

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

**CM No.6936-C of 2014 in/and
RSA No. 897 of 1990 (O&M)
Date of Decision: January 11, 2017**

Food Corporation of India and others

..Appellant(s)

Versus

M/s. Walaiti Ram Amar Nath, Commission Agents

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Sandeep Kumar, Advocate
for the appellants.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet, Advocate
for applicant-respondent.

ANITA CHAUDHRY, J.

CM No.6936-C of 2014

For the reasons set out in the application, same is allowed
as prayed for and main appeal is taken up on Board today itself for
hearing.

RSA No. 897 of 1990

The appellants have challenged the judgments of both the
Courts below. The suit for recovery of Rs.10,108/- was decreed in

favour of M/s. Walaiti Ram Amar Nath Agents. The amount was allowed with future interest @ 6% per annum.

The facts are that Food Corporation of India had purchased paddy in November, 1982 worth Rs.2,09,986.34 Ps. It was agreed between the parties that in case payment was not made within a fortnight of the purchase then the plaintiff was entitled to interest @ 18% per annum. It was claimed that it was an established custom and usage in the market to charge interest @ 18% on the outstanding balance. As per the calculations made by the plaintiff, the interest calculated @ 18% came to Rs.9,256/-. The plaintiff filed a suit for recovery of Rs.19,363/-.

The defendants admitted the purchase but submitted that they were competent to waive the shortage of one percent and that had been waived and all the bills were cleared and nothing remained to be paid.

After recording evidence, the suit of the plaintiff was decreed only for recovery of Rs.10,108/-. The trial Court also allowed interest @ 6% from the date of filing of the suit till actual realization. Aggrieved by the judgment and decree, an appeal was preferred by the defendants, which was dismissed on 18.01.1990.

The dispute that arises between the parties is whether there was any shortage at the time when the paddy was purchased. It would be relevant to refer to para no.7 of the judgment of the appellate Court which reads as under:-

“After hearing the learned counsel for the parties and going through the evidence on record, I am of the considered opinion that no exception can be taken to the finding recorded by the trial Court. The letter mark X has not been proved according to the law. So the letter mark X cannot be read into evidence. Further more, one of the partner has appeared as PW1. This letter was not got confronted from him. So no reliance can be placed on this letter. Admittedly, the appellant has purchased the paddy worth Rs.1,32,14,871/- on 15.11.1982 and Rs.77,837-00 on 20.11.1982 when this purchase was made by the appellant, it has not been shown that there was any shortage of the paddy. There is no evidence on the record that when the bags of the paddy were handed over to the officials of the appellant, then there was shortage. DW8 Purana Chand Assistant General Manager admitted the signatures on forms ST-XXII Ex.P2 and Ex.P3. These were signed by the Assistant Manager Mr. Bhatia. He also admitted that as per these forms the paddy worth amount mentioned in the same was purchased by them from the plaintiff/respondent and the same reached in their custody and the entries regarding the same was made in their account books. So the sole controversy has been cleared by DW8 that the paddy worth Rs.299086-34 were purchased from the plaintiff vide Ex.P2 and Ex.P3 and there was no shortage when the appellant had purchased it. If any shortage occurred in the godown of the appellant plaintiff/respondent is not liable for that. Admittedly the appellant has not made payments claimed by the plaintiff/respondent. Therefore, the appellants are liable to pay that amount to the plaintiff.”

The submission on behalf of the appellant was that the plaintiff had agreed in writing that they would make good the loss suffered by the defendants and the payment that was made was accepted as full and final payment and the suit was not maintainable as the entire amount had been cleared.

The submission on the other hand was that the Courts below have not relied upon the letter Mark-X and it could not be read in evidence as it was not proved.

The core question is whether there was any shortage at the time of delivery. Both the Courts below have given a finding that no shortage was found when the paddy was purchased. It is admitted that the entire payment had not been made, therefore, I find that there is no error in the judgment. A finding of fact has been recorded that the paddy was delivered with proper weight and it had been checked and verified by its officers under their signatures.

It was urged that as per amendment in Sections 100 and 102 of the Code of Civil Procedure, 1908, there is complete bar of second appeal in case of money recovery decree involving less than Rs.25,000/-.

The provisions of Section 102 CPC are clear. No second appeal lies against any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-. Reference can also be made to *Haryana Dairy Development Cooperative Federation Ltd. Vs. Jagdish Lal (2014) 3 SCC 156* and *Gurudawara Singh Sabha*

Vs. Uttar Haryana Bijli Vitran Nigram Ltd. and another, RSA No.4972 of 2012 (O&M), decided on 21.05.2014, wherein such law as laid down. Therefore, the appeal was not maintainable. There is no substantial question of law involved. No ground for interference in the concurrent finding is made out.

The appeal is dismissed.

**(ANITA CHAUDHRY)
JUDGE**

January 11, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No