
(2006) 04 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 829 of 2006

Haryana State Agricultural Marketing Board

APPELLANT

Vs

Umed Singh and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Punjab Agricultural Produce Markets Act, 1961 — Section 31, 42, 47

Citation : (2006) 143 PLR 703 : (2006) 2 RCR(Civil) 707

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : S P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below., whereby the suit for declaration filed by the plaintiff that he is entitled to the same pay scale as that of his junior, was decreed.

2. In the second appeal, learned Counsel for the appellant has raised two fold arguments. Firstly, the suit was not maintainable without serving a notice contemplated u/s 31 of the Punjab Agricultural Produce Markets Act, 1961 (for short "the Act"), In support of the said argument, learned Counsel for the appellant has relied upon Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, and East India Cotton Mfg. Co. Limited Vs. Haryana Urban Development Authority and Others,

3. However, I am unable to agree with the said contention of the learned Counsel for the appellant.

4. Issue No. 7 was framed by the learned trial Court to the effect whether the suit is bad for want of legal notice u/s 31 of the P.A.P.M. Act, 1961?" The said issue was not pressed or argued before the learned trial Court and, thus, the

same was decided against the defendant. There is nothing on record to show that the appellant disputed the finding recorded by the trial Court before the first Appellate Court as none gets deciphered from the judgment. The judgments referred to by the learned Counsel for the appellant are clearly distinguishable and not applicable to the facts of the present case.

5. Dr. H.S. Rikhy's case (supra), the question was whether the Municipal Committee is estopped by its conduct from challenging the enforceability of the contract even though there is no contract in writing as required by Section 47 of the Act. It was found that where a statute makes a specific provision that a body corporate has to act in a particular manner and in no other, that provision of law is mandatory and not directory. In the present case, the provision of serving of notice is meant for the consideration of the claim of the suitor by the Market Committee. Since it was the provision for consideration by the Committee, it was always open to the Committee to waive the requirement of notice. Since the defendants have not pressed the said issue No. 7 before the trial Court, therefore, by its conduct, the Market Committee has waived the requirement of notice u/s 31 of the Act.

6. In East India Cotton Mfg. Co. Limited's case (supra), the question was regarding jurisdiction of the Civil Court. It was held that since there is a statutory bar, there could not be any concession against a statutory provision. Again the said judgment is not applicable to the facts of the present case as the provisions of Section 31 of the Act are meant for consideration of the claim by the Market Committee, which could be waived by the appellant.

7. Secondly, learned Counsel for the appellant has argued that the plaintiff had the alternative remedy u/s 42 of the Act and having not availed such alternative remedy, the jurisdiction of the Civil Court is barred. There is neither any express or implied bar in the Act. Therefore, u/s 9 of the Code of Civil Procedure, the suit can be said to be maintainable before the Civil Court.

8. In view of the above, no substantial question of law arises for consideration in the present appeal.

9. Consequently, the present appeal is dismissed.