IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 11.03.2015

1. RSA No.1153 of 2012 (O&M)

Makhan Singh

...Appellant

versus

Punjab State Civil Supplies Corportion Ltd. & others

...Respondents

2. RSA No.1158 of 2012 (O&M)

Swaranjit Singh

...Appellant

versus

Punjab State Civil Supplies Corportion Ltd. & others

...Respondents

3. RSA No.1161 of 2012 (O&M)

Makhan Singh

...Appellant

versus

Punjab State Civil Supplies Corportion Ltd. & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.K. Shukla, Advocate,
for the appellant(s).

Mr. Anil Sharma, Advocate,
and Mr. Hitesh Verma, Advocate,
for PUNSUP (in RSA Nos. 1153 & 1158 of 2012.

Mr. Aman Chaudhary, Advocate,
for PUNSUP (in RSA No.1161 of 2012).

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RITU BAHRI , J.

This judgment shall dispose of RSA Nos.1153, 1158 and 1161 of 2012 together as common questions of law and facts are involved in all these appeals. For reference, facts are taken from RSA No.1153 of 2012.

RSA No.1153 of 2012 has been filed against the judgment dated 19.10.2011 passed by the Additional District Judge, Sri Muktsar Sahib, dismissing the appeal filed by the defendant-appellant against the judgment and decree dated 08.12.2008 passed by the Additional Civil Judge (Senior Division), Muktsar, whereby suit of the plaintiffs-respondent Nos. 1 and 2 has been partly decreed with proportionate costs against defendant Nos. 1 and 2 to the tune of 40% each and against defendant No.3 to the tune of 15% for recovery of 95% of:

Rs.5957180/- on account of shortage of wheat;

Rs.524176/- on account of excessive replacement of *Bardana;* and

Rs. 7030193/- on account of rejected wheat.

The plaintiff-corporation was also held entitled to pendente lite interest @ 12% per annum from the date of suit till passing of thejudgment. Suit against defendant No.4 was dismissed. .

Plaintiff No.1-Punjab State Civil Supplies Corporation Ltd., Chandigarh is company registered under the Companies Act, 1956. Makhan Singh-defendant No.1 was posted as Sub Inspector at Muktsar Centre vide order dated 12.04.1993 and Anoop Kumar-defendant No.2 was posted as Incharge vide order dated 12.04.1993. Nanak Singh-defendant No.3 was appointed as Field Officer of PUNSUP at Muktsar vide order dated 08.10.1990, whereas A.K. Chawla-defendant No.4 was posted at Muktsar Sub Division vide order dated 01.03.1995. Defendant Nos. 1 and 2 were authorized to purchase wheat for the crop years 1993-94 and to store the same with double lock. Defendant Nos. 3 and 4 were to supervise the wheat stock from time to time. All the defendants were responsible to maintain the health of wheat stock and all the shortages thereof. Since defendant Nos. 1 and 2 were custodian of the wheat stock lying in the godown of PUNSUP at Muktsar, they were required to put their joint locks and key on the same. However, they had failed to perform their duties as per the norms laid down by the PUNSUP and certain irregularities/shortcomings of the crop years were noticed against them. On account of their carelessness, PUNSUP had suffered heavy financial loss. Accordingly, they were charge-sheeted and disciplinary action was taken against them. On completion of regular enquiry, they were found guilty and ultimately, both were dismissed from service.

For the crop year 1993-94, 275359.40 quintals of wheat was purchased by defendant No.1, which was stored in the godown of PUNSUP at Muktsar. On physical verification, the wheat was found short as detailed below:-

Date of physical verification.	**Wheat found short.**	**Rate per Qtls. of wheat.**	**Total value of the wheat.**
31.03.1997	30.38.04.000	653.42	19,78,597
4/97	29.35.000	684.71	20096
3/98	1161-69-000	752.58	8,74,265
6/98	3999-82-000	771.09	30,84,222
Total	8218.90.000		59, 57,180

The defendants were duty bound to take necessary steps to preserve the wheat stock from getting damaged from insects etc. They were required to spray DDVP or Malatheon to maintain the quality of wheat. The wheat stock stored at Muktsar godown was supplied to Food Corporation of India (FCI), however, 22817 bags weighing about 14517 Qtls. 80 Kgs. were rejected since the quality was not according to required specifications. Resultantly, the PUNSUP was constrained to sell the said wheat stock to various private parties at very low price. If the said wheat had been supplied to FCI, the PUNSUP would have earned a sum of Rs.1,08,75,393/-, whereas it was sold only for a sum of Rs.38,45,200/- to private parties. In this manner, the plaintiff-corporation had suffered financial loss to the tune of Rs.70,30,193/-. Defendant Nos. 1 and 2 were required to submit documents of wheat, complete in all respects within four days from the date of dispatch of special wagons of wheat supplied to FCI. On completion of these documents, the amount of wheat stock was to be claimed from FCI. But, they failed to complete the documents within required time. Due to the negligence and carelessness of the defendants, the PUNSUP could not claim the price of wheat supplied from FCI at proper time and payment was got delayed. In this manner, the PUNSUP suffered financial loss to the tune of Rs.217906/- on account of delayed payment. It was pleaded that due to negligence, carelessness and inaction of all the defendants, the plaintiff-corporation had suffered huge financial loss. Therefore, the plaintiffs were entitled to recover interest on aforesaid amount. Defendant Nos. 3 and 4 also failed to discharge their duties to supervise the wheat stock in proper manner. Therefore, they were also responsible with defendant Nos. 1 and 2 to make good the financial loss suffered by the PUNSUP.

Upon notice, defendants appeared and filed their separate written statement. Defendant No.1 took preliminary objections with regard to maintainability of the suit, non-joinder of necessary parties, limitation and estoppel. He had denied the allegations levelled by the plaintiffs. Reference was made to the PUNSUP Manual regarding storage structure. It was pleaded that the stocks could not be stored for more than six months. In the present case, the stocks had been allowed to be stored in the indigenous storage structure for longer period, which led to the loss excess, for which, defendant No.1 could not be held responsible. The impugned shortage and loss excess was due to storage loss and the fact that the wheat is perishable commodity, which looses weight due to longer storage. According to the statistical date, this loss has been held to the extent of 2% to 9% per annum. It was further submitted that defendant No.1 was to obey the orders of Centre Incharge and he had to assist him in his day to day working. He had performed his duty diligently, effectively, judiciously and meticulously. Defendant No.2 being Centre Incharge had never recommended action against defendant No.1 and no crop was found short in the year 1993-94. It was admitted that defendant No.1 had purchased wheat to the extent of 2753 Qtls. for the crop years 1993-94 along with defendant No.2. But, the said stock was stored on open plinths hired by the then District Manager & Technical Officer/Inspector/Deputy Manager Quality Control, Chandigarh. The partial shortage in wheat stock was due to longer storage on unscientific plinths and exposed to vagaries of nature for 5 to 6 years. By making reference to Rule 201 of Punjab Government Warehouse Rules, it was pleaded that defendant No.1 could not be made responsible for causing shortage in the wheat stock.

Defendant No.2 filed a separate written statement and took similar objections as raised by defendant No.1 in his written statement. At the same time, he shifted the burden on defendant No.1 and the District Authority as well as technical staff. It was further stated that he was on leave from 01.07.1994 to 11/1994 and thereafter, he was placed under suspension from 01.11.1994. Thereafter, the entire stock was looked after and maintained by defendant No.1-Makhan Singh. No physical verification was done prior to 01.11.1994 and it was done during the tenure of defendant

No.1. The replacement of gunny bags were done by defendant No.1 alone. This fact could be ascertained from the documents, which were in the custody of plaintiff-corporation, consisting of labour bills, daily work slips and labour contract bills.

In his separate statement, defendant No.3 also raised similar averments as raised by defendant No.1. He specifically denied the allegations made by the plaintiff-corporation. It was stated that he was not answerable in the maintenance of health of the wheat stock. He had left the charge on 02.03.1995. At that time, there was no shortage or deterioration of health of wheat stock. It was further stated that defendant No.2 was responsible for preparation of documents of wheat specials loaded and liquidated to the FCI. Defendant No.3 could not be attributed to loss suffered by PUNSUP. Written statement of defendant No.4 is not being dealt with, as there is no decree against him.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to recovery of Rs.1,76,26,461/-? OPP
2. Whether the suit is within time? OPP
3. Whether suit is bad for non-joinder of necessary parties? OPD
4. Whether suit has been filed without passing any resolutions, if so, its effect? OPD-1
5. Whether plaintiffs are estopped by their act and conduct to file the present suit? OPD
6. Whether suit is not maintainable in the present form? OPD

7. Whether no cause of action accrued to the plaintiffs to file the present suit? OPD

8. Relief.

The suit was held to be within limitation as the physical verification was conduced and stock statements were submitted by the defendants on 28.02.1998 (Ex.P2), 30.04.1997 (Ex.P3) and 30.06.1998 (Ex.P4). The suit could be filed by 2001 and the same was filed on 09.02.2000, which was well within the limitation. Plaintiffs had examined Avinash Kumar Goyal, Senior Assistant Account (PW-1), who brought the physical verification report and monthly statement of stock. In the physical verification, 3028-04 Qtls. stock was found in godown. The physical verification report (Ex.P1) was prepared and signed by Gian Chand, which was duly signed by Makhan Singh-defendant No.1. This witness further deposed that the defendants were required to send periodical statement of the stock. They had sent statements of stock on 30.04.1997 (Ex.P3), 28.02.1998 (Ex.P2) and 30.06.1998 (Ex.P4). The defendants had purchased 256448 bags weighing 243625-60 Qtls. wheat and they received 33554 bags weighing 31876-30 Qtls. from other purchase centre. The defendants gave 2532 bags weighing 1688.07 Qtls. by way of excess saving. In this manner, the total stock with the defendants came out to be 292534 bags weighing 277189-97 Qtls. Out of total stock, the defendants dispatched 269657 bags weighing 254682-03 Qtls. of FCI and 22887 bags weighing 14289-04 Qtls. was sold to private parties due to rejection of wheat by FCI being of poor quality. In this manner, the total shortage of 8218.90 Qtls. was detected.

Plaintiff-corporation further examined Swarnjit Singh, Junior Assistant (PW-2), who deposed that defendant Nos. 1 and 2 were custodian of wheat stock of the crop years 1993-94. Makhan Singh had sent statement of *Bardana*/Jute bags on 02.04.1997 (Ex.P6), wherein he had claimed segregation/DP of 45770 bags in the crop year wheat. He had replaced 22755 bags, which were much more than the norms fixed by PUNSUP. Letter dated 28.04.1997 (Ex.P7) was issued to the defendants to explain excess replacement of bags and segregation of wheat until 11.05.1997. They did not give any explanation and thereafter, another letter dated 16.05.1997 (Ex.P8) was written to them. Thereafter, letters dated 12.06.1997 & 11.07.1997 were sent to them. Explanation given by Makhan Singh vide letter dated 11.08.1997 is Ex.P11. Anoop Kumar and A.K. Chawla did not give any explanation. As per norms of PUNSUP, only 916 bags could be replaced as deposed by PW-2, Swaranjit Singh. But, the defendants had replaced 21839 excessive bags. The price of jute bag was Rs.24/- per bag at that time. Accordingly, the total value off excess replacement of wheat bags was computed to be Rs.524136/-.

With regard to rejection of wheat, delayed documentation and withholding of payment, the plaintiff-corporation had examined Jasvir Chand, Senior Assistant Account, PUNSUP, Faridkot (PW-3). He deposed that defendant No.2 was Incharge of the wheat for crop year 1993-94 at Muktsar Centre. Defendant Nos. 1 and 2 had their double lock over the stock in question. Defendant Nos. 3 and 4 were posted as Supervisor and they used to make periodical supervision/checking. During the crop year 1993-94, defendant Nos. 1 and 2 stored 275359-40 Qtls. wheat. Out of this stock, the defendants dispatched wheat weighing 254682.03 Qtls. from March 1994 to January 1997. Jasvir Chand (PW-3) had further deposed that the defendants did not take necessary steps to protect the wheat from damage/deterioration and due to their negligence/carelessness, wheat weighing about 14287.03 Qtls. was damaged and it was rejected by the FCI. In this respect, analysis reports, Ex.P14 and Ex.P15, were prepared, which was bearing the signatures of defendant Makhan Singh also. He had further deposed that PUNSUP had issued letters to sell out the rejected wheat in the open market. Thereafter, the rejected wheat was sold to different Mills vide release orders, Ex.P20 to Ex.P28. The witness further deposed that the plaintiff-corporation suffered loss due to negligence and carelessness of defendants. Defendant Nos. 1 and 2 were required to submit complete papers after delivery of wheat to Food Corporation of India (FCI). The delivery certificates, Ex.P32 to Ex.P57, issued by FCI were not obtained by the defendants at the time of delivery and the same were obtained later on. Therefore, the plaintiff-corporation was not able to claim the amount of wheat from FCI within time and it suffered loss of interest to the tune of Rs.217906/-. This witness further deposed that the defendants were responsible to get the quality certificates from FCI officials with regard to the wheat dispatched between 03.11.1996 to 24.01.1997. However, due to their negligence, the plaintiff-corporation suffered financial loss to the tune of Rs.25770/- and Rs.107805/-. The said amount was withheld by FCI, therefore, the department suffered loss on account of interest to the tune of Rs.33708/-.

Makhan Singh-defendant while appearing as DW-1, admitted the entire case of the plaintiff-corporation in his cross-examination. He admitted that during the crop years 1993-94, he had purchased the wheat stock weighing 275359.40 Qtls. He also admitted the entire loss suffered by the PUNSUP. Similarly, Nanak Singh (DW-2) admitted that he had the supervisory duty to supervise the work and conduct of defendant Nos. 1 and

2.

The trial Court, after going through the entire evidence led by the parties, held that it was duly proved on record that due to rejection of the wheat stock, the plaintiff-corporation had suffered loss to the tune of Rs.70,30,193/-. Defendant Nos. 1 to 3 were having sufficient infrastructure to protect the wheat stock from getting damaged. Therefore, they were liable to make good the loss suffered by PUNSUP. With regard to delayed documentation and withholding of payment, no evidence was led by the plaintiff-corporation to prove that defendants were responsible to get complete these documents. Therefore, the plaintiffs were not held entitled to recover this amount from the defendants. Ultimately, the suit of the plaintiff-corporation had been partly decreed in the aforesaid terms.

On appeal, the findings recorded by the trial Court were affirmed by the lower appellate Court.

Learned counsel for the appellant(s) has argued that in view of the judgment delivered by the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corporation Ltd. Vs. Sikander Singh,*** 2006 (2) SCT 26, in case loss has been caused by an employee due to his negligence in performance of duties, the same can be recovered in disciplinary proceedings and a separate civil suit was not competent for that purpose.

Learned counsel for respondent-PUNSUP referred to a recent judgment given by a Coordinate Bench of this Court in ***Ram Singh Vs. Punjab State Civil Supplies Corporation Ltd. & another,*** CR No.6253 of 2011 (decided on 06.12.2012). In that case the employees of the corporation had sought rejection of plaint on the ground that presentation of civil suit was not competent as the loss could be recovered in disciplinary proceedings.

While interpreting and distinguishing the judgment delivered in ***Sikander Singh's*** case (supra), this Court had observed that on account of loss suffered by the Corporation at the hands of an employee, a civil suit for recovery could be filed and the same is not barred. Reference was made to another judgment delivered in ***Shakti Kumar Vs. Punjab State Civil Supplies Corporation and others,*** 2009 (4) SLR 375, whereby this Court had an occasion to examine the judgment given in ***Sikander Singh's*** case (supra). In this judgment it was clarified that the judgment in ***Sikander Singh's*** case was delivered by the Hon'ble Supreme Court in the facts and circumstances of that case and on the basis of the findings arrived at between the parties to the effect that the loss caused by defendant No.1 in that case had been made good by one defendant and the other defendant was not held liable for any dereliction of duty and therefore, in those circumstances, the Hon'ble Supreme Court held that suit for recovery against them was not maintainable. The Hon'ble Supreme Court has not laid down any abstract proposition of law to the effect that in a case where loss has been caused by an employee due to his negligence in performance of duties, the same can be recovered in disciplinary proceedings by holding him guilty to the alleged misconduct and the same cannot give rise to cause of action for filing suit for recovery of money for loss caused. Further, by making reference to another judgment delivered by this Court in ***Bhajan Singh Vs. Punjab State Civil Supplies Corporation Ltd. & another,*** Civil Revision No.4614 of 2012 (decided on 17.08.2012), it was held that jurisdiction of civil Court cannot be said to be barred, unless expressly or impliedly excluded by any statute. Accordingly, the revision petition(s) filed by the employees were dismissed.

Learned counsel for the appellants is not able to cite any judgment contrary to the judgments given in ***Ram Singh***, ***Shakti Kumar*** and ***Bhajan Singh's*** case (supra), whereby it has been held that even though disciplinary proceedings have been initiated against the erring/delinquent employees, the Corporation is not debarred for recovering the loss by filing a civil suit.

After going through the impugned judgments, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for determination.

Resultantly, all the regular second appeals i.e. RSA Nos. 1153, 1158 and 1161 of 2012 are dismissed.

(RITU BAHRI)
JUDGE

11.03.2015
ajp