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**(2010) 08 P&H CK 0261**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 2289 of 2009

Brij Lal Ram Richpal

APPELLANT

Vs

Market Committee, Rewari

RESPONDENT

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**Date of Decision :** 04-08-2010

**Acts Referred:**

Punjab Agricultural Produce Markets Act, 1961 — Section 31(1), 31(2), 31(3), 42

**Citation :** (2010) 4 PLR 490 : (2010) 4 RCR(Civil) 777

**Hon'ble Judges :** Rakesh Kumar Jain, J

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## **Judgement**

Rakesh Kumar Jain, J.

1 The plaintiff is in second appeal against judgment and decree of both the Courts below, whereby his suit for declaration and permanent injunction has been dismissed.

2 The plaintiff had filed a suit for declaration in order to assail the validity of order dated 29.09.1988 passed by the Executive Officer cum Secretary, Market Committee, Rewari (defendant No. 2) and order dated 25.11.1997 by which the appeal filed by the plaintiff against order dated 29.09.1988 was dismissed by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula.

3 The case set up by the plaintiff firm is that it is engaged in the business of purchase of Gur, Shakkar and sugar etc. During the year 1983-85, precisely for the period 01.03.1983 to 18.01.1985, the plaintiff had deposited market fee of Rs. 1,28,760/- on different occasions, but vide its order dated 27.03.1986, defendant No. 1 passed an order of best judgment assessment for a sum of Rs. 1,62,683.52 paise and imposed a penalty of an equal amount. The order dated 27.03.1986 was challenged by the plaintiff by way of statutory appeal which was allowed on 19.02.1987 and the case was remanded back for fresh assessment to defendant No. 1 with the following order :

"It is further ordered that the amount of market fee deposited by the firm be refunded only after making the fresh assessment as ordered above and adjusting

the amounts of market fee and found due and penalty, if any, as a result of such assessment, which should be carried out expeditiously."

4 The plaintiff was not satisfied with the order of the Appellate Authority, therefore, it filed CWP No. 1418 of 1987 in this Court which was decided on 18.02.1988 in its favour. The order of the writ Court was assailed by the defendants by way of LPA No. 412 of 1988 which was disposed of by this Court on 14.07.1988 with the following order :

"The respondent assessee is permitted to produce the records now before the assessing authority within a period of eight weeks from this date, i.e., on or before September 8, 1988. If the respondent does not produce the record by that time, it is open to the market committee to proceed with the assessment without the account books and records with the material available before them. The refund or otherwise of the market fee already collected will have to depend upon the fresh assessment order that may be made. We also direct that the assessment order shall be made on or before September 30, 1988. Until that time, the stay granted by this Court already shall remain in operation."

5 In terms of the aforesaid order, the plaintiff was required to submit his account books for the purpose of assessment on or before September 08, 1988, but admittedly the account books were not submitted to the assessing authority, therefore, the assessing authority again carried out best judgment assessment vide its order dated 29.09.1988. The said order was initially challenged by the plaintiff by way of Civil Suit No. 423 of 1992 filed on 06.05.1992. The plaintiff also challenged the order dated 29.09.1988 by way of statutory appeal.

6 During the pendency of the aforesaid suit No. 423 of 1992, the Appellate Authority dismissed the statutory appeal on 25.11.1997. In the said Suit No. 423 of 1992, an objection was taken by the defendants that the plaintiff has not served notice under Section 31(1) of the Punjab Agricultural Produce Markets Act, 1961 [for short "the Act 1961"], therefore, the suit was bad and was not maintainable. The plaintiff then withdrew the said suit on 24.08.1999 and served a notice in terms of Section 31(1) of the Act 1961 on 25.08.1999 and this time the plaintiff had also challenged the subsequent order dated 25.11.1997 passed by the Appellate Authority. The subsequent suit, i.e. Civil Suit No. 611 of 1999 was filed on 09.10.1999.

7 The plaintiff's case is that the best judgment assessment is illegally carried out by defendant No. 1 as admittedly they have served notices dated 05.08.1988 (Ex.D5) and 30.08.1988 (Ex.D6) but the details of the material which has been collected by defendant No. 1 for the purpose of making best judgment assessment was not conveyed or communicated to the plaintiff. Both the Courts below have dismissed the suit of the plaintiff. In nut shell, the suit has been dismissed on the ground of noncompliance of Section 31(1), 31(2) as well as Section 42 of the Act 1961.

8 Shri Jaswant Jain, learned counsel for the appellant has vehemently argued

that the only witness examined by the defendants i.e. Ram Krishan, Mandi Supervisor (DW1) has admitted in so many words that no details of the material collected for the purpose of making best judgment assessment were sent to the plaintiffs. Learned counsel for the appellant, thus, in support of his arguments, has relied upon a decision of the Division Bench of this Court in the case of M/s. Jai Ram Hans Raj v. The State of Haryana and others, 1972 PLJ 725. In respect of the technical objection on the basis of which the suit of the plaintiff has been dismissed, learned counsel for the appellant has submitted that the plaintiff had filed the suit within the period of limitation and even if the suit was filed before completion of two months, as envisaged under Section 31(1) of the Act 1961, it would not affect the suit of the plaintiff because the defendants had already knew the dispute which has been raised by the plaintiff before the Court of law. It is submitted that the notice is meant only for the purpose of giving a prior intimation to defendants about the expected litigation at the instance of the plaintiff. In respect of Section 42 of the Act 1961, it is submitted that the remedy of revision is not efficacious and according to Section 9 of the Code of Civil Procedure, 1908 [for short CPC] any action of the State which affects the civil rights of a party can be challenged before the .

9 On the other hand, learned counsel for the respondents has submitted that insofar as the first argument of the learned counsel for the appellant that the details of the best judgment assessment were not supplied to the plaintiff is concerned, the plaintiff has no right to make a grievance because it has been withholding its account books from the assessing officer throughout and had ultimately not produced the same despite the fact that this Court, vide its order dated 14.07.1988, had given a period of 8 weeks to the plaintiff to produce its account books before the assessing authority on or before September 08, 1988. It is submitted that the bungling in the account books is writ large because if an assessee withholds the account books from the assessing authority, then adverse inference has to be taken against the assessee. He also submits that Section 31(1) of the Act 1961 is mandatory in nature and applies with full force in the present case because the plaintiff had withdrawn his earlier suit only for the purpose of filing it again after serving notice under Section 31(1) of the Act 1961 upon the defendants but still the suit has not been filed before the expiry of two months. Section 31(2) of the Act 1961 provides that the suit could be filed within six months from the date of accrual of cause of action and in this case cause of action had accrued to the plaintiff on 25.11.1997 whereas the suit was filed on 09.10.1999 much beyond the expiry of period of six months. He also submits that Section 42 provides the remedy of revision which is an efficacious remedy and in the presence of an efficacious statutory remedy, the present civil suit is not maintainable.

10 Before referring to the rival contentions, it would be relevant to reproduce Section 31(1), 31(2) and Section 42 of the Act 1961 here under :

"31. Bar of suit in absence of notice. (1) No suit shall be instituted against the

Board or a Committees or any member or employee thereof or any person acting under the direction of any such Committee, member or employee for anything done or purporting to be done under this Act, until the expiration of two months next after a notice in writing stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims has been, in the case of the Board or a Committee delivered to him or left at its office, and in the case of the Board or a Committee delivered to him or left at its office, and in the case of any such member, employee or person as aforesaid, delivered to him or left at his office or usual place of abode and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of cause of action."

"42. Revision. Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of the Board or any of its officers passed or purporting to have been passed under this Act, if it considers it to be not in accordance with this Act or the rules or byelaws made thereunder."

11 Section 31(1) of the Act 1961 bars a suit in the absence of notice. The language couched in negative provides that the suit could be filed against the Board, Committee, member, employee or any person acting under the direction of any such Committee, member or employee for anything done or purported to be done under this Act, after the expiration of two months next after a notice in writing stating the cause of action, the name and place of abode of the intending plaintiff and the relief which is claimed. The purpose of this provision is that before coming to the Court, the matter could be resolved at the threshold and the Board or the intending litigant could avoid that litigation before the Court of law. The language of the provision is mandatory in nature, therefore, in the present case, the plaintiff had withdrawn the earlier suit only for the purpose of serving notice under Section 31(1) of the Act 1961, but still the suit has been filed in a haste on 09.10.1999 before even expiry of two months, therefore, it is clearly barred under Section 31 (1) of the Act 1961. Insofar as Section 31(2) of the Act 1961 is concerned, according to the plaintiff itself his statutory appeal was dismissed on 25.11.1997, but the suit has been filed on 09.10.1999. Section 31(2) of Act 1961 provides that a suit shall be dismissed unless it is instituted within six months from the date of the accrual of cause of action. Cause of action had accrued to the plaintiff on 25.11.1997 and the suit has been filed on 09.10.1999 much beyond the period of six months, therefore, the suit was not maintainable. Section 42 of the Act provides remedy of revision against the order passed by the authorities under the Act. The said power is vested with the government i.e. Secretary as held by this Court in the case of Haryana State Agricultural Marketing Board, Panchkula v. Umed Singh and others, 2006(2) R.C.R.(Civil) 707 : 2006(2) All India Land Laws Reporter (P&H) 361. In this regard, learned counsel for the respondents has also relied upon a decision of Division Bench of this Court in the case of M/s. Shambhu Rice Mills, Khuddi Road,

Barnala v. Market Committee, Barnala and another 2008(3) S.L.J. (P&H) 1506 in which it has been held that the provision of Section 42 of the Act clearly provides that the State Government can revise or modify the order which is passed by any officer of the Board under the Act, if it considers it to be not in accordance with the Act, Rules and byelaws made thereunder. Any order in this Section includes even the order of assessment passed by the Assessing Authority and the order of Appellate Authority confirming the assessment order. Thus, in view thereof, the remedy under Section 42 is available to the plaintiff but the same has not been exhausted before filing the civil suit. On this count also, the suit is bad in the eyes of law.

12 In view of the above observations, I do not find any question of law muchless substantial involved in this Regular Second Appeal and, therefore, the same is hereby dismissed.