

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.570 of 2008(O&M)
Date of Decision: 11.1.2017

Major Singh and another
... Appellants
Versus
Punjab State Civil Supplies Corporation Ltd. and another
... Respondents

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

Present: Mr.H.C.Arora, Advocate for the appellants
Ms.Deepali Puri, Advocate for the respondents

RAJIV NARAIN RAINA, J. (Oral)

1. The facts giving rise to these appeals against a money decree are that the Punjab State Civil Supply Corporation Limited (PUNSUP) filed suit No. 397 dated 30.04.1991 for recovery of ₹ 13,42,187.26 paise and interest amounting to ₹ 7,04,648/- (total ₹ 20,46,835.43 P) for the period 01.05.1988 to 31.03.1991 against Major Singh (Defendant No. 1) and Hari Singh (Defendant No. 2). Defendant No. 1 was posted as Sub Inspector in-charge PUNSUP Centre, Mansa on 26.04.1987 while Gurmail Singh Sub Inspector, Mansa. Defendant No. 2 posted on 21.04.1987 in the same centre. Both defendants performed twin duties called Double-lock System Incharge, PUNSUP Centre at Mansa till 30.04.1988. Due to their negligence and carelessness PUNSUP suffered losses as per the chart below .

Concerned year	Item No.	Claim in terms of money
1980-81	Deficiency in wheat of 5.52.000 Qtls.	813.70 p
1985-86	Deficiency in wheat of 573.49.500 Qtls	141416.89 p

1986-87	Deficiency in wheat of 435.77.500 Qtls	109558.19 p
1987-88	Deficiency in wheat of 426.75.000 Qtls	98279.61 p
1985-86	Less excess of wheat 145.25.400 Qtls	30818.31 p
1986-87	Less excess of wheat of 1273.98.000 Qtls	320291.31 p
1987-88	Less excess of wheat 1052.30.5000 Qtls	242230.00 p
1985-86	Quality Cut	12198.00
1986-87	Quality Cut	23167.00
1987-88	Quality Cut	83397.00
1985-86 1986-87 1987-88	Loss due to late dispatch of documents	235261.57 p
1985-86 1986-87 1987-88	Excess replacement of 4682 bags	37536.00
	Deficiency of crates	2218.80 p
	Interest @ 18% p.a. From 01.05.1988 to 31.03.1991	704648.00
	Total	20,46,835.43 p

2. Trial court partly decreed the suit on 11.10.1999 with liability assessed to the extent of 50% on defendant No. 1 and 30% on defendant No. 2 by apportionment of blame.

Concerned year	Item No.	Claim in terms of money	
1986-87	435.77.500 qtls	₹ 1,09,558.19	
1987-88	429.95.000 qtls	₹ 98,279.61 p	
1986-87	1273.98.000 qtls	₹ 3,26,291.21 p	
1986-87	1052.30.500 qtls	₹ 2,42,330.8 p	For less excess of wheat

3. Besides, an additional recovery of ₹ 2,35,261.57 against defendant No. 1 alongwith interest of 12% p.a. w.e.f. 01.05.1988 till final realization on account of late dispatch of documents which by itself caused

4. Feeling aggrieved, PUNSUP challenged the decree of learned Trial Court by filing RFA 751 of 2000 for claiming remaining of amount of money which was not granted by the trial court.

5. The appeal was partly allowed on 11.12.2007. Suit of appellant was ordered to remain decreed as per the terms of judgment and decree of the trial court except qua interest rate. Additional claim of the appellant PUNSUP qua recovery of amount of ₹ 35,818.31 on account of less excess of wheat for the period 1985-86 was also decreed. 50% of the above said amount of ₹ 35,818.31 was made payable by respondent No. 1 and 30% payable by respondent No. 2. This liability was imposed in addition to the liability imposed by the trial court. However, the judgment and decree of the trial court was modified by ordering that interest will be payable @ 6% p.a. on the recoverable amount w.e.f. 11.10.1999 till recovery.

6. Mr. Major Singh and Hari Singh also preferred an appeal No. CAD No. 121 and 120 dated 22.12.2006 respectively against the judgment and decree of Civil Judge (Sr. Division), Mansa and the same were partly allowed qua interest on 21.01.2012. The impugned judgment and decree dated 11.10.1999 was modified to the extent that respondents-plaintiffs are entitled to interest @ 6% per annum on the recoverable amount w.e.f. 11.10.1999 till realization of the decretal amount.

7. Now, Major Singh and Hari Singh have preferred two appeals. One against the judgment and decree dated 11.10.1999 passed by learned Civil Judge (Sr. Divn.), Mansa in Civil Suit No. 397 of 1991 and judgment and decree dated 11.12.2007 passed by learned Additional District Judge, Bathinda in RFA No. 751 of 2000.

8. Second against the judgment and order dated 11.10.1999 passed

judgment and decree dated 21.01.2012 passed by learned Additional District Judge, Mansa in CAD 120 and 121 of 2006.

9. First appeal was filed in time. But the second appeal was filed after much delay. Counsel seeks condonation of 1057 days delay in filing and 396 days in re-filing the appeal in the case of Major Singh and 1055 days in filing and 448 days in re-filing in case of Hari Singh.

10. Plea for explaining the delay taken by counsel is that the appellants had filed RFAs No. 700 of 2000 (Major Singh Vs. PUNSUP) and RFA No. 701 of 2000 (Hari Singh Vs. PUNSUP) in this Court, which were subsequently transferred by this Court to Court of District & Sessions Judge, Mansa with change in pecuniary jurisdiction. However, RFA No. 751 of 2000 (PUNSUP Vs. Major Singh and another) filed by the respondent-PUNSUP in this Court was transferred to the Court of learned District & Sessions Judge, Bathinda and the present appellant had no knowledge of the transfer of said appeal to Bathinda and the same was decided by learned Addl. District Judge, Bathinda on 11.12.2007, whereas the other two RFAs filed by the appellants were transferred to Mansa which was converted into CAD 120 and 121 which was decided by Learned Addl. District Judge Mansa on 21.01.2012. However, the appellants had filed a review application No. 12 and 13 of 2012 against the judgment dated 21.01.2012, which has now been dismissed on 26.11.2014. The instant RSA has been filed by the appellants against three impugned orders i.e. Judgment in civil suit rendered by Civil Court on 11.10.1999 and the judgment in appeal rendered on 21.01.2012 and order passed in review application on 26.11.2014.

11. PUNSUP had filed reply to the condonation of delay

delay caused by ailment of the appellant is not supported by any medical record and personal affidavit of counsel and clerk to counsel is also not forthcoming for delay in filing and re-filing the appeal.

12. On merits of the appeal, I am confronted with an elaborate and well reasoned judgment passed by the learned Additional District Judge, Bathinda on 11th December, 2007 which is well considered on all aspects after appreciating evidence brought on record whether recoveries were justified or were not, concluding that they were on documentary evidence upholding the major findings recorded in the judgment of the trial court. The first appeal of PUNSUP against Major Singh and Hari Singh, respondents has been partly allowed. The suit of PUNSUP has been ordered to remain decreed as per judgment and decree of the trial court except qua interest part which has been reduced from 12% to 6% on the recoverable amount w.e.f. 11th October, 1999 till recovery which is fair and just. The learned lower appellate court has rightly decreed the additional claim of PUNSUP qua recovery of an amount of ₹ 35,818.31P on account of less excess of wheat of the year 1985-86. 50% of this amount has been decreed as payable by Major Singh, respondent no.1, but 30% of the amount of the additional claim will be payable by respondent no.2, Hari Singh. This liability has been treated by the lower appellate court in addition to the liability imposed by the trial court on respondents no.1 and 2 and justifiably so, after appreciating threadbare the evidence adduced on record by the parties. It would not be necessary to go into the fine details of the claims by appreciation of facts on each head of claim and it would suffice to say that any further para-phrasing of the work of the first appellate court would not be necessary or required as the same is self speaking. I have no doubt in my mind that the operative part

the facts of the case does not give rise to a question of law, much less substantial. It would not be proper for this Court to unsettle the findings by substituting opinion of the lower appellate court when they are accompanied by cogent reasons on each of the facts presented on the issues framed. The discussion in the judgment in appeal is satisfactory without leaving any doubt on any of the material facts on which the decision turned. I would, therefore, not interfere with the judgment and decree of the learned Additional District Judge, Bathinda which suffers from no error or legal infirmity caused by misreading of evidence and this appeal deserves to fail and is accordingly dismissed with costs against the appellants and in favour of the PUNSUP.

(RAJIV NARAIN RAINA)
JUDGE

11.1.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No