

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.487 of 2017

Date of Decision: October 30, 2018

The Gurdaspur Cooperative Sugar Mills Ltd.

...Appellant

Versus

M/s Falcon Chemicals, Dayalpur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (Oral)

Appellant-plaintiff has been non-suited on account of non-payment of court fees in a suit seeking recovery of loss and damages on account of the non-lifting of 7800 Qtls. Molasses as per the sale order dated 20.07.2009 along with penalty charges @ 2% per quintal per week, interest and costs.

As per case set out in the plaint, it was pleaded that the respondent- defendant was to lift the aforementioned Molasses as per the agreement, but having failed to do so, plaintiff suffered losses and compelled to sell at lesser price in open market @ ₹ 415/- per Qntl. to M/s Jagat Jit Industries Ltd. Hamira, District Kapurthala. This fact has been justified by the plaintiff in his own deposition.

Ravi Kant Bhalla PW-2 supported the version of PW-1 Harish Wadhawa, but the Courts below laid focus only on the fact of non-payment of court fees.

Mr. Vikas Singh, learned counsel representing the appellant-

plaintiff submitted that the sale order dated 03.12.2010 has been proved on record, but the courts below abdicated in not referring to the same, therefore, there is gross illegality and perversity.

As regards the payment of the court fees, he, on instructions submits that his client is willing to pay the court fees as umpteen number of documentary evidence has been brought on record for succession of the claim.

I am afraid, the aforementioned argument is not able to cut ice, for, during the course of the hearing, only sale order dated 03.12.2010 of the appellant-plaintiff has been shown, but no witness from M/s Jagatjit Industries, who had actually purchased it, has been produced or the account statement has been brought on record to establish the alleged damages quantified in terms of money as per the provisions of Section 73 of the Indian Contract Act. As per the provisions of the Court Fees Act, the suit could not have been couched in the mode and manner as indicated above, for, it should have been a simple suit for damages on payment of court fees. It would be a farcical exercise in allowing the purported application for payment of court fees as the plaintiff has failed to discharge the onus for claiming damages.

In view of what has been observed above, no ground for interference is made out, much less any question of law arises. Resultantly, the appeal is dismissed.

October 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No