

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

RSA No.6317 of 2017 (O&M)
Date of decision: 13.08.2018

Jagadhari Co-operative marketing cum-Processing Society Ltd. .. Appellant
vs.

M/s Hukum Chand Rattan Lal .. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Ravi Sharma, Advocate
for the appellant.

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Harinder Singh Sidhu, J.

CM No.16446-C of 2017

Civil Misc. Application is allowed.

The delay of 5 days in re-filing the appeal is condoned.

Main Case

The present appeal has been filed against the judgment and decree dated 07.02.2017 of the learned Additional District Judge, Yamuna Nagar at Jagadhari, whereby it has set aside the judgment and decree dated 07.02.2013 of the Trial Court dismissing the suit of the plaintiff and decreed the suit of the plaintiff-respondent for recovery of Rs.71,058/- along with interest @ 6% p.a. from the date of filing of the suit till realization.

The plaintiff-respondent had filed a suit against the defendant-appellant for recovery of Rs.71,058/-. It was the case of the plaintiff that it was a firm dealing in food grains as commission agent at Anaj Mandi, Kharwa. The defendant purchased the wheat from the plaintiff in the financial years 2008-09 and 2009-10. However, lesser amount of Rs.71,058/- paid at the time of delivery of wheat at godown of HAFED.

The case of the defendant was that there was shortage in delivery of wheat weighing 43 quintals 50 kgs amounting to Rs.53,288/- in the financial years 2008-09 and for the purchase in the financial years 2009-10, there was shortage of 14 quintals-07 kgs amounting to Rs.17,770/-. As there was shortage of delivery of wheat amounting to Rs.71,058/- (for these two years) the amount was deducted from the payment to be made to the plaintiff in the aforesaid years.

Learned Trial Court dismissed the suit holding that the plaintiff had failed to produce any oral or documentary evidence to prove the fact that there was no shortage of wheat at the time of delivery to the godown of HAFED. Further the plaintiff did not lead any evidence to indicate that it was not the duty of the plaintiff to deliver the exact weight of as per Form 1 to the defendant and further to the Godown of the HAFED. The plaintiff had also failed to prove that shortage of wheat occurred due to environmental conditions or delay in lifting the material from the market by the defendants transporters.

Learned Lower Appellate Court, however, reversed the finding and it was held that the defendant had admittedly purchased the wheat from the plaintiff. DW-1-Ram Kumar sole witness of the defendants in his cross-examination stated that the plaintiff had got the stocks weighed in the presence of workers of the defendant. It was only on satisfaction of the weight, the bags were stitched. There was no privity of contract between the plaintiff and HAFED. The defendant purchased the wheat for its supply to the HAFED. Once the quantity of wheat purchased was weighed in the presence of workers of the defendants the transportation thereof to the godown of HAFED was the responsibility of the defendants. The liability of the plaintiff was

only to account for the wheat prior to its lifting. It was also noticed that no

notice had been given by the defendant to the plaintiff or to the Secretary, Marketing Board that there was any shortage of wheat at the time of weighment by the plaintiff.

In view thereof, the judgment and decree of the trial Court was set aside and the suit of the plaintiff for recovery of Rs.71,058/- along with interest @ 6% p.a. from the date of filing of suit till its realization.

Learned counsel for the appellant has not been able to establish as to how the findings recorded by the Lower Appellate Court are perverse or against the record.

Thus, there is no merit in the appeal and the same is dismissed.

13.08.2018
Atul

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No