

(2009) 12 MAD CK 0206
In the Madras High Court
Case No : C.S. No. 134 of 2003

The Cheyyar Co-operative Sugar Mills Ltd.	APPELLANT
Vs	
S.V. Sugar Mills Ltd.	RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Contract Act, 1872 — Section 69

Citation : (2009) 12 MAD CK 0206

Hon'ble Judges : V. Periya Karuppiyah, J

Bench : Single Bench

Advocate : K.S. Gnanasambandam, for R. Balasubramanian, for the Appellant;
Raghul Balaji, for the Respondent

Judgement

V. Periya Karuppiyah, J.—This suit has been filed by the plaintiff for the recovery of a sum of Rs. 34,42,490.95 from the defendant together with interest at the rate of 12% per annum from the date of suit till the date of realisation and for costs.

2. The averments made in the plaint filed by the plaintiff in brief are as follows:

The plaintiff is a Co-operative Sugar Mills Ltd., registered under the Tamil Nadu Co-operative Societies Act. In the year 1995-96, as the yield of Sugarcane was excessive and surplus, the Commissioner of Sugar took a decision to divert the surplus sugarcane available from Public Sector Co-operative Sugar Mills, to the private Sugar Mills with a view to avoid loss by the sugarcane growers. The plaintiff-mill also directed to have a talk with the sugarcane receiving mills in excess and to have a discussion, regarding the sending of excess sugarcane and receiving them for crushing. The plaintiff and the defendant agreed to have the price at the rate of Rs. 485/- per metric tonne on tentative basis, which is subject to revision by the Government under the Sugarcane Control Order 1966. Any provision between parties not to implement the order of the Government, under clause 5-A of the aforesaid Sugarcane Control Order 1966, is against law and any such clause of agreement not to implement the revised rate, which may

be fixed by the Government under the said order is not valid as the same is forbidden by law. The revised price under the said order is to be implemented by the parties notwithstanding the fact that there is a clause in the agreement that no further revision will be made against the price also fixed by the parties. The payment of the sugarcane price has to be made within 14 days from the date of supply, failing which the plaintiff is entitled to the market rate of interest at the rate not more than 19.5% per annum on the outstanding amount. The plaintiff is entitled to the difference in accordance with Sl. No. 20 in respect of S.V. Sugar Mills Ltd., as per the proceedings dated 21.03.1998 on the file of the Sugar Commissioner and Cane Commissioner of Tamil Nadu Government. The demand was made by the plaintiff under the mistaken ground that the rate applicable relates to the plaintiff's mill under Sl. No. 9 of the proceedings dated 21.03.1998 of the Sugar Commissioner and Cane Commissioner of Tamil Nadu. As per the said proceedings, the defendant is liable to pay the difference of the cane price at the rate of Rs. 36.29 per metric tonne. The defendant is liable to pay a sum of Rs. 7,49,040.30 with interest as set out in the statement of accounts filed alongwith the plaint. Accordingly, the sugarcane was diverted by the plaintiff-mill to the defendant-mill at the rate of 25 loads per day for the period commencing from 12.06.1996 to 05.09.1996 to pay a total weight of 20640.406 metric tonnes. The value of the said cane diverted was at Rs. 100.11 lakhs at Rs. 485/- per metric tonne, which was fixed tentatively. As the said amount was not paid by the defendant-mill the plaintiff, made request from time to time for the said payment. Therefore, the defendant is liable to pay the interest for the said amount also. The Director of Sugars in his letter dated 05.02.1997 had intimated that the cane price at State Advised Price applicable to the plaintiff-mill was Rs. 632.50 per metric tonne. Accordingly, the plaintiff had sent a letter to the defendant on 26.02.1997 demanding them to pay the difference amount of Rs. 65,55,056.80 for the total quantity of 20640.406 per metric tonne of cane diverted to the defendant mill for the said season 1995-96. The total value at Rs. 632.50 per metric tonne worked out to Rs. 1,30,55,056.80. Out of the said amount a sum of Rs. 65,00,000 was already paid as on 26.02.1997 and the balance amount of Rs. 65,55,056.80 is liable to be paid by the defendant. Accordingly, a notice was sent by the administrator of the plaintiff-mill on 26.02.1997 demanding the said amount. However, the defendant requested the plaintiff to withdraw the demand made by the plaintiff for payment at the rate of Rs. 632.50 per metric tonne and the defendant was willing to pay only at Rs. 485/- per metric tonne towards full and final settlement. Having said so, a cheque for a sum of Rs. 34,26,597/- was given by the defendant on 27.03.1997 and the same was accepted on the said payment. Several letters were written by the plaintiff requesting the defendant to settle the demand, but they became vain. The understanding between the plaintiff and the defendant at the time of diverting the sugarcane from the plaintiff-mill to the defendant-mill was tentative subject to the final price fixed by the Government and therefore, the defendant is liable to pay the balance sum of Rs. 30,44,459/- alongwith the accrued interest of Rs. 11,33,776/- upto 31.03.1997. The Joint Commissioner of Sugar had

convened a meeting of Co-operative Public and Private Sector Sugar Mills on 22.12.1997 for the purpose of settling the differences between all the sugar mills. The said finding of such joint meeting would show that the agreement entered into between the plaintiff and defendant was not conclusive agreement in respect of the price. Similarly on 06.09.1999, a meeting was held consisting of the Commissioner of Sugar, Joint Commissioner of Sugar, Additional Director of Sugar, Deputy Director of Sugar and it was decided that the cane price cannot be anything less than the statutory minimum price fixed under Clause 5-A of the Sugarcane Control Order 1966. The said meeting decided that the Private mills should pay either, the price fixed under Rule 5-A or the mutually agreed price, whichever is higher for the diverted Sugarcane. Thereafter, the plaintiff made a demand through his letter, dated 23.10.1999, demanding the defendant to honour their claim of Rs. 25,01,691.50. The plaintiff had also sent a reminder on 27.11.1999 but there was no payment in answer to the claim made by the plaintiff.

3. Therefore, the plaintiff has prayed for a judgment and decree against the defendant to pay a sum of Rs. 34,42,495/- together with interest at 12% per annum from the date of suit till the date of realisation with costs.

4. The contentions of the defendant as stated in the written statement would be as follows:

(i) The suit is not maintainable and is liable to be dismissed in limine since it is barred by limitation.

(ii) No cause of action has arisen for filing the suit, since the plaintiff claimed the payment on the ground that the Central Government notified price is higher than what was agreed between the parties. Actually, the informed price of the Central Government is lesser than the contractual price and on that reason, the suit has to be dismissed and the defendant is a company which commenced its crushing operations in January 1996. During 1995-96 crushing season, the Cooperative Sugar Mills had surplus sugarcane over and above their crushing capacity.

iii) The over supply of sugarcane led to uneconomical recovery rates in respect of such sugar mills. Insofar as the defendant was concerned, it had commissioned its maiden season only on 24.01.1996, which itself was delayed by two years. The defendant was first required to draw registered cane from its registered cane growers in its command area. However, due to surplus availability of sugarcane with the cooperative sugar mills, the same was unanimously decided to be sold to private mills on the understanding that the rates could be fixed between the selling mill and the purchasing mill. Therefore, even though it was beyond the capacity of the defendant, the defendant was to receive the sugarcane from the plaintiff. After having discussions with the plaintiff, it was agreed that the sugarcane would be purchased by the defendant at a price of Rs. 485/- per metric tonne as a final price and that there would not be any further claims in that regard. The same was agreed to and a letter in that regard was sent by the

plaintiff. As evident from its letter dated 11.06.1996, the price was specifically fixed at Rs. 485/- per metric tonne with the record of the understanding that there would be no further claims. The defendant received the sugarcane from the plaintiff and purchased the same and had admittedly made payments for the sugarcane lifted from 12.06.1996 upto 05.09.1996 for a total quantity of 20,640 metric tonnes at the contracted rate. Thereafter, the plaintiff started making claims contrary to the terms of the contract, calling upon the defendant to make payments in terms of the Statutory Minimum Price (SMP) as finally declared as 5-A price under the Sugarcane Control Order as also demands for payment in terms of the State Advised Price, since both the said prices were higher than the price which was agreed between the parties. The defendant flatly refused such demands, since the same was contrary to the terms of the contract. The defendant states that the present suit has been filed on the ground that the demand has to be made under the terms of the Sugarcane Control Order when the Sugarcane Control Order itself is wholly inapplicable to the transactions between the plaintiff and the defendant. The Sugarcane Control Order specifically provides that it is applicable only to a sugarcane grower which include the sugarcane growers' cooperative society or the sugarcane growers' association. In the present case, the sale of the sugarcane is not by any sugarcane grower to the defendant but by the plaintiff, which is not covered by such definition. It is a sale that is not governed by the Sugarcane Control Order and as such the plaintiff is entitled only to the contractually fixed payment, for which the payment has been made by the defendant.

iv) Admittedly, the last of the payments was made as far as back in 27.03.1997 and the plaintiff claims that the suit is within the period of limitation calculated from the circular issued by the Commissioner of Sugar and the Cane Commissioner dated 21.03.1998, declaring the 5-A price under the Sugarcane Control Order, 1966. When the Sugarcane Control Order itself has no applicability to the transactions between the parties herein, any notification issued under the said Order cannot in any manner enlarge the period of limitation and the present suit is clearly barred by limitation.

v) Without prejudice to the above, even if the claim for payment of the price as declared by the Central Government is held to be applicable to the transaction between the parties herein, the same can only be the price as declared by the Central Government u/s 5-A. which is contrary to the claim of the plaintiff and it is only Rs. 425/- per metric tonne as set out in the Gazette Notification dated 16.07.2002 for the sugar year 1995-96. Therefore, the said minimum sugarcane price of Rs. 425/- per metric tonne together with the additional price for the sugar year 1995-96 of Rs. 7.39 per metric tonne as evident from the communication dated 27.07.1998 would make it clear that the total price even in terms of the Sugarcane Control Order as claimed by the plaintiff is only Rs. 432.39(Rs. 425.00 + 7.39) per metric tonne. Therefore, the defendant has paid more than the SMP price + 5A price to the plaintiff and if the plaintiff's claim is taken to be correct, the plaintiff would have to refund excess price that has been

paid to it. The defendant, going by the plaintiff's claim, would be entitled to the refund. In view thereof, the entire claim of the plaintiff is without any basis and the suit is vexatious.

vi) Without prejudice to the stand of the defendant that the Sugarcane Control Order and the price fixed by the Central Government are held to be applicable to the present transaction, it would be the plaintiff who would have to refund to the defendant at the rate of Rs. 52.61 per metric tonne, being the difference between the contracted rate of Rs. 485/- per metric tonne and the price fixed under the Sugarcane Control Order together with the additional price, both totaling to Rs. 432.29 per metric tonne.

vii) The defendant has already stated that the sale of sugarcane by the plaintiff to the defendant is a subject matter of a separate contract not governed by the Sugarcane Control Order and a final price of Rs. 485/- per metric tonne was arrived at, which the plaintiff itself in its letter has stated to be final and has specially stated that there would not be any further claims. Therefore, the claim of the plaintiff that the said rate was only tentative is false. The defendant states that the provisions of the Sugarcane Control Order are inapplicable to the present transactions and assuming, but without admitting, that the Sugarcane Control Order is applicable to the present case, it would infact be the plaintiff which would have to make payment to the defendant of a sum of Rs. 10,85,870/- calculated being the difference between the rate paid by the defendant and the price of sugarcane fixed under the Sugarcane Control Order. The claim in respect of payment and the alleged claim for interest are also without any basis, since there was no such contractual term for interest. It is denied that the defendant is entitled to any difference in the price agreed upon and the price declared and the defendant is not liable to pay the difference of Rs. 26.39 per metric tonne and infact no further payment is due and payable and if the plaintiff's claims are taken to be correct, it would be the plaintiff, who would have to refund money to the defendant. It is denied that the price agreed upon at Rs. 485/- per metric tonne is tentative and such a claim is contrary even to the plaintiff's own letters.

viii) The demand for payment of State Advised Price is without any basis. Further more, the State Advised Price in any event not a binding price and no sugar factory is bound for payment of such price even to a sugarcane grower and therefore, all claims made on the said basis are contrary to law. The fixation cannot be done, since it is purely a private contract not governed by the Sugarcane Control Order and therefore, any claim in that regard as also the claim for interest is without any basis.

ix) In any event, no order or decision was ever taken contrary to the defendant's stand that it was liable to pay only the agreed price and even if such order or decision was taken, it is not binding. The defendant is in any event not bound to concede the demand made by the plaintiff contrary to the contract and the law. It is denied that the Statutory Minimum Price is applicable for the present

transaction. In any event, assuming without admitting that the same is applicable to the present case, it would be the plaintiff which has to refund money to the defendant as already set out. In view of the express position of the defendant, the defendant did not comply with the illegal demand of the plaintiff for additional payment. It is most humbly prayed that this Court may be pleased to dismiss the above suit being barred by limitation and also being devoid of merits and to award costs to the defendant.

5. On the above pleadings, this Court had, on 29.01.07, framed the following issues for trial:

i) Whether the Sugarcane Control Order is applicable to the transaction involved in the suit between the parties ?

ii) Whether the suit is filed in time ?

iii) Whether the plaintiff is entitled to any difference in the price agreed upon and the price declared, and whether the defendant is not liable to pay the difference of Rs. 36.29 per metric tonne ?

iv) Whether there is any cause of action in filing the suit?

v) Whether the plaintiff is entitled to the suit claim ?

6. Heard, Mr. K.S. Gnanasambandam, learned Counsel for the plaintiff and Mr. Raghu Balaji, the learned Counsel for the defendant.

7. Issue No. (ii):-The suit had been filed by the plaintiff against the defendant seeking for the recovery of a sum of Rs. 34,42,490.95 together with interest at the rate of 12% per annum from the date of suit till the date of realisation with cost. The said amount claimed was calculated by the plaintiff towards the difference of the price amount payable by the defendant to the plaintiff for the sugarcane supplied during the year 1995-96. The total quantity of sugarcane supplied by the plaintiff to the defendant was to the tune of 20640.406 metric tonnes.

8. The plaintiff claimed the value at Rs. 632.50 per metric tonne for the entire quantity of 20640.406 metric tonnes of sugarcane supplied by the plaintiff to the defendant. Accordingly, it was worked out to Rs. 1,30,55,056.80. The plaintiff had deducted a sum of Rs. 65,00,000/- paid by the defendant as on 26.02.1997, and had calculated a sum of Rs. 65,55,056.80 towards the balance amount. However, the plaintiff received a cheque dated 27.03.1997 for a sum of Rs. 34,26,597/- from the defendant. According to the plaintiff, the defendant was liable to pay a further sum of Rs. 30,44,459/- with accrued interest at Rs. 11,33,776/- calculated upto 31.03.1997. In short, the claim of the plaintiff would be for a difference sum of Rs. 147.50 per metric tonne for the entire quantity of 20640.406 metric tonnes of sugarcane supplied by the plaintiff to the defendant. According to the claim of the plaintiff, the difference amount of Rs. 147.50 per metric tonne accrues from the date of issuance of a letter dated 05.02.1997, by

the Director of Sugar intimating that the cane price at State Advised Price applicable to the plaintiff-mill was at Rs. 632.50 per metric tonne. The State Price of the sugarcane as intimated by the Director of Sugar was supported by a circular bearing RC. No. 26380/D1/1997 dated 21.03.1998 issued by the Commissioner of Sugar and Cane Commissioner in exercise of power conferred in Sub-clause 2 of clause 5-A under Sugarcane Control Order 1966, as amended by the Sugarcane Control Amending Order 1974 and 1975 read with G.O.MS. No. 1330/Agri(SC)/Dept, dated 29.08.1975. It has been also pleaded by the plaintiff in the plaint that this suit was filed within three years from the date of the said circular dated 21.03.1998 and therefore, it is not barred by limitation.

9. However, the defendant would contend that the fixation cannot be done by the Government Officers, since the agreement entered into between the plaintiff and defendant was purely on a private contract, not governed by Sugarcane Control Order and therefore, the suit filed on the basis of the circular issued by the Commissioner of Sugar cannot be made applicable for extending the period of limitation.

10. As far as the applicability of the Sugarcane Control Order as well as the specifications available in circulars and notifications are concerned, we have to go through the agreement entered into between the plaintiff and the defendant for the purpose of supplying the surplus sugarcane from the plaintiff sugar mill to the defendant sugar mill. The said agreement reached in between the plaintiff and the defendant is produced in Ex.P6. In the said document Ex.P6, dated 11.06.1996, a sum of Rs. 485/- per metric tonne was agreed in between the plaintiff and defendant. The said acceptance letter would contain an unconditional undertaking from the plaintiff that they would agree to supply 25 loads per day to the defendant-mill at a cane price of Rs. 485/- per metric tonne without any future claim. Whether the surplus sugarcane agreed to be supplied by the plaintiff could be directed by the any fixation of future price by the Sugarcane Control Order or by the Commissioner of Sugar is the crucial question. For that, we have to peruse the earlier order passed by the Authorities concerned, directing the plaintiff to supply excess sugarcane to the private sugar mills like the defendant. Ex.P1 is the order for diversion of surplus cane issued by the Commissioner of Sugar. As per the clause 5-A, it has been categorically instructed that the cane receiving mill (defendant) need not pay development charges of Rs. 25/- per metric tonne to cane and also additional cane price, other than 5-A prices. Similarly, in the clause 5-A it has been categorically referred that the cane receiving mill and the sending mill may discuss among themselves and finalise a mutually agreed cane price taking into account, the economics of crushing the surplus cane in their mill vice-versa diversion to the other mill. It is further instructed that in any case the cane growers, who are diverting the cane to the other mills, should be ensured to the cane price, subsidy, etc., which would be getting when they supply their cane to the parent mill. Therefore, we could see that the additional cane price has to be claimed for the diverted surplus cane other than the 5-A price. Similarly, the cane growers were

exempted from the payment made by the receiving mills.

11. The sending mill is directed to ensure the cane price subsidies payable to the cane growers. Therefore, it is clear that subject to this order Ex.P1, the supply of excess sugarcane was entered into between the plaintiff-mill and the defendant-mill. Accordingly, the excess sugarcane of 20640.406 metric tonnes was supplied by the plaintiff mill to the defendant mill. Therefore, the combined reading of Ex.P1 and Ex.P6 would go a long way to show that there cannot be any future claim towards additional price by the plaintiff to the defendant except under clause 5-A price. It has also been categorically shown by the plaintiff that the price during the year 1995-96 for one metric tonne of sugar cane was fixed at Rs. 632.50 per metric tonne by the Commissioner of Sugar. The said additional price was fixed at Rs. 632.50 per metric tonne as per Ex.P8. Since the agreement reached in between the plaintiff and the defendant for supply of excess sugarcane from the plaintiff mill to the defendant mill concluded through Ex.P6 on the basis of the directions given by the Commissioner of Sugar in Ex.P1, the said contract cannot be termed as an independent or private contract, but subject to the directions given by the Commissioner of Sugar in Ex.P1. Therefore, the instructions given in Ex.P1 to retain the applicability of clause 5-A price would go a long way to show that the fixation of price as ordered by the Commissioner of Sugars in Ex.P8 may be made applicable to the said contract. According to Ex.P4, as far as the fixation of additional cane price for the season 1995-96 under clause 5-A of the Sugarcane Control Order 1966, issued by the Central Government, which has been informed by the Commissioner of Sugar and Cane Commissioner of Tamil Nadu on 21.03.1998, is concerned, the additional cane price to be paid by the defendant company, which has been notified as Rs. 36.29 per metric tonne. The original statutory minimum cane price for the said period 1995-96 was fixed at Rs. 485/- per metric tonne. The said amount was entered into between the plaintiff and the defendant for the diverted sugarcane as per Ex.P6. The specification order passed by the Director of Sugar through Ex.P8 would go to show that the plaintiff was entitled to Rs. 632.50 per metric tonne for the total quantity of 0.21 L.T.(20640.406 M.T). The said order was dated 05.02.1997. The claim was made by the plaintiff on the basis of the said order passed by the Director of Sugar, whereas the original order passed by the Director of Sugar, upon which the agreement in between the plaintiff and the defendant (emulator) was made, would go to show that the additional cane price fixed on any account will not be applicable to the contract. Therefore, the fixation of additional price in Ex.P8 is not applicable. Ex.P6 also would go to show that no future additional claim could be made by the plaintiff except 5-A price. Therefore, the said contract is subject to 5-A price as per Ex.P1. The order passed by the Commissioner of Sugar in Ex.P8 is not an order passed under clause 5-A price. Only the Central Government is empowered to fix the 5-A price which was done promptly in Ex.P4. As we have already discussed the contract in between the plaintiff and defendant was subject to Ex.P1 order and, therefore, per the fixation of 5-A price, Ex.P4 is the cause of action for the

claim of additional cane price fixed by the Central Government. Therefore, the suit is filed within three years from the date of Ex.P4, is certainly within the period of limitation. Accordingly, this issue is decided in favour of the plaintiff.

12. Issues (i) (iii) & (iv): It has already been discussed that the claim of the plaintiff was based upon the notification issued by the Government under Ex.P4 dated 21.03.1998. It is also seen that the contract was entered into between the plaintiff and defendant in accordance with Ex.P6 subject to the order passed by the Director of Sugar in Ex.P1. It is already found that Sugarcane Control Order under clause 5-A price will alter the price of the diverted sugarcane from the plaintiff-mill to the defendant-mill. It is an admitted case that during 1995-96, crushing period, the plaintiff mill had supplied 20640.406 metric tonnes of excess sugarcane and the amount was calculated at Rs. 485/- per metric tonne. As per Ex.P6, the 5-A price will be altering the price of the excess sugarcane supplied by the plaintiff mill to the defendant mill. Therefore, the 5-A price, even though fixed for sugarcane growers, it is applicable to the defendant company also for excess sugarcane received by it for which the price has to be paid by the said sugar mill.

13. Accordingly, the original price was fixed for a minimum cane price for the season 1995-96 at Rs. 485/- per metric tonne. The additional cane price now worked out as per clause 5-A price of the Sugarcane Control Order 1966, during 1995-96 season, was fixed at Rs. 36.29 per metric tonne. The clause in Ex.P1 would go to show that by virtue of fixation of 5-A price, the sugar cane growers could have given all benefits payable by receiving sugar mills that has been ensured in Ex.P1. Therefore, this amount which would be denoting to the benefit of sugarcane growers has to be paid by the defendant mill to the plaintiff mill for the sugar cane received by it.

14. The learned Counsel for the plaintiff would submit in his argument that the plaintiff's sugar mill had paid all the payment to the sugarcane growers at Rs. 632.50 per metric tonne and the plaintiff who had paid the said amount on behalf of the defendant to the sugarcane growers should not be deprived of the said amount. He would draw the attention of the Court that u/s 69 of the Indian Contract Act the plaintiff company is entitled for reimbursement for the payment made to the sugarcane growers paid on behalf of the defendant company. He has cited a judgment of this Court made in AIR 1961 Madras 170 in between Thirumala Subbu Chettiar v. Rajammal. The relevant passage would run as follows:

The plaintiff was interested in the payment of money because without such payment he could not obtain possession of the property which he had purchased. This amount which he paid, the defendant was bound by law to pay because he had undertaken to pay it under the sale deed relating to the property in the A schedule.

15. Yet another judgment of this Court in between Chenthilnathan Chettiar v. Peri

V. SP. Manickam Chettiar reported in AIR 1966 Madras 426 was cited by the learned Counsel for the plaintiff. The relevant portion runs thus:

The payment to the third party must be because of the interest the plaintiff had in the payment; it must not be an officious and voluntary one. The scope of the section is manifest. It affords to the person, who pays money because he has himself an interest in making the payment, who, rather than he, could have been made liable at law to make the payment. It has been held that the words "bound by law to pay" in Section 69 do not exclude those obligations of law which arise inter parties whether by contract or tort and are not confined only to those public duties, which are imposed by statute or general law.

16. In both the aforesaid judgments the judgment of Privy Council reported in AIR 1950 Privy Council 99 has been referred. The relevant passage from the text of privy council would be as follows:

Certainly the Common law of England afforded a right of indemnity to one who had paid "under compulsion of law" against the true obligor without limiting the circumstances in which the latter's liability had arisen. Certainly too, there is authority in the Courts of India for the proposition that "bound by law" covers obligations of contract or tort. Accepting this interpretation, as their Lordships do, they hold that the act of payment by the appellant company gave to it a right of action against him, both the plaintiffs in this suit ought to have been held to have good, though alternative, rights of action.

17. On a careful reading of the passage mentioned above we could see that the plaintiff had claimed the amount as if they were paid to all the sugarcane growers who had supplied the sugarcane to the plaintiff mill and in turn diverted to defendant mill. The plaintiff had not produced any list of sugarcane growers, benefited by the payment made by the plaintiff as per the direction of the Sugarcane Commissioner. The evidence of PW1 would go to show that they have paid a sum of Rs. 632.50 per metric tonne for the sugarcane in addition to transport charges and other expenses. The said oral evidence of the plaintiff was not supported by the actual payment made through documents. No doubt, the plaintiff mill is supposed to keep documents for payment of such money payable to the sugarcane growers, whose sugarcane was diverted by the plaintiff mill for crushing to the defendant mill. In the plaint filed by the plaintiff, he had claimed the difference amount as per the order of the Director of Sugar mentioned in Ex.P8 and stated to be the price that he is entitled to get payment from the defendant. The said order was passed by the Director of Sugar on 05.02.1997. It has been specifically directed that it is applicable for the diverted sugar from the plaintiff mill to the defendant mill to the tune of 0.21 L.T. by virtue of the said order he had passed the claim. However, in the evidence of PW1 it has been categorically mentioned that the defendant mill has to pay a sum of Rs. 521.29 per metric tonne as the 5-A price fixed for the defendant mill. The plaintiff has not pleaded in the plaint that he is entitled to the difference between the agreed sum in Ex.P6 and the 5-A price mentioned as Rs. 521.29 in Ex.P4. Now, as per

the evidence of PW1, an excess sum of Rs. 36.29 per metric tonne is claimed from the defendant. In the earlier discussion it has been found that the suit has been filed by the plaintiff on the basis of the declaration of 5-A price under Ex.P4 dated 21.03.1998 and therefore, the suit claim was within the period of limitation. However, the evidence of the defendant would go to show that there is no agreement entered into between the plaintiff and defendant to pay as per 5-A notified price. He would further depose that they were given liberty to negotiate with defendant to arrive a price for the defendant and it was arrived at Rs. 485/- per metric tonne and at that time the defendant told the plaintiff that the defendant was not willing to pay more than Rs. 485/- per metric tonne. There is no dispute that the 5-A price fixed by the Central Government is payable to the sugarcane growers. It differs from mill to mill. According to Ex.P4 notification dated 21.03.1998, the additional cane price declared as per clause 5-A of the Sugarcane Order for the year 1995-96 season, for the defendant mill was at Rs. 36.29, where as for the plaintiff mill, it has been declared at Rs. 29.84. The price paid by the said mills concerned would be at Rs. 521.29 and Rs. 514.24 respectively. There is no evidence to show that whether the plaintiff have paid to the cane growers at Rs. 514.24, the 5A price fixed by the Government for the plaintiff mill or at Rs. 521.29, the 5A price fixed for the defendant mill or at Rs. 632.50 which was the price fixed by the Commissioner of Sugar for the diverted sugarcane, as per Ex.P1.

18. The additional cane price fixed under clause 5A sugarcane order for the year 1995-96 season, is produced as Ex.P4 and that was issued on 21.03.1998. In the said order, the additional cane price for paying towards sugarcane growers was fixed at Rs. 29.84 per metric tonne and the total amount was fixed at Rs. 514.24 per metric tonne. If at all, the plaintiff is entitled to the said amount payable by the defendant mill for the diverted sugarcane, since it could be the additional expenditure incurred by the plaintiff mill for the payment made to its sugarcane growers as per Ex.P4. The plaintiff cannot claim additional sugarcane price under clause 5A price fixed for the defendant's sugarcane order at Rs. 36.29 and for a total sum of Rs. 529.29 per metric tonne. Therefore, the plaintiff is entitled to a difference amount as per (Ex.P4), the order passed by the Government under clause 5A of Sugarcane Order, which would be the difference of price in between the sum of Rs. 514.24 and Rs. 485/-, the contractual rate per one metric tonne for the entire quantity supplied by the plaintiff mill. When we calculate the difference of the amount payable as per Ex.P4 order, it would come to a total sum of Rs. 6,35,013.60 for a total quantity of 20640.406 metric tonnes supplied by the plaintiff as per the order of the Sugarcane Commissioner. The claim for the payment under clause 5A price at Rs. 36.29 by the defendant is not permissible since the plaintiff it has claimed for re-imburement of the amount paid by the plaintiff to its sugarcane growers.

19. It is a settled principle that no one can enrich himself at the cost of others. In pursuance of the said doctrine also, the plaintiff is entitled to the said claim. In that aspect also the plaintiff's claim for the aforesaid amount can be ordered.

Accordingly, all the three issues are decided, in favour of the plaintiff.

20. Issue (v):

The final claim of the plaintiff was said to have been effected through Ex.P12 letter and it shows that the plaintiff is not entitled to any amount thereafter. However, it has been discussed in the earlier issues that the suit was filed in time and the plaintiff was entitled to the suit claim for a sum of Rs. 6,35,013.60/- only and the claim of the plaintiff at Rs. 34,42,490.95/- cannot be found as the payment due by the defendant to the plaintiff. Admittedly, the claim was made by the plaintiff on several occasions. However, the said quantum has been fixed only by virtue of Ex.P4 order dated 21.03.1998. Therefore, the plaintiff is entitled to claim interest only from the date of the said order at 12% per annum till the date of suit and thereafter at 9% till the date of decree and thereafter at 6% till the date of realisation with proportionate cost. Accordingly, this issue is decided in favour of the plaintiff.

21. In the result, the suit is decreed in favour of the plaintiff against the defendant for a sum of Rs. 6,35,013.60 with interest at 12% from the date of order of the Commissioner of Sugar dated 21.03.1998, till the date of filing of the suit and thereafter, at 9% per annum till the date of decree and thereafter, at 6% till the date of realisation with proportionate costs.