

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

RSA-4905-2014(O&M)

Date of decision:-19.12.2018

M/s Gurdial Singh Kirpal Singh Bardana Merchants and others

...Appellants

Versus

The Punjab State Co-operative Milk Producers Federation Ltd. and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.G.S. Jaswal, Advocate with  
Mr.J.S. Lalli, Advocate  
for the appellants.

Mr.Manjot Singh, Advocate and  
Mr.Atul Kaushik, Advocate  
for respondents No.1 and 2.

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**H.S. MADAAN, J.**

This regular second appeal is directed against the judgment and decree dated 29.5.2014 passed by Additional District Judge, Amritsar vide which he had dismissed the appeal against the judgment and decree dated 23.11.2011 passed by Civil Judge(Sr.Divn.), Amritsar vide which the Court had decreed the suit of plaintiffs – respondents.

The defendants-appellants feeling aggrieved by the judgments and decrees passed by the Courts below have approached this Court praying that the appeal be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit filed by the plaintiffs-respondents be dismissed.

Briefly stated, facts of the case are that the plaintiffs The Punjab State Co-operative Milk Producers Federation Limited known as Milkfed, Chandigarh through its Managing Director and The Punjab State Co-operative Milk Producers Federation Ltd.(Cattle Feed Plant), Ghania Ka Banger, Tehsil Batala, District Gurdaspur through its General Manager had filed a suit for recovery of Rs.14,22,000/- as principal and Rs.3,12,840/- as interest thereon at the rate of 12% per annum, total amounting to Rs.17,34,840/- against defendants M/s Gurdial Singh Kirpal Singh Baradana Merchants Katra Mit Singh/Dhab Wasti Ram, Amritsar through its partners Gurdial Singh, Kirpal Singh, Smt.Sunita and Smt.Pushpal Kaur on the averments that defendant No.1 was a partnership concern had been carrying on business in the name and style of M/s Gurdial Singh Kirpal Singh situated at Kot.Mit Singh/Dhab Wasti, Amritsar; that plaintiff No.2 required raw material for working of the plant, which was being purchased from the market i.e. gunny bags, kattas and old bags and old kattas were being disposed of by the plaintiffs by inviting tenders; that the plaintiffs invited tenders for the sale of old gunny bags and old kattas for the period 1.4.97 to 31.1.1998 by issuing advertisements in the newspapers on 8.2.1998; that one Rajan Bardana Co. Bajrang Bazar Kt. Karam Singh, Amritsar submitted tender, which was negotiated on 26.2.1998 and rates were settled at the rate of Rs.4.58 per old gunny bag and 82 paise per katta i.e. Rs.458 per hundred for old gunny bags and Rs.82/- per hundred old kattas; that the plaintiffs had also received tenders from other purchasers i.e. Sardar Jute Co. Ludhiana, Dingra Rice Mills and the defendants and the rate after negotiation was @

4.56 old gunny bags i.e. Rs.456/- per hundred old gunny bags and 76 paisa per old kattas i.e. Rs.76/- per hundred and the tender of Rajan Bardana was accepted being highest; that the tenders invited were for 4 lacs gunny bags and 25000 old kattas and the tender of Rajan Bardana Co. Amritsar was accepted on 26.2.1998; that the defendants had filed a suit for mandatory injunction and perpetual injunction before learned Civil Judge (Jr.Divn.), Batala seeking a restraint order against the plaintiffs from delivering or removing the old gunny bags and kattas and the injunction was granted to the defendants by the Court on 18.5.1998; the rate submitted by the defendants was lower than that of Rajan Bardana Co. Amritsar; thereafter, the plaintiffs had moved an application on 21.12.1998 and made statement during the pendency of the suit on 22.12.1998 praying that the suit of the plaintiffs be decreed and defendant be directed to lift the material within a period of 10/15 days, however that suit filed by defendants was dismissed on 22.12.1998; that in the application moved by the plaintiff, it was submitted that the goods were likely to deteriorate and defendant should take delivery of the goods but the defendant did not agree to the proposal and suit was dismissed; that due to the filing of the suit against the plaintiffs by the defendants, the plaintiffs suffered a loss of Rs.2/- per hundred gunny bags, total Rs.8,000/- and loss of 4 paisa per katta, total Rs.1,000/-; that on failure of the defendants to take delivery of the material, the plaintiff issued a fresh advertisement calling for tenders for sale of the old gunny bags and old kattas, those were ultimately sold to M/sChuni Lal Chaman Lal, Amritsar, who had made the highest bid giving rates of Rs.105/- and Rs.42/- per

hundred old bags and old kattas respectively, the plaintiffs in that way suffered a loss of Rs.351/- per hundred old gunny bags and Rs.36/- per hundred old kattas. The details of the loss suffered happened to be as under:

| Sr.No. | Item             | Difference between the rates settled with Rajan Bardana Co. | Difference between the rates settled with defendants |
|--------|------------------|-------------------------------------------------------------|------------------------------------------------------|
| 1.     | Gunny bags 4 lac | Rs.14,12,2000/-                                             | Rs.14,04,000/-                                       |
| 2.     | Kattas 25000     | Rs.10,000/-                                                 | Rs.9,000/-                                           |
|        | Total            | Rs.14,22,000/-                                              | Rs.14,13,000/-                                       |

The plaintiffs contended that they are entitled to recover this amount from the defendants along with interest @ 12% per annum. When the defendants failed to pay the amount, the plaintiffs filed suit for recovery in the Court of competent jurisdiction at Amritsar.

On getting notice, defendants No.1, 2, 4 and 5 put in appearance. Subsequently, defendants No.1, 2 and 4 filed a joint written statement taking objections that the suit was time barred and was not maintainable; that the Civil Court at Batala lacked territorial jurisdiction to entertain and try the suit; that no cause of action arose to the plaintiffs to bring the present suit; that the suit was not filed by duly authorized and competent person and that the suit was bad for non-joinder of necessary parties. Several other assertions in the plaint were denied. According to the defendants, they had submitted a tender and the rate settled after negotiating with the defendants was Rs.456.40 per hundred old gunny bags and 78 paise per old kattas i.e. Rs.78/- per hundred kattas, which was

the highest and the Director Milkfed the then member of the Tender committee issued a certificate dated 26.2.1998. It was contended that tender of the defendants was the highest. The plaintiffs did not deliver the gunny bags and kattas to the defendants in pursuance of their tender and the defendants served a telegraphic notice dated 2.3.1998 upon the plaintiffs but to no effect; that thereafter the defendants filed a suit for mandatory injunction and perpetual injunctions in the Court of Civil Judge(Jr.Divn.), Batala; that the Court had passed an injunction order; that the plaintiffs had moved an application dated 22.12.1998 in that suit and made a statement during the pendency of that suit on 21.12.1998 that on account of negligence of the plaintiffs some stock had deteriorated, worn out and some stock was changed by the plaintiffs; that the defendant's attorney visited the premises of the plaintiffs for inspection of the stock of gunny bags and kattas in dispute and found that gunny bags and kattas in dispute had been spoiled due to the negligence of the plaintiffs; thereafter the defendants moved an application dated 17.11.1998 in the suit at Batala that the plaintiffs be directed to replace the original bags agreed to be sold instead of spoiled bags but the plaintiffs, who were defendants in the suit did not do so, rather made a statement on 22.12.1998 and got their suit at Batala dismissed as withdrawn. The defendants denied that plaintiff suffered any loss of Rs.14,22,000/- on account of difference between the rates settled with Rajan Bardana Company or any loss of Rs.14,13,000 on account of the difference between the rates settled with the defendants. Denying the remaining allegations, such defendants prayed for dismissal of the suit.

Defendant No.5 in the written statement filed by her took up various legal objections. Such defendant also prayed for dismissal of the suit.

The plaintiffs had filed replications to the written statements of defendants No.1, 2, 4 and 5 controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed vide order dated 19.12.2006:

1. Whether the plaintiff No.1 is a registered co-operative society and Sh.Amrik Singh, its Managing Director is authorized and competent to file the present suit?OPP.
2. Whether the plaintiffs are entitled to recovery of Rs.17,34,840/- alongwith interest as prayed for? OPP.
3. Whether the suit is time barred? OPD.
4. Whether the suit is not maintainable? OPD.
5. Whether this Court has no jurisdiction to entertain and try the present suit?OPD.
6. Whether the plaintiffs have no cause of action to file the present suit? OPD.
7. Whether the suit is bad for non-joinder of necessary parties? OPD.
8. Relief.

In order to prove his case, the plaintiffs had examined Karamjit Singh as PW1, Gopal Kakkar as PW2 Jaswant Singh as PW3 and Ms.Jasbir Kaur as PW4.

On the other hand, the defendants had examined Gurdip

Singh as DW1 and Gurdial Singh as DW2.

After hearing the learned counsel for the parties, the trial Court decreed the suit of the plaintiffs.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Amritsar, which was assigned to Additional District Judge, Amritsar, who vide judgment dated 29.5.2014 dismissed it.

The defendants are feeling dissatisfied with the said judgments and decrees passed by the Courts below and have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiff against them be dismissed.

On getting notice of regular second appeal, the respondents had appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

No substantial question of law comes out to be there. The Courts below have already dealt with all the material aspects of the case and the contentions now sought to be raised in the grounds of appeal and put forward by learned counsel for the appellants to the effect that gunny bags were not kept properly and there were no proper negotiations, there

was dereliction on the part of department, technical report was not taken etc., those are touching merits of the case, which have been dealt with by the Courts below in a proper and appropriate manner and need not be dealt with again.

One more argument advanced by learned counsel for the appellants was that Additional District Judge, Amritsar has not given issue-wise findings and has not discussed the documents. Whereas I find that it is not so. Learned Additional District Judge, Amritsar has considered the rival contentions, evidence adduced by the parties and submissions made by learned counsel for the parties coming to the conclusion that there was nothing wrong with the judgment passed by the trial Court and no interference was called, therefore, the same was affirmed.

Learned counsel for the appellants has further contended that the form of suit was defective and it was time barred. But then a perusal of the detailed judgment passed by the trial Court goes to show that defendants No.1 to 4 in the joint written statement filed by them had taken all those objections, which were considered. Specific issues No.3 and 4 were framed in that regard i.e.:

3. Whether the suit is time barred? OPD.
4. Whether the suit is not maintainable? OPD.

The parties were afforded opportunities to lead evidence. After hearing arguments, both the issues were decided against the defendants and that too rightly. Learned counsel for the appellant could not convince me that suit was not maintainable or had not been filed

within time.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

19.12.2018  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**