

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1840 of 2015 (O&M)
Date of decision 25.08. 2015.

Punjab State Civil Supplies Corporation Limited and another
..... Appellants.

versus

Ved Parkash and others
..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Aman Chaudhary, Advocate for the appellants.

K.C.PURI, J.

C.M. No.4941-C of 2015.

Deficiency in Court fee has been made good.

2. CM stands disposed of accordingly.

C.M. No.4942-C of 2015.

3. For the reasons mentioned in the application, delay of 178 days in re-filing the appeal stands condoned.

4. CM stands disposed of accordingly.

C.M. No.4943-C of 2015.

5. For the reasons mentioned in the application, delay of 19 days in filing the appeal stands condoned.

6. CM stands disposed of accordingly.

MAIN APPEAL

7. This appeal has been directed by Punjab State Civil Supplies Corporation Limited and another against the judgment and decree dated 27.03.2014 passed by Dr. Rakesh Kumar, Additional District Judge-III, Ferozepur vide which the appeal preferred by defendants against the judgment and decree 16.01.2009 passed by Shri Jatinder Pal Singh Wahniwal, the then learned Civil Judge (Senior Division), Ferozepur was dismissed except modification of interest that plaintiff shall be entitled to interest @ 15% per annum from 1.5.1990 till the date of recovery.

8. Briefly stated Punjab State Civil Supplies Corporation Limited and another filed suit for recovery of Rs.22,94,366.44ps against the defendants with the allegations that defendant No.1 had been working as Sub Inspector Punsup at Dharamkot vide order dated 20.05.1987. Defendant No.2 was already posted as Additional Incharge with Raj Kumar Chohan Inspector, Incharge of Dharamkot Centre. Defendant No.2 was directed to take joint charge of Dharamkot PUNSUP Center with defendant No.1 as defendant No.1 joined there on 20.5.1987. Therefore, defendants took charge of wheat crop for the years 1983-84 to 1987-88 along with other dead articles. The duty of defendants was to make procurement of wheat to store it in various godowns/plinths, to make delivery of food to Food Corporation of India and private companies, to keep accounts of procurement, shortage and delivery and to keep accounts in account books comprising godown registers, stock registers etc. It was also their duty to maintain the healthy food-grains. The defendants made procurements of

wheat crop of the year 1987-88 and made the deliveries of wheat stocks to Food Corporation of India and private companies. Defendant No.1 was suspended for certain irregularities vide order dated 4.12.1987 and Shri Devinder Sharma Inspector was posted as Incharge of Dharamkot Punsup Centre vide order dated 31.12.1987 and the defendants were directed to hand over the charge to Inspector Devinder Sharma. Defendant No.2 was directed to take joint charge of the stocks of this centre with Inspector Devinder Sharma, who joined on 4.1.1988. Defendant No.1 remained absent and avoided to hand over the charge. Then District Manager, Ferozepur vide notice dated 13.1.1988 directed defendant No.1 to hand over the charge of this centre till 18.1.1988, otherwise a committee was to be constituted. Defendant No.1 received notice on 19.01.1988. He failed to hand over charge. Devinder Sharma reported to the District Manager, Ferozepur on 20.1.1988, 28.1.1988 and 17.2.1988. Then the District Manager constituted a committee consisted of P.S.Cheema, District Manager, Jalandhar, Sukhdev Singh Field Officer, Abohar and Sohan Lal Accountant Punsup, Ferozepur vide order dated 18.2.1988 for handing over the charge to Inspector Devinder Sharma. A direction was issued that if defendant No.1 does not come then committee would hand over the charge in his absence. The committee started counting bags, weighment of bags and handing over the stocks of Dharamkot Punsup center to Devinder Sharma on 26.02.1988 in the presence of defendants. Defendant No.1 remained present with the committee on 26.2.1988 and 27.2.1988. He became absent from 28.2.1988. Defendant No.2 remained present there upto 16.3.1988.

Defendant No.2 signed all the papers regarding handing over the charge. The stocks lying in Rama Rice Mill were handed over to Inspector Devinder Sharma as the same were in the shape of heaps. A huge shortage was deducted and therefore, charge report was prepared. Vide order dated 22.7.1988 for the shortage defendant No.2 was also suspended. Similarly huge shortage was found in the stocks. Total loss of Rs.19,95,536.04ps was found. Therefore, the present suit for the recovery of Rs.19,95,536.04ps along with interest @ 18% p.a.

9. Upon notice, defendant No.2 appeared and filed written statement taking preliminary objections that this shortage pertains to Dharamkot Punsup center. Therefore, this court has got no territorial jurisdiction to try the suit. The suit is time barred. The suit is filed to cover the administrative failure to dispose of the wheat stock of more than five years stored in open plinths. The liability of disposing of stocks lies with Head Office of District Manager. The defendants had no role to play. The suit is not filed by competent person. There is only natural shortage. The wheat stocks were stored in open plinths which is a temporary mode of storage. It is subject to adverse claim and conditions rains, floods, eating of grains by birds. These factors are responsible for the loss. In the present case the wheat was stored in open plinths for more than five years. As per expert committee, the loss in weight of stored wheat comes to 6.5% per annum. The Punsup has not adopted any such norm like other procuring agencies. The Field Officer, the Deputy District Manager (Fields) and District Manager Punsup supervisor the stocks in various centers and record

their remarks about quality and condition of the stocks on the registers. The stocks were neither purchased nor stored by answering defendant. The stocks were taken after due remarks that the bags were in torn condition, infected, atta formation etc. The Punsup has fixed the tare weight at 1.20kg but the weight of gunny bags is between 700 to 740grams, for which the answering defendant cannot be held responsible. Denying all other averments, defendant No.2 prayed for dismissal of the suit.

10. Replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiffs are entitled to the recovery of Rs.19,95,536.04ps., as alleged ?OPP
2. Whether the plaintiffs are entitled to any interest, if so, at what rate ? OPP
3. Whether this Court has no territorial jurisdiction to entertain and try this suit ? OPD
4. Whether the suit is time barred ? OPD
5. Whether the suit has been filed through competent person ? OPD
6. Whether the suit is not maintainable in the present form ? OPD
7. Whether the suit has not been properly verified ?OPD
8. Whether Civil Court has no jurisdiction to entertain and try this suit ? OPD
9. Relief.

11. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence decreed the suit of the plaintiff for recovery of Rs.19,95,536.04ps along with interest @ 18%

p.a., from 1.5.1990 vide judgment and decree dated 16.01.2009.

12. Feeling aggrieved, the plaintiff preferred First appeal. The learned District Judge, Ferozepur vide judgment and decree dated 27.03.2014 dismissed the appeal of the defendants except modification of interest that plaintiff shall be entitled to interest @ 15% per annum from 1.5.1990 till the date of recovery. .

13. Still feeling dissatisfied with the aforesaid judgments and decrees, the present regular second appeal has been directed by the plaintiff/appellant.

14. The appellant in paragraph No.09 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- i) Whether the learned lower appellate court is justified in dismissing the appeal filed by the appellant-plaintiff by ignoring the oral as well as documentary evidence produced and proved on record ?
- ii) Whether the learned courts below are justified in declining the claim of the plaintiff-appellant with regard to the interest prior to the filing of suit without giving any reason for declining the same ?
- iii) Whether the learned trial court is justified in declining the claim of the plaintiff-appellants for future interest @ 18% without giving any finding ?
- iv) Whether the learned courts below have misread the evidence produced and proved on record which has resulted in grave miscarriage of justice ?
- V) Whether the courts below were justified in ignoring that the amount demanded are not account of losses but shortage of wheat and barley, less excess in wheat stock, quality cut shortage of gunny bales, loss of interest on account of late submission of delivery documents, non-deposit of petty cash advance and loss due to rejection of

wheat by F.C.I. ?

15. I have heard learned counsel for the appellant and have gone through the case file.

16. The only point urged during the course of arguments is that the Appellate Court has wrongly decreased the interest @ 15% p.a. from 18% p.a. allowed by the trial Court. Counsel for the appellant has submitted that plaintiff concern is dealing with commercial transaction. The grains are purchased from the market and loan is raised from the Commercial banks and interest is paid @ 18% per annum. The said rate of interest should have been granted by the Lower Appellate Court. However, counsel for the appellant is fair enough to concede that there is no evidence on the file that bank interest @ 18% per annum is being paid. The discretion exercised by the First Appellate Court is not a substantial question of law and as such the present appeal is not competent in view of Section 100 of the CPC. The suit of the plaintiff has already been decreed along with interest @ 15% per annum. So, in view of the above discussion, the appeal is without any merit and the same stands dismissed.

17. However, while parting with the judgment, it is observed that Government-Semi Government departments are invariably filing the appeals in some of the cases without any justification. In my view responsible officer of Government-Semi Government departments should take an effective decision regarding filing of the appeals. It is well known that 70% litigation involving Government or Semi Government departments are pending in various Courts in India. In case the responsible officers of

Government or Semi Government department takes rational judgment regarding filing of the appeals, in that case lot of money of Government-Semi Government departments can be saved. So, it is proposed that Governing Body of Government and Semi Government departments may make a policy regarding filing of the suit or filing of the appeal so that civil suit or appeal may be filed in appropriate cases only after taking the decision. In the present case, had the authorized officer applied its mind properly, considerable amount of the department, which has been spent in engaging counsel and purchasing stamp duty can be avoided as the point in issue is only regarding rate of interest which was reduced from 18% to 15% per annum.

18. A copy of the judgment be sent to the State of Punjab, State of Haryana and Union Territory of Chandigarh for taking steps to rationalize the litigation by taking steps in this regard.

19. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 25, 2015

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