

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

RSA No.2735 of 2009 (O&M)

Date of decision : 26.08.2016

M/s Super Ganesh Cargo Movers

...Appellant

Versus

Punjab Small Industries and Export Corporation Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. A.K. Jaiswal, Advocate for the appellant.

Mr. Nitin Kaushal, Advocate for respondent.

AMIT RAWAL, J. (Oral)

CM No.11099-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, LRs of deceased-Iqbal Singh-Sole Proprietor of the Firm, as mentioned in the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Main Case

The appellant-defendant is aggrieved of the concurrent findings of fact whereby suit for recovery of an amount of ₹7,58,844/- along with interest @ 12% p.a. and future interest at the rate of 12% p.a. has been decreed.

Mr. A.K. Jaiswal, learned counsel appearing on behalf of appellant-defendant submits that suit was not maintainable on two accounts:-

- i) The notice as per the provision of Section 10 of Carriers Act was not

sent as it had to be within a period of six months from the date of knowledge. Ex.DW1/3 is a letter dated June, 1995 whereas notice (Ex.P7) sent on 26.09.1996 and, therefore, it was beyond six months.

- ii) The respondent-plaintiff failed to discharge the onus in essence not placed on record the invoice with regard to the delivery of 229.320 metric tone of bitumen, therefore, alleged shortage i.e. deducting 120.120 metric tones bitumen alleged to have been supplied/delivered could not be established.

Both these aspects have not been taken into consideration by both the Courts below, thus, resulting into fallaciousness and perverse findings and thus urges this Court for framing of the substantial questions of law as culled out in memorandum of appeal.

Mr. Nitin Kaushal, learned counsel appearing on behalf of respondent-Corporation submits that Ex.DW1/3 dated 20.06.1995 is an internal communication between Mathura IOC Refinery and with the Chief Regional Officer, Chandigarh, regarding supply of the material, invoice and total of 1190 barrels comes to 229.15 metric tones. In the meeting of Corporation held on 26.04.1996, the factum of the shortage surfaced and accordingly, notice under Section 10 was served on 26.09.1996 i.e. within six months from the date of knowledge. The defendant himself has proved the case of shortage by placing on record the aforementioned documents. In a suit for recovery, onus keeps on shifting and, therefore plaintiff cannot be thrown out on the ground of having not discharged the onus under Section 101 of the Indian Evidence Act and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the

paper book and of the view that there is no force and merit in the submissions of Mr. A.K. Jaiswal, for, Ex.DW1/3 as noticed above is a communication between Mathura IOC Refinery and Chief Regional Manager which reveals the delivery and handing over the bitumen to be supplied at various destination and the total quantity of metric tones bitumen comes to be 229.15 whereas actual quantity delivered is 120.120 metric tones. It is in this backdrop of the matter that there was shortage which ascertained in the meeting held in April 1996, as noticed above. Legal notice was served on 26.09.1996, therefore, in my view, notice cannot be said to be beyond the period of six months in essence there is compliance of Section 10 of Carriers Act. I am in agreement with Mr. Kaushal, that the onus in the suit for recovery keeps on shifting. The aforementioned documents itself proves the handing over and delivery of the material and thus prima facie proves shortage and rightly so, the Courts below after having examined the aforementioned documentary evidence, coupled with other documentary evidence rendered findings in favour of respondent-plaintiff.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree under challenge, much less, no ground for interference is made out.

Dismissed.

26.08.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No