

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3236 of 2014(O&M)

Date of Decision: 02.07.2015

The Ferozeppur District Cooperative Milk Producers Union Limited

... Appellant

Versus

Sumit Wadhawan

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rahul Sharma-I, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The appellant-plaintiff has filed the present regular second appeal against the concurrent findings of both the courts below, whereby the suit for mandatory injunction filed by the appellant-plaintiff has been dismissed.

The appellant-plaintiff had filed a suit for the grant of a decree of mandatory injunction directing the respondent-defendant to return 70 cans along with the lids, which were stated to belong to the plaintiff and its societies as well as dairy farms. A further direction asking the respondent-defendant to pay a sum of Rs.50,000/- for the use and occupation of the cans and the damages caused to the plaintiff was also prayed for.

It was the case of the appellant-plaintiff that it had entered into a contract with the respondent-defendant on 12.06.2007, whereby the respondent-defendant had agreed to lift the milk from route no.5 and 15 for a period of one year, i.e. from 1.07.2007 to 30.06.2008. However, in breach of the terms and conditions of the contract executed by the parties, the

respondent-defendant had stopped lifting the milk on 19.05.2008 without any prior intimation and thus, causing huge loss to the appellant-plaintiff. It was further alleged that the respondent-defendant had not returned the 70 cans along with the lids and thereby had misappropriated and damaged the property of the appellant-plaintiff.

The respondent-defendant contested the suit filed by the appellant-plaintiff and took a preliminary objection that the suit filed by the appellant-plaintiff was false, frivolous and vexatious. It was alleged that the suit filed by the appellant-plaintiff was merely a counterblast to the suit filed by the defendant for mandatory injunction directing the plaintiff to pay the advance money for filling the diesel and for maintenance of vehicles, which were attached with the route number 5 and 15. Importantly, it was stated that the respondent-defendant has no concern with the cans alleged in the plaint and that the same were in the custody of the appellant-plaintiff.

The learned Civil Judge(Junior Division), Ferozepur, after appreciating the evidence on record came to the conclusion that the appellant-plaintiff has not brought any evidence on record to show that the 70 cans referred to in the plaint had been handed over to the defendant. In fact, PW1, Swaran Singh, admitted in his cross examination that on the judicial file there is no receipt with regard to the milk cans having been received by the defendant. Further, the learned Civil Judge also found that the plaintiff had led no evidence to show that the defendant had breached the terms of the agreement entered into between the parties. Resultantly, the suit filed by the plaintiff was dismissed.

Aggrieved against the same, the plaintiff-appellant filed an appeal before the learned Additional District Judge, Ferozepur, who also did

not find any error in the judgment and decree passed by the learned trial court.

The learned counsel for the appellant, Sh. Rahul Sharma, vehemently contended that once there was an admission of an agreement having been executed between the parties, the onus in law had shifted upon the defendant to prove as to how the milk could have been lifted without the 70 cans with lids having been supplied to the defendant. He further stated that the judgment and decree passed by the learned Courts below are an outcome of misreading of evidence and it was not open to the learned courts below to non-suit the appellant-plaintiff merely for want of receipt.

I have considered the submissions advanced by the learned counsel for the appellant-plaintiff and find no merit in the same. The learned Courts below on appreciation of the evidence brought on record have found that the plaintiff had failed to bring on record of the case any receipt with regard to the 70 cans with lids having been handed over to the defendant. In fact, PW1, Swaran Singh, had admitted in his cross-examination that in the record as well as in the pleadings of the case no date or year with regard to the delivery of cans to the respondent-defendant has been mentioned. It was also admitted by him that on the judicial file there is no receipt with regard to the milk having been received by the defendant. Therefore, once the plaintiff had failed to discharge the initial onus placed upon it to show that the 70 cans with lids had been delivered to the respondent-defendant, there arose no question for the burden of proof having been shifted upon the respondent-defendant to show that the cans had been returned by him to the plaintiff. The findings returned by the learned courts below are not perverse, which would require an interference

by this Court in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

For the foregoing reasons, I do not find any merit in this appeal. The same is, therefore, ordered to be dismissed as no substantial questions of law arise for consideration of this Court on its second appeal side.

02.07.2015
monika

(RAJIV NARAIN RAINA)
JUDGE