

(1987) 12 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1355 of 1987

Market Committee, Jhabal, Amritsar

APPELLANT

Vs

Manjit Singh and another

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 42

Citation : (1987) 12 P&H CK 0013

Hon'ble Judges : S.D. Bajaj, J

Bench : Single Bench

Advocate : S.C. Pathela, for the Appellant; J.S. Kher, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Bajaj, J.—Plaintiff-Respondent Manjit Singh was serving Defendant No. 2 as accountant when his services were dispensed with on 20th July, 1979. Against the order of termination of his services dated 20th July, 1979 aforesaid Plaintiff-Respondent preferred an appeal to Defendant No. 1 which was dismissed in October, 1983. Compelled by circumstances, the Plaintiff filed civil suit No 588 on 23rd January, 198(sic) for assailing the impugned order of 20th July, 1979. The learned trial court decreed the suit with costs on 10th December, 1986. Appeal preferred by Defendant No 2 against the decision of the learned trial Court was dismissed by the learned court of first appeal on 12th March, 1987. Hence Regular Second Appeal No. 1355 of 1987 in this Court.

2. Learned Counsel for the Defendant-Appellant has urged that the Plaintiff-Respondent had not served any notice on Defendant-Appellant before filing the suit, that the alternative remedy of approaching the State Government in revision u/s 42 of the Punjab Agricultural Produce Markets Act, 1961 had not been exhausted before filing the suit and that the suit was hopelessly barred by limitation. There is obviously no merit in any of the three contentions raised. All the same, for facility of reference all the three of them are being adverted to ad-seriatim hereinafter:

(i) Notice Learned first Appellate Court discussed the matter at great length in para 9 of its assailed judgment dated 12th March, 1987 and rightly observed that the State Agricultural Marketing Board being the appointing authority of Plaintiff Respondent, notice Exhibit P. 2 vide postal receipts Exhibits P. 3 and P. 4 and acknowledgement due receipts Exhibits P 5 and P. 6 was duly served upon it. The words used in Section 31 of the Punjab Agricultural Produce Markets Act, 1961 while prescribing the requirement of a prior notice before institution of suit are "Board or a Committee" and not "Board and a Committee". The argument addressed in this regard is thus without any basis and much substance. Finding recorded by the learned court of First appeal in regard to the service of prior notice before the institution of the suit is, therefore, affirmed.

(ii) Alternative remedy. Revision u/s 42 of the Punjab Agricultural Produce Markets Act, 1961 is competent and is required to be filed against the order of the Board and not of the Respondent-Appellant Committee. Since in this case impugned order dated 20th July, 1979 is of Market Committee, Jhabal, no revision against it was either competent or required to be filed with the State Government. The argument advanced in this regard is, therefore, wholly falacious

(iii) Limitation. It has been urged that in terms of Sub-section (2) of Section 31 of the Punjab Agricultural Produce Markets Act, 1961, the suit ought to have been filed within six months from 20th July, 1979 i.e. up to 20th January, 1980 and that the suit filed on 23rd January, 1984 is obviously barred by limitation.

3. Sub-section (2) of Section 31 of the Punjab Agricultural Produce Markets Act, 1961 reads, "Every such suit shall be dismissed unless, it is instituted within six months from date of accrual of cause of action. The assailed order was no doubt passed on 20th July, 1979. The Plaintiff-Respondent, however, filed an appeal against it before the Board which was dismissed in October, 1983. Counting from the date of dismissal of the appeal, the suit filed on 23rd January, 1984 was obviously filed much before the expiry of six months" period of limitation prescribed for it in Sub-section (2) of Section 31 aforesaid. The sole point for consideration is whether dismissal of appeal would also give rise to a cause of action.

4 Cause of action means the whole bundle of material facts which it is necessary for the Plaintiff to prove in order to entitle him to succeed in the suit. In the restricted sense they mean the circumstances forming the infringement of the right or the immediate occasion for the action. In the wider sense they mean the necessary conditions for the maintenance of the suit, including not only the infraction of the right but the infraction coupled with the right itself. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Cause of action has not been defined but it has always been taken to mean every fact which if traversed, it would be necessary for the

Plaintiff to prove in order to support his right to the judgment of the Court. A cause of action is something more than a ground or unity of title. It not only includes the facts necessary to support the Plaintiff's title, but also the facts which entitle him to relief against a particular Defendant.

5. In this view of the matter, the filing of the appeal against the impugned order before the Board and its dismissal by it in October, 1983 were both required to be set out in the plaint for enabling the Plaintiff Respondent to succeed in the suit. In the absence of averment aforesaid, the Plaintiff-Respondent could be non-suited for having approached the civil court without exhausting the alternative remedy of filing an appeal before the Board. Dismissal of the appeal by the Board does, therefore, give rise to a cause of action and the Plaintiff Respondent was in terms of Sub-section (2) of Section 31 of the Punjab Agricultural Produce Markets Act, 1961, entitled to file the suit within six months of the date of the dismissal of his appeal by the Board. The suit, as held by the learned trial court, was, therefore, within time. The argument advanced in this regard is also wholly futile. Finding recorded by the learned trial court on point of limitation under issue No. 2 is affirmed.

6. In result the Regular Second Appeal also fails and is dismissed with costs.