

RSA No.625-2016 (O&M)
Date of Decision:16.11.2018

The Morinda Co-operative Sugar Mills Ltd.Appellant

Vs.

M/s Sood Sales Corporation Sugar Selling AgentRespondent

CORAM : HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Vikas Singh, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff has not been successful in seeking recovery of Rs.3,08,018.75 against the defendant alongwith interest at the rate of 12 per cent per annum on the premise that in the oral contract dated June 12, 2002, plaintiff had agreed to supply 3000 bags but the defendant lifted only 2046 bags and on account of the non-lifting of remaining 954 bags incurred the loss. The intimation in this regard was submitted vide Ex.PA dated July 21, 2002. Another contract dated June 17, 2002 was entered into for 3000 bags but none of the bags were lifted and resulting into loss of Rs.91,950/- and then again on June 18, 2002 contract of 3000 bags was entered into but none of the bags were lifted, again caused loss of Rs.2,27,520/-.

The trial Court did not believe the evidence brought on record, dismissed the suit and appeal preferred before the lower appellate Court was also dismissed.

Mr.Vikas Singh, learned counsel appearing on behalf of the appellant submitted that *de hors* of the fact there was oral contract but the defendant had been issuing delivery orders proved on record vide

Ex.PA. There is misinterpretation of the documentary evidence but the Courts below ought not to have discarded the version of the plaintiff. The loss was intimated by registered letter but the defendant did not come forward and therefore, claimed the recovery through intervention of the Court.

I am afraid the aforementioned arguments is not sustainable as no direct and cogent evidence with regard to the alleged loss of not lifting the bags had been placed on record much less any surveyor report or intimation for the assessment of the loss in presence of the defendant.

Therefore, in my view the appellant has not been able to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act, 1872.

The arguments of Mr.Vikas Singh, does not enable the Court to form a different opinion than the one arrived at by the Courts below. Having found no illegality and perversity, no ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018.

dharamvir/dkp

Whether speaking/reasoned	: YES/NO
Whether Reportable	: YES/NO