
(2019) 11 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 6138 Of 2017 (O&M)

Punjab State Co-Operative And Marketing Federation Limited, APPELLANT
Chandigarh

Vs

M/S Khalsa Rice Mills, Dharamkot & Others RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2019) 11 P&H CK 0099

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Naresh Gopal Sharma

Final Decision : Dismissed

Judgement

Amit Rawal, J

CM No.16026-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 18 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6138 of 2017

Appellant-Markfed has not been successful in claiming recovery of ` 36,03,121/- from the defendants along with interest as per terms and conditions of the contract entered into between the parties from the year 1994-95 onwards.

It was alleged that the defendants, vide letter dated 20.09.1994, were supplied numerous quantity of paddy by the plaintiff for custom milling and they were required to deliver the stock upto 28.02.1995, but did not adhere to the schedule of delivery and in such circumstances, claimed the amount by way of compensation.

Defendant Nos.3 and 5 contested the suit on the premise that the Rice Mill-defendant No.1 was not in existence. Defendant No.2 Dalip Singh had already expired before filing of the suit. It was alleged that there was no space with the Government due to the bumper heavy crop for the year 1994-95 and poor quality of the paddy, much less the rice was not as per the specification as laid down by the Ministry of Foods. Execution of the alleged agreement was denied. It was alleged to be an unilateral act.

Defendant No.4 also contested the suit independently by filing written statement.

On the preponderance of the evidence, the trial court dismissed the suit and the appeal taken before the Lower Appellate Court was also dismissed.

Mr. Naresh Gopal Sharma, learned counsel appearing on behalf of the appellant submitted that both the courts below committed illegality and perversity in not appreciating the account statements Ex.P9/1 to Ex.P9/3 which established that there was loss caused to the appellant. There was no denial on behalf of the defendants with regard to the appointment of the arbitrator, matter was also referred to the arbitrator. All the witnesses have been coherent and consistent.

I am afraid, the aforementioned argument is not sustainable, for, arbitrator appointed had returned the reference owing to the existence of "Excepted Clause". Markfed-plaintiff preferred objections under Section 34 of the Arbitration and Conciliation Act, which have also been dismissed. Matter attained finality upto Hon'ble Supreme Court.

Plaintiff failed to place on record any evidence to establish the compensation or incurring of any loss. In the absence of the weighing receipts or quantity shortage certificate or non-supply, the court had no other occasion but to dismiss the suit. No evidence has been placed on record to prove the alleged liability of the defendants.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law, which are based on appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on ground of limitation and as well as on merit.