CGHC010115132009 2026:CGHC:43049

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 166 of 2009

{Arising out of judgment and decree dated 29-4-2009 in Civil Suit No.1-B/2008 of the 2nd Additional District Judge, Raipur}

Judgment reserved on: 17-9-2026

Judgment delivered on: 5-10-2026

Judgment (Full) uploaded on: 5-10-2026

Food Corporation of India an Undertaking owned & control by the Central Government, registered office at New Delhi, at present District Office, Madina Building, Jail Road, Raipur (CG)

(Defendant)
... Appellant

versus

M/s Suraj Bessan & Rice Mill, a partnership firm, registered under the Indian Partnership Act, 1932, having office at 21/367, Ganjpara, Raipur (CG)

(Plaintiff)
... Respondent

For Appellant	:	Mr. B.P. Gupta, Advocate.
For Respondent	:	Mr. B.P. Sharma and Ms. Mitisha Kotecha, Advocates.

Single Bench: -
Hon'ble Smt. Sushma Sawant, J.

C.A.V. Judgment

1. Invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, the appellant herein/defendant has preferred this appeal challenging the judgment & decree dated 29-4-

2009 passed by the 2nd Additional District Judge, Raipur in Civil Suit No.1-B/2008 (M/s Suraj Besan and Rice Mills v. Food Corporation of India), by which the learned Additional District Judge has decreed the suit for recovery with cost.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the trial Court.)

Factual Matrix

-: Admitted Facts :-

3. It is an admitted fact in this case that the **appellant herein/ defendant – Food Corporation of India (FCI)** had called for tenders for the sale of damaged grains, and the **respondent herein/ plaintiff firm** submitted tender for 1,280.41 metric tons of food grains. The **respondent herein/plaintiff**, which is a partnership firm, was informed by telegram on 11/11/1998 regarding the acceptance of his tender for 11,415 quintals of damaged grains and it was also accepted that the value of the aforesaid food grains was ₹ 65,38,110/-.

-:Case of the Respondent/Plaintiff before the Trial Court:-

4. The case of the respondent herein/plaintiff firm, in brief, is that the respondent/plaintiff is a partnership firm engaged in production and sale of high-quality pulses and cattle feed, and the defendant is a Central Government-owned and incorporated entity. In the month of August, 1998, the appellant/defendant issued a tender bearing No.QS-

9(3-B)/97-98, to clear the damaged goods in all depots at Raipur. The tender was scheduled to be opened on 28-9-1998, but it was extended to 12-11-1998. The appellant/defendant FCI informed the respondent/ plaintiff firm through a letter dated 11-11-1998, that the tender submitted by it had been accepted. The respondent/plaintiff firm received the said letter on 16-11-1998. The respondent/plaintiff firm thereafter sent a letter on 17-11-1998, to the defendant FCI requesting payment of tender amount in installments and the waiver of commercial tax due to the high tender amount. On 18-11-1998, the plaintiff firm again sent a letter to the defendant FCI informing it to remove the commercial tax otherwise there would be delay in payment of the amount and that the plaintiff firm would not be responsible for payment of interest.

5. Further case of the respondent/plaintiff firm is that on 23-11-1998, the plaintiff firm was informed through fax that it would have to pay the commercial tax, upon which on 24-11-1998, the plaintiff firm sent a notice to the defendant FCI through its lawyer that the commercial tax imposed in connection with the said tender was wrong and it should be removed. On 4-1-1999, the defendant FCI informed the plaintiff firm over the phone about the removal of the commercial tax. On 7-1-1999, the first installment of the tender amount of ₹ 25,00,000/- was deposited in the Raipur Branch of the defendant FCI, and on 8-1-1999, the second installment of the tender amount of ₹ 30,00,000/- was deposited in the Raipur Branch of the defendant FCI, and finally, on 14-1-1999, the remaining amount of ₹ 10,38,110/- was deposited.

6. It is also the case of the respondent/plaintiff firm that the order bills issued by the defendant FCI are numbered as 7479 to 7493, in which the amount of commercial tax was included by the defendant organization, and no details regarding the amount of interest and storage charges were given. On 22-2-1999, final bill was presented to the defendant FCI, in which the amount was received under 11,414 quintals 18 Kgs. and they were given 10,944 quintals 2 Kgs.. The said goods were supplied and a bill of ₹ 4,54,741/- for the difference amount of the said goods was presented before the defendant in which ₹ 5,000/- was deposited by the defendant as security deposit. The amount of difference for the raw material supplied by the plaintiff firm was demanded from the defendant FCI several times, but the defendant FCI did not pay the amount and since the other firm was being given complete goods by giving a discount in the amount of interest, the plaintiff firm has filed suit against the defendant FCI for recovery of the outstanding amount along with interest.

-:Written Statement of the Respondent/Defendant before the Trial Court:-

7. Except the admitted facts in the written statement submitted by the defendant FCI, all the remaining major allegations made in the plaint have been denied and it has been denied that as per the contract between the plaintiff and the defendant, the plaintiff has no right to go against the terms of the contract. The suit presented by the plaintiff is time barred. The plaintiff's suit is not maintainable, as the plaintiff has not submitted the names, addresses and registration of other partners.

Recovery of interest from the plaintiff under the terms of the contract is as per the law. Therefore, it is prayed that since the plaintiff is not entitled to get any relief, the plaintiff's suit be dismissed.

8. The Trial Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under: -

क्र.	वाद प्रश्न	निष्कर्ष
1)	क्या वादी फर्म भागीदारी अधिनियम 1932 के तहत रजिस्टर्ड होकर वादी द्वारा समस्त भागीदारों के नाम, पते और इस संबंध में रजिस्ट्रेशन पेश न किये जाने से वाद पोषणीय नहीं हैं ?	"दस्तावेज पेश है, अतः वाद के अपोषणीय होने को प्रश्न उत्पन्न नहीं हैं ।"
2)	क्या वादी प्रतिवादी से 2,79,987/– रूपये क्षतिपूर्ति मय ब्याज पाने का पात्र हैं?	वादी प्रतिवादी से कुल 2,46,960/– रूपये प्राप्त करने का पात्र हैं ।
3)	क्या वादी का वाद अवधि बाह्य हैं?	" नहीं"
4)	सहायता एवं व्यय?	वादी का वाद अंशतः स्वीकार किया जाकर वादी के पक्ष में आज्ञाप्ति पारित की गयी ।

9. Parties were given opportunity to adduce evidence and after completion of trial, the suit of the respondent herein/plaintiff firm has been decreed with cost on the ground that there was no reason for deducting the penal interest for delayed payment and storage charges, and the decree was along with 12% interest per annum totaling to ₹ 2,46,960/- vide **judgment dated 29-4-2009**, being aggrieved against which this appeal has been filed on the following grounds: -

(i) The judgment and decree under challenge are contrary to facts, evidence and law.

(ii) The plaintiff witness has categorically stated that he was in the knowledge of the tender document and has understood the same,

which incorporates the conditions for penal interest and storage charges.

(iii) It is not in dispute that there was a delay in the installment payment by the respondent/plaintiff.

(iv) The learned Trial Court ought to have held that penal interest charged on the delayed payment is not disputed fact because it has been accepted by both the parties.

(v) The learned Trial Court ought to have held that in terms of the contract between the parties stipulated in the tender document, the appellant/defendant is authorised to charge penal interest and the respondent/plaintiff is under contractual obligation to pay the same.

(vi) It is evident from the delivery challans (Exhibits P-17 to P-31) that there is free delivery period after which storage charges are payable.

(vii) The learned Trial Court ought to have held that as per the terms of contract both in the tender and delivery challan, the appellant/ defendant is entitled to levy storage charges for delayed lifting and the respondent/plaintiff was under contractual obligation to pay storage charges.

(viii) The respondent/plaintiff is bound by the principle of estoppel.

(ix) 12% interest on the decretal amount is excessive.

-:Proceedings before the Appellate Court:-

10. Both the parties were heard on this appeal. The evidence and documents available in the record of the Trial Court have been perused.

-:Question to be considered in this Appeal:-

"Whether the judgment & decree passed by the Trial Court are just and proper and call for interference in appeal?"

-:Details of evidence and documents available before the Trial Court:-

11. Before the Trial Court, **Atul Goyal (PW-1)** has been examined on behalf of the respondent/plaintiff, whereas, **Smt. Lekha Chatterjee (DW-1)** has been examined on behalf of the appellant/defendant. The plaintiff has exhibited as many as 48 documents vide **Exs.P-1 to P-48**, however, the defendant has exhibited only one document **Ex.D-**1 i.e. No Demand Certificate.

-:Argument of the Appellant/Defendant FCI:-

12. On behalf of the appellant/defendant FCI, detailed submissions have been advanced by Mr. B.P. Gupta, learned counsel, in consonance with the pleadings contained in the written statement. The principal contention is that all the deductions made were in accordance with the terms and conditions of the accepted tender. It is further contended that the learned Trial Court not only failed to take into consideration the admitted facts on record, but also awarded interest arbitrarily and contrary to the applicable provisions. It is, therefore, submitted that the impugned judgment and decree cannot be sustained.

-:Argument of the Respondent/Plaintiff Firm:-

13. Per contra, Mr. B.P. Sharma, learned counsel appearing for the respondent/plaintiff, while supporting the judgment and decree passed by the learned Trial Court, submitted that the findings recorded therein are based on a proper appreciation of the evidence and material available on record. It was contended that the deductions made by the appellant/defendant FCI were not justified under the terms and

conditions of the accepted tender and that the Trial Court has rightly awarded the amount found due to the plaintiff along with interest in accordance with law. It was, therefore, submitted that the impugned judgment and decree call for no interference in the present appeal.

-:Analysis of the Appellate Court:-

14. In view of the admitted facts, the controversy in the present case is confined to a limited compass. From the pleadings and evidence led by both the parties, it emerges that the dispute arose when the appellant/ defendant started making deductions towards Commercial Tax from the bills of the respondent/plaintiff.

15. During the course of arguments before this Appellate Court, the appellant/defendant FCI has principally contended that the deductions towards tax were made in accordance with law and that the deductions towards charges for failure to lift the goods from the warehouse within the stipulated time, were also made in terms of the conditions of the tender, marked as **Ex.P-2**. It is, therefore, contended that the deductions made from the respondent/plaintiff's bills were lawful and in accordance with the terms governing the transaction.

16. It has further been contended that the interest awarded by the learned Trial Court on the amount found due is excessive and that, having regard to the provisions of Section 34 of the Code of Civil Procedure, the rate of interest ought not to exceed 6% per annum.

17. Significantly, the appellant/defendant FCI has also raised an objection to the document marked as **Ex.P-1**, contending that the plaintiff has

been authorised under the said document to recover a particular amount ₹ 1,79,987 /-, whereas the present suit has been instituted for recovery of an amount ₹ 2,79,987/- exceeding the amount mentioned therein.

18. This objection may be considered first. It is true that the amount mentioned in the said document is lesser than the amount claimed in the suit. However, this circumstance by itself is of no consequence. What is material is that **Ex.P-1** authorises the plaintiff to institute the civil proceedings in question for recovery. The precise amount recoverable may vary upon finalisation of the accounts and determination of the amount actually found due. Therefore, mere difference between the amount mentioned in the authorisation **Ex.P-1** and the amount ultimately claimed in the suit does not invalidate the authority to institute the proceedings.

19. Viewed in the context of the other material on record, the oral evidence of the plaintiff witness **Atul Goyal (PW-1)**, read along with the documentary evidence produced by it, makes it apparent that, initially, the transactions were being carried out in accordance with the accepted tender terms. It was only when deductions towards Commercial Tax began to be made from the plaintiff's bills that the plaintiff raised objections and started corresponding with the appellant/defendant in writing. It appears that this correspondence perhaps caused some discomfort to the officers of the appellant/defendant.

20. In this regard, the admissions made by the witness of the appellant/ defendant, **Smt. Lekha Chatterjee (DW-1)**, in her cross-examination are of considerable significance. In paragraphs 10 and 15 of her cross-examination, she has admitted that the accepted tender, marked as **Ex.P-2,** contains no stipulation providing for deduction towards Commercial Tax. In paragraph 15, she has further admitted that Commercial Tax was deducted from the bills of the respondent/ plaintiff, although such tax was, in fact, not payable. Even assuming, for the sake of argument, that there was no such stipulation in the tender, the deduction could nevertheless have been justified if it was mandated under the applicable statutory rules. However, on this aspect also, the cross-examination of the said witness, particularly paragraph 19, assumes significance.

21. It emerges from her admission that the Commercial Tax deducted from the respondent/plaintiff's bills by the appellant/defendant was not deposited with the Commercial Tax Department. This circumstance clearly indicates that the amount so deducted was not lawfully deductible; otherwise, there would have been no occasion for the **appellant/defendant FCI** to retain the amount without depositing it with the competent department. As regards the charges levied upon the **respondent/plaintiff firm** for allegedly failing to lift the goods from the warehouse within the stipulated time, the last line of paragraph 14 of the cross-examination of the same witness is significant. It has been admitted therein that the **appellant/ defendant FCI** could not supply the prescribed quantity of goods to the **respondent/plaintiff firm**.

22. It is, therefore, apparent that the deduction towards such penalty charges was erroneous, particularly when the material on record indicates that the delay in the entire transaction was attributable to the **appellant/defendant FCI** itself. In such circumstances, the **respondent/plaintiff firm** cannot justifiably be saddled with penalty charges for the alleged delay in lifting the goods. Therefore, the learned Trial Court, has committed no error in recording its finding against the **appellant/defendant FCI** on this issue.

23. As regards the direction for payment of interest at the rate of 12 % per annum along with the principal amount, the relevant provisions of Section 34 of the Code of Civil Procedure, 1908, are apposite and are reproduced herein-below:-

> "**34. Interest**.—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
>
> Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.
>
> *Explanation I*.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

> *Explanation II*.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.
>
> (2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

24. In terms of the aforesaid provision, interest at the rate of 6% per annum could ordinarily have been awarded. The **respondent/plaintiff firm** did not lead any evidence before the learned Trial Court to establish that it had suffered any commercial loss on account of the deductions in question, warranting award of interest at a higher rate.

25. The amount in question essentially represents sums wrongly deducted from the respondent/plaintiff's bills towards Commercial Tax and other charges. The learned Trial Court has awarded interest at the rate of 12% per annum on the amount wrongly deducted by the Government department. However, there is no contractual or statutory basis on record justifying such a higher rate of interest. In view of Section 34 of the Code of Civil Procedure, 1908, and in the absence of any material warranting a higher rate, interest at the rate of 6% per annum has to be considered just and reasonable. Accordingly, the award of interest at 12% per annum deserves to be modified and reduced to 6% per annum.

26. In view of the foregoing discussion, no ground is made out for interference with the decree passed by the learned Trial Court in respect of the principal amount. However, the rate of interest awarded by the learned Trial Court is liable to be modified.

-:Conclusion:-

27. Accordingly, the appeal is partly allowed. The decree passed by the learned Trial Court is maintained to the extent of the principal decretal amount of ₹ 2,46,960/-. However, the award of interest at the rate of 12% per annum is modified. The **respondent/plaintiff firm** shall be entitled to interest at the rate of 6% per annum on the decretal amount of ₹ 2,46,960/- from the date of institution of the suit, i.e. 27-3-2002, till its realization.

28. The decree passed by the learned Trial Court shall stand modified to the aforesaid extent. Remaining part of the decree shall remain unaltered.

29. Decree be drawn-up accordingly.

Sd/-
(Sushma Sawant)
JUDGE

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