

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

**RSA No.4619 of 2015 (O&M)
Date of Decision: 08.01.2018**

Bhajan Singh

.....Appellant

Vs

Punjab State Civil Supplies Corp. Ltd. And anr.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Parveen Kumar Garg, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the judgments and decrees passed by the Courts below whereby suit filed by the plaintiffs was decreed by the trial Court and affirmed by the lower Appellate Court.

[2]. Brief facts are that the plaintiffs filed a suit for recovery of Rs.1,16,547/- against the defendant on account of shortage of empty gunny bags and loss of interest due to late receipt of payment of wheat crop from Food Corporation of India (for short 'the FCI'). Defendant/appellant was posted as Incharge of

Talwandi Bhai Punsup Centre and he was directed to purchase and store wheat for the crop year 1997-98. One Piare Lal Inspector Grade II was posted as Addl. Incharge of the Centre for double lock of the stocks of wheat for the crop year 1997-98 along with the defendant. On 18.04.1997, Jagdev Singh was posted as Addl. Incharge in place of Piare Lal. Defendant and the said Jagdev Singh joined Talwandi Bhai Centre on 25.04.1997 and both of them purchased and stored the wheat stock for the crop year 1997-98. Defendant was to deliver the wheat stock to FCI as per directions of the higher authorities. Defendant was also required to maintain the health of the stock with the use of insecticides, fumigants, wooden crate, polythene covers and other stock articles. He was also required to maintain the stock register and godown register and registers for entering the quantity, delivery, opening balance and closing balance etc.

[3]. It was further alleged by the plaintiffs that the defendant along with Jagdev Singh purchased 1,75,013 bags of wheat weighing 1,66,130.70 Qtls. of wheat for the crop year 1997-98 and made delivery to the FCI. Jagdev Singh was transferred to Fatehgarh Panchtoor vide order dated 21.06.1998. Defendant was directed to relieve him immediately so as to enable him to join his new place of posting on 01.07.1998. However,

defendant did not relieve him in time. Jagdev Singh was relieved vide letter dated 12.01.1999 and at the time of his relieving, no charge was due from him. Defendant had mentioned that no charge was due from Jagdev Singh and he was not responsible for wheat specials dated 17.11.1998, 25.11.1998 and delivery of 6/97, 11/97 and 1/98 as there was no shortage and excess as per the norms. The wheat stock purchased by the defendant had become Nil in 8/2000. The accusation against the defendant/appellant was that the wheat special dated 11.07.1997 was placed on 12.07.1997, but the defendant could not load the wheat special and the FCI deducted a sum of Rs.28,008/- and also forfeited the security payment of Punsup. A letter dated 22.07.1997 was issued to the defendant to show cause as to why wheat special was lapsed and why his responsibility be not fixed for the said loss. Defendant submitted his reply on 22.07.1997. The explanation was not found to be satisfactory and it was held that the defendant was responsible for the loss of Rs.28,008/- to the plaintiffs. The second accusation was in the context that empty gunny bags provided to the defendant being incharge of the Centre were found short in the physical verification conducted. Estimated value of the shortage was Rs.63,018/-.

[4]. Defendant/appellant denied the allegations and

pleaded that the suit was bad for non-joinder of the necessary parties. Relieving of Jagdev Singh and also execution of writing in respect of the same was denied. The document was claimed to be forged and it was alleged that the plaintiffs should have taken the matter with the FCI and the FCI was not entitled to deduct any amount, unilaterally without conducting any inquiry or fixing responsibility. The defendant/appellant being a subordinate officer was made a scapegoat. He never refused to deliver the stock, but in fact FCI persons did not take the delivery of the wheat and the defendant had given the explanation in the reply dated 22.07.1997. Supply of quantity of gunny bags or bales was also denied including any shortage as alleged by the plaintiff. The defendant relied upon the inquiry report dated 01.10.1999 in which defendant was never found at fault and it was Gurnam Singh, Inspector G-II, who was found at fault, but he was not impleaded in the suit.

[5]. The trial Court after appreciation of evidence led by the parties held that so far as recovery of amount of Rs.28,008/- on account of demurrage and forfeiture of security was concerned, the same was the joint liability of the defendant and Jagdev Singh Inspector, who also joined the Talwandi Bhai Punsup Centre on 25.04.1997. The wheat special dated 11.07.1997 was placed on 12.07.1997. Defendant being incharge was required

to deliver the stock on 12.07.1997, but he could not load the wheat special. Due to non-delivery, Railways charged demurrage from the FCI and FCI in turn deducted an amount of Rs.28,008/- on account of demurrage and security forfeiture from the bill of the plaintiffs. The defendant admitted the fact that he could not load the wheat on 12.07.1997, but attributed the same to the officials of the FCI, who did not take the delivery of the stock intentionally.

[6]. It was held by the trial Court that if the officials of the FCI did not take the delivery of the stock intentionally, the defendant should have informed the plaintiffs. It was only on 22.07.1997, the defendant ventilated his grievance when he was issued a show cause notice. The unwillingness of the officials of the FCI could have been informed by the defendant in time. It was only when the FCI had written a letter dated 17.07.1997 with regard to the forfeiture of security, stand of the defendant could be known. Prior to that the defendant never brought it to the notice of the plaintiffs. Since no information was given prior to 22.07.1997, the defendant was found liable for the said lapse. The trial Court further held that no doubt the defendant was found to be negligent in performing his duty, however he was not the sole person, responsible for the same. Jagdev Singh examined by the plaintiffs as PW-6 was also liable

for the negligence, who was posted at the same time from 23.04.1997 to 30.06.1998, when the wheat stocks were purchased.

[7]. The trial Court also doubted the alleged reliving letter. By referring to the document Ex.DW-5/C, the trial Court found some alterations by way of addition of words with regard to wheat special mentioned in the letter. The author of the document did not sign at the end of the writing. The signatures of the author of the document i.e. the defendant were not legible and a line was inserted over the signatures. The document was found to be doubtful and the genuineness of the same was not relied by the trial Court. Jagdev Singh while appearing as PW-6 admitted that he remained working at Talwandi Bhai Centre from 23.04.1997 to 30.06.1998. Trial Court held Jagdev Singh also responsible for the admitted loss on account of demurrage and forfeiture of security, which was deducted from the bills of the plaintiffs. So from the total computation of Rs.28,008/-, half of the amount i.e. Rs.14,004/- was ordered to be recovered from the defendant.

[8]. The second allegation with regard to shortage of nine gunny bales was proved by the plaintiff-Corporation before the trial Court on the basis of physical verification dated 30.09.1999 (Ex.PC). At the time of physical verification, the stock was found

to be in custody of the defendant, who was also present at the spot and verified the same. Joint liability of Gurnam Singh was discarded by the trial Court on the ground that the defendant could not prove the fact by way of any report in his favour with regard to the physical verification dated 30.09.1999. Precisely for the said reason, the trial Court held the defendant liable for the loss amounting to Rs.63,018/-.

[9]. I have heard the submissions made by the learned counsel for the parties.

[10]. So far as the amount of Rs.28,018/- on account of demurrage and security forfeiture is concerned, the liability of the defendant was held to be 50% i.e. Rs.14,004/-, which in my considered opinion cannot be faulted with, as the same was recorded on the basis of evidence on record. The defendant did not inform the plaintiffs timely in respect of unwillingness of the officials of the FCI in not accepting the delivery of stock.

[11]. With regard to second allegation, the defendant had specifically taken the plea of joint liability with Gurnam Singh, Inspector G-II. Reliance was placed on enquiry report dated 01.10.1999 (Ex.DW-1/D) submitted by Chaman Lal, Field Officer, Punsup, Zeera, pursuant to his appointment as enquiry officer vide letter dated 29.07.1999 (Ex.DW-1/C). In the report

dated 01.10.1999, involvement of Gurnam Singh, Inspector G-II, was also found in respect of accusation against the defendant/appellant. Though the defendant has taken a stand that enquiry report dated 01.10.1999 did not involve him, but extracted translation of concluding two paras of the said document would show the following facts:-

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I have read the statements of all the employees and also orally heard them and reached to this conclusion that if brother of Sh. Bhajan Singh was ill, in any case, he should have counted the Bardana to Sh. Gurnam Singh and secondly if Gurnam Singh was to use the Bardana then he ought to have counted the same, so that shortage, if any could have been known at that time. Both employees admit that they have double lock with them. No adjustment in the account of Sh. Madanjit Singh has been proved. From the side of Gurnam Singh a list has been prepared on the basis of record, from which it is proved that he has yet to take 502 gunny bags from the Mandi after adjustment of giving and taking. From this list, no importance (*ahmiat*) can be given to the adjustment of 1080 gunny bags in the account of Bhajan Singh, as after adjusting this Bardana in the account of *Arthiyas* the balance of Mandi has been taken out.

So conclusion is that Sh. Gurnam Singh should take 502 gunny bags from Mandi and remaining shortage of 9 Gatha = 2700 gunny bags (-) 505 = 2198 gunny bags is attributed to both of them equally. (not readable).....”

Sd/-

Field Officer, Punsup
Zeera”

[12]. Perusal of the impugned judgments and decrees would show that the trial Court has not adverted to the aforesaid document (i.e. enquiry report dated 01.10.1999 (Ex.DW-1/D) in any manner. The trial Court has based its conclusion only on the physical verification of gunny bags which was done on 30.09.1999. The document Ex.DW-1/C vide which the Enquiry Officer was appointed and the report dated 01.10.1999 (Ex.DW-1/D) submitted by the Enquiry Officer should have been taken into consideration by the trial Court while deciding the second accusation against the defendant/appellant.

[13]. As per the enquiry report dated 01.10.1999 (Ex.DW-1/D) submitted by Chaman Lal, Field Officer, Punsup, Zeera, for the shortage of nine gunny bales, Gurnam Singh was also held equally responsible along with the defendant.

[14]. So far as plea of the plaintiff in respect of maintainability and limitation is concerned, the suit was filed through authorised person and from the date of physical verification dated 30.09.1999, the cause of action arose to the plaintiffs in the year 2000. The wheat special was to be loaded out of the stocks which became Nil in August 2000 and, therefore, the suit was

within limitation.

[15]. Since the appellant was not solely responsible for the shortage of nine gunny bales worth Rs.63,018/-, therefore, Gurnam Singh ought to have been impleaded as co-defendant. The loss should have been apportioned amongst the defendant and Gurnam Singh, who was also found to be indicted by in the report dated 01.10.1999 (Ex.DW-1/D). Non-consideration of the said report by the Courts below can be credited to the case of the defendant/appellant, by reducing his liability to the tune of 50% under the said allegation.

[16]. For the reasons recorded hereinabove, I accept the appeal partially by modifying the decrees passed by the Courts below thereby, decreeing the suit of the plaintiffs for recovery of Rs.14,004/- (half of Rs.28,008/-) and Rs.31,509/- (half of Rs.63,018/-) along with interest @ 8% per annum from the date of filing of the suit till passing of the decree by the trial Court i.e. 17.07.2013 along with future interest @ 6% per annum from the date of decree till final realization of the amount.

January 08, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No