

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

RSA-3301-2011(O&M)

Date of decision:-26.7.2019

The Punjab State Warehousing Corporation and another

...Appellants

Versus

M/s Pawan Kumar & company

...Respondent

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

Argued by: Mr.I.S. Sidhu, Advocate
for the appellants.

Mr.S.K. Singla, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – M/s Pawan Kumar & Company, Ferozepur City through its partner Sh.Pawan Kumar had brought a suit for recovery of Rs.8,35,000/- against the defendants i.e. The Punjab State Warehousing Corporation, Chandigarh (hereinafter referred to as the Corporation) through its Managing Director and Punjab State Warehousing Corporation, Ferozepur City through its District Manager on account of rent for storing the paddy by the defendants in the premises of the plaintiff firm for the crop year 1998-99 w.e.f. 1.10.1998 till 30.9.2002 along with further rent at the rate of 50 paisa per bag per

month w.e.f. 1.10.2002 till the lifting of the entire paddy by the defendants from the premises of the plaintiff firm along with interest @ 18% per annum.

As per the case of the plaintiff, it has been dealing with shelling of paddy etc. for the last several years; that it has been purchasing its own paddy for shelling and has been shelling paddy of other food procuring agencies like Corporation, Punjab Agro, Markfed, Punsup etc.; that the controlling authority of all such agencies is District Food & Supplies Controller through its District Office, Ferozepur; that no stock was allotted to the plaintiff for the purpose of shelling for the crop year 1998-99, as such it had been shelling its own stock; that earlier the plaintiff had been doing shelling work for defendant corporation for the year 1996-97 and 1997-98; that during the crop year of 1998-99, the defendant corporation stored 71471 bags of paddy upto 30.9.1998; that there was an oral agreement between the parties that the plaintiff firm would charge rent @ 25 paisa per bag per month on account of storage of 71471 bags of paddy; that the plaintiff requested the defendants – corporation to execute a written agreement, however, the defendants put off the matter on various pretexts; that the stock of defendants remained stored in the premises of the plaintiff from 1.10.1998 to 30.4.2000 i.e. for 19 months and rent calculated @ 25 paisa per bag per month comes out to Rs.3,39,487/-. However on

30.4.2000, 5935 bags of paddy were lifted and remaining bags numbering 65536 remained stored in the premises of plaintiff firm from 30.4.2000 to 20.5.2002 i.e. for 24 months 20 days and the rent calculated at the same rate comes to be Rs.4,04,138/-; that on 20.5.2002, 1990 bags of paddy were again lifted, whereas remaining stock of 63456 paddy bags remained, the same remained stored from 21.5.2002 to 30.5.2002 i.e. for ten days and the rent at the same rate comes to be Rs.5295.50 paisa; that again on 30.5.2002, 2895 bags of paddy were lifted and remaining 62651 bags remained stored in the premises of the plaintiff firm from 31.5.2002 up to 15.8.2002 and rent at the same rate for the said period is calculated as Rs.39,156.50 paisa, in total a sum of Rs.7,88,077/- was due from the defendants-corporation to the plaintiff firm, whereas 62651 bags of paddy are still lying in the premises of the plaintiff firm; that the plaintiff claimed amount of Rs.7,88,077/- from the defendants-corporation with interest @ 18% per annum till realization.

According to the plaintiff-firm, it requested the defendants to pay this amount and even served a legal notice through its counsel dated 17.8.2002, however the defendants-corporation sent reply to the notice, which was based upon wrong and concocted facts. It neither paid the amount nor lifted the remaining paddy stock, giving rise to a cause of action to the plaintiff-firm to bring the suit for recovery of Rs.8,35,000/- uptill 30.9.2002, craving for grant of

future rent from 1.10.2002 till lifting of entire paddy stock along with interest.

On notice, the defendants appeared and filed written statement contesting the suit, challenging the maintainability of the suit in the present form contending that the suit was false, frivolous and vexatious to the knowledge of the plaintiff and the plaintiff was estopped to file the suit by its own act and conduct and that plaintiff had not approached the Court with clean hands. According to the defendants, the paddy was stored in the premises of plaintiff for custom milling of the same and delivery of its resultant rice to the FCI in the account of the defendant – corporation and an agreement dated 22.11.1998 was executed between the parties containing clause No.22 that in case of dispute, the matter would be referred to Arbitration. Therefore according to the defendants, the Civil Court had no jurisdiction to entertain and try the matter and further the arbitration proceedings were pending between the parties. As per version of the defendants, the plaintiff had to mill the paddy stored in its premises and to deliver the resultant rice up to 28.2.1999 in the account of the defendants corporation but it failed to do so, therefore the paddy stored deteriorated due to fault of plaintiff and the defendants had to auction the said paddy at much lesser rate, in that way the plaintiff was liable to make good the loss suffered by the defendants; that a registered notice dated 13.5.1999 was sent to the

plaintiff but to no effect. The defendants denied their liability to pay any rent. In the end, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to recover the suit amount from the defendants on account of rent? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the plaintiff is estopped from filing the present suit by way of his own act and conduct? OPD.
4. Relief

In order to prove its case, the plaintiff had examined Sh.Pawan Kumar as PW1 besides tendering certain documents.

On the other hand, the defendants had examined, Sh.Avtar Singh, Warehouse Manager, Punjab State Warehouse Corporation, Ferozepur as DW1, Sh.K.K. Godara, Warehouse Manager as DW2 and Sh.Gurmit Singh as DW3 besides tendering some documents.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants, issue No.2 against the defendants and in favour of the

plaintiff, issue No.3 against the defendants and in favour of the plaintiff. Resultantly, vide judgment and decree dated 31.3.2009, the suit of the plaintiff was decreed in favour of the plaintiff and against the defendants for recovery of Rs.8,35,000/- on account of rent for storing the paddy by the defendants in the premises of the plaintiff for the crop year 1998-99 w.e.f. 1.10.1998 till 30.9.2002 with costs. The plaintiff was further granted interest @ 6% per annum on the said amount from the date of filing of the suit till realization of decretal amount.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal before District Judge, Ferozepur, which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 10.3.2010 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I find that the judgments and decrees passed by the Courts below are not sustainable and are liable to be set aside, resultantly suit is bound to be dismissed with costs.

This is a case of civil nature, which is to be decided by

preponderance of probabilities. In the instant case, the version of the defendants comes out to be much more plausible than that of the plaintiff. The case of the plaintiff is not supported by any documentary evidence. It is hard to believe that any oral agreement would be entered into by the defendants with the plaintiff in such a manner. The defendant corporation, a statutory body cannot possibly function in such a manner. All the acts and actions are supposed to be in writing and no oral transaction could possibly be there. As against oral agreement so alleged by the plaintiff with regard to storage of the paddy stock by defendants in the premises of the plaintiff statedly on rent @ 25 paisa per bag per month, there is specific stand of defendants that the stock was stored in the premises of the plaintiff for custom milling and a written agreement in that regard was entered into. However, the plaintiff failed to do the needful within time, resultantly the stock deteriorated and some of that had to be put to auction and further arbitration proceedings in that respect are pending between the parties. The defendants by examining DW1 Sh.Avtar Singh and DW2 Sh.K.K. Godara, its Warehouse Managers at Ferozepur and DW3 Gurmit Singh, who had placed on file the relevant documents supporting the stand of the defendants have been able to establish their pleaded cases. DW1 Sh. Avtar Singh had proved copy of agreement Ex.DW1/B executed between the parties with regard to custom milling of the paddy and delivery of resultant

rice to the FCI. As a matter of fact, it comes out that the defendants had taken up the matter with the plaintiff for non milling of the paddy but the plaintiff failed to comply with the terms and conditions of the agreement. It comes out from the record that the paddy stock was stored in the premises of plaintiff for custom milling, which plaintiff failed to do in terms of the agreement entered into between the parties and the premises of the plaintiff was not hired by the defendants for keeping their stock and that no agreement was entered into between the parties for payment of rent by defendants to the plaintiff on account of such storage.

The Courts below have completely misappraised the evidence and ignoring the factual and legal position have wrongly decreed the suit of the plaintiff. There was no justification at all for decreeing the suit of the plaintiff against the defendants. The judgments and decrees passed by the Courts below cannot stand judicial scrutiny and are hereby set aside. Resultantly, the suit of the plaintiff stands dismissed.

The appeal stands allowed accordingly.

26.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No