concurrent findings recorded by the Trial Court and the First Appellate Court, which were justified in dismissing the suit.

10. In view of the discussion above, no question of law, much less any substantial question of law, arises for determination by this Court in the present case. The present appeal is wholly devoid of any merit and is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

13.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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