

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

**RSA No.350 of 2010 (O&M)
Date of Decision: February 20, 2018**

The Hafed (The Haryana Co-operative Marketing-cum-Processing Society) and others ..Appellants

Versus

M/s Chiranji Lal Som Nath Commissioner AgentRespondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ravinder Malik, Advocate
for the appellants.

Mr. Sanjay Mittal, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The brief facts that are essential to be highlighted are that between period 02.10.2003 to 7.11.2003 as is there and is admitted case of both the sides from the plaintiff M/s Chiranji Lal Som Nath Commission Agent Anaj Mandi, Kaithal (in short, 'the firm'), defendants Hafed (The Haryana Co-operative Marketing-cum-Processing Society) (in short, 'the Hafed') purchased at Centre Barta grains for a total amount of Rs.82,02,816-87 paise and made payment of Rs.81,80,066-64 paise by leaving a balance amount of Rs.22,750-23 paise. A legal notice was served through registered post and when defendant failed to make good the payment of balance amount the present suit for recovery was filed claiming a sum of Rs.,22,750,23 paise being principal and interest amounting to Rs.3749-77/- along with interest @ 18% per annum was due towards defendants from the

date of filing of suit. The Court of learned Additional Civil Judge, (Senior Division), Narwana through judgment dated 06.05.2008 dismissed the suit, against which findings two appeals one by the plaintiff and other by the defendants was filed. Learned Additional District and Sessions Judge-I, Jind disposed off both these appeals through common judgment dated 23.3.2009, whereby, appeal of plaintiff was allowed and that of defendant stood dismissed and that is how the present regular second appeal has come about.

Heard learned counsel for the parties and perused the records of the case. The defendants in their written statement besides taking preliminary objections regarding maintainability of the suit in the present form and Civil Court having no jurisdiction to entertain the suit took the plea admitting the transactions but raked plea that there was shortage in each bag and, therefore, plaintiff-firm were not entitled to the amount of this shortage as they were intimated by the defendants by letter dated 15.12.2003 and, therefore, shortage ought to be deducted claiming that full and final payment has been made and sought dismissal of the suit. On the basis of pleadings of the parties learned trial Court framed the following issues:-

1. Whether plaintiff is entitled to recover the suit amount of Rs.70,000 from the defendants as claimed? OPP
2. Whether plaintiff is entitled to recover interest on the principal amount from defendants, is so at what rate? OPP
3. Whether plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
4. Relief.

Both the parties led evidence in their support. The first and the foremost point raised by the learned counsel for the appellant

revolves around non-service of prior notice being in violation of Section 124 of Haryana Co-operative Society Act which is well controverted by learned counsel for the respondent, who has argued that in the plaint as well as in the evidence it is well illustrated that through Registered A.D. post notice was served upon defendants and the very purpose of issuance of legal notice is to make aware the other party of the likely grievance of the person serving the notice and to ensure that they are not taken by surprise and since legal notice has been served prior to the filing of the suit certainly such an argument is rendered otiose. It is duly accepted by learned counsel representing the two sides as to the transactions which were undertaken but the only grievance of the appellant is shortage in the quantity so supplied. Testimony of DW1 Bir Bhan, the own witness of defendant-appellants, Salesman had accepted the fact that process of taking delivery has been initiated from 07.11.2003 and learned counsel for the appellant accepted that provisions of Section 43(2) of Haryana State Agricultural Produce Markets (General) Rules, 1962 as well as sub-clause 24(7) of this Act provides for test weighment of 10% units of packing either at the packing site and if no such test weighment is made at the site it would be deemed that produce has been correctly weighed. Ex.P3 reflects transaction that has been undertaken between the parties. Learned counsel to the very specific query of the Court could not show by any means how or by what means in their own records the shortage has been reflected at the time of making delivery. Section 31 of the Sales of Goods Act provides that seller shall deliver the goods to the buyer who will accept and pay for them in terms of contract and by virtue of Section 37 of this Act seller if delivers quantity not

as per the contract the buyer can reject the delivery and none of these eventualities have been resorted to by the defendants. Admittedly the appellants have received goods and in the absence of any cogent and reliable evidence to the contrary deemed to have accepted these good as per the terms so settled between them and, therefore, to their entire satisfaction and since the defendants have made good the major portion of this amount due invariably leads to one and the only conclusion that all was well as per the wishes and desire of the defendants. Had it been so at the very phase of delivery the defendants could have refused to accept the remaining delivery as well as could have stopped the payment of the goods which they never did so. Learned first Appellate Court has rightly given consideration to this own volition of the defendants, whereby, they have kept silent and mum over the delivery so received by them and at this belated stage when they have obligation to pay back the amount cannot wriggle out of the commitment on such a flimsy plea which is not supported by any evidence. Thus, there is no illegality or perversity in the findings so recorded by the Courts below. The appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 20, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No