

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

**RSA No. 1982 of 2017 (O&M)
Date of Decision: 06.04.2017**

M/s Mulji Devshi & Company

... Appellant

vs.

M/s Garg Rice Industries & Ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Ms. Aashna Gill, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

Delay condoned.

This is defendant's regular second appeal against the concurrent findings recorded by the Courts below in a suit for recovery filed by the respondents. The appellant had been directed to pay the principal amount of Rs.2,93,675/- along with interest @ 12% per annum from 05.04.2011 till realization.

The suit was filed by the respondents seeking recovery of balance amount of Rs.2,93,675/- which was due towards the appellant in respect of rice supplied vide bills No. 2503 and 2511. It was claimed that the appellant-defendant had wrongly withheld the above amount from the principal amount of Rs.15,93,675/-.

The defendant though admitted the supply of rice vide the aforesaid bills, but it was claimed that the rice supplied was of bad quality and an amount of Rs.9,58,415 was incurred on

fumigation,cleansing and repackaging and a debit note for adjustment of Rs.2,93,675/- was rightly made in the account books.

After analyzing the oral as well as documentary evidence produced by the parties, the trial Court negated the plea of the appellant regarding substandard quality of rice and held that the appellant failed to substantiate the plea and at no point of time it was shown that any complaint regarding its quality was raised. The suit was partly decreed by directing the appellant to pay the due amount with interest.

The defendant failed in appeal, leading to the institution of the instant regular second appeal.

I have heard learned counsel for the appellant and perused the record.

The appellant had not disputed the supply of rice by the respondents vide bills No. 2503 and 2511 for an amount of Rs. 15,93,675/-. It was also come on record that an amount of Rs.13 lakhs was paid by the appellant, leaving an outstanding amount of Rs. 2,93,675/-, for which the appellant issued a debit note and adjusted the amount in the books. To wriggle out of the liability, the appellant took the stand that the rice was of poor quality and justified withholding of the balance amount. No evidence worth credence was produced to substantiate the plea. It was also noticed by the Courts below that at no point of time, the appellant complained to the respondents about substandard quality of rice. The appellant neither rejected the cargo by not accepting its delivery nor asked for its replacement. The silence on

the part of the appellant had led to the conclusion that the rice of good quality at the time of delivery and the process of fumigation, cleansing and repackaging was got done by the appellant without any authority. The appellant failed to connect the photographs with the rice delivered vide consignment Nos. 2503 and 2511. The same were found to be of different consignment. Taking into account the totality of circumstances, it was held that the action of the appellant to adjust the outstanding amount of Rs.2,93,675/- was arbitrary and unilateral and the respondents were entitled to recovery of the amount with interest.

I find no reason to interfere with the concurrent findings recorded by the Courts below which are neither illegal nor suffer from perversity. The findings are affirmed. No substantial question of law arises for consideration in this appeal. Dismissed in limine.

06.04.2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No