

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-825-2016 (O&M)

Date of Decision: 26.3.2019

Dilbagh Singh

...Appellant.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Harit Sharma, Advocate for the appellant.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

None for respondent No.5.

Mr. Rohan Mittal, Advocate for respondent No.6.

AJAY KUMAR MITTAL, J.

1. Delay of 40 days' in filing the appeal is condoned.
2. This Letters Patent Appeal has been filed against the order dated 11.1.2016 passed by the learned Single Judge whereby CWP-10611-1992 filed by respondent No.6, was allowed.
3. Put pithily, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant was Salesman of the Jatpur Cooperative Agricultural Service Society Ltd., Jatpur, Tehsil Anandpur Sahib, District Ropar (in short "the Society"). The appellant used

Sugar, Ghee, Flour, Pulses etc. He was authorized to purchase the same from the market independently and to sell the same without approval. The sale proceeds were required to be deposited with the Secretary of the Society or the Bank but the appellant did not deposit the same. Thus, a sum of ₹ 37,388.09 was recoverable from him and he had duly signed the entry for the said amount in the essential commodities register maintained by him. The appellant admitted his liability in writing on 16.1.1986 (Annexure P-1) before the Inspector of the Society. An arbitration dispute was raised against the appellant and respondents No.6 to 13. Before the Arbitrator, the appellant admitted that an amount of ₹ 5600/- was due towards him whereas respondent No.6 had admitted that a sum of ₹ 5820/- was due from the appellant. The Arbitrator vide award dated 19.1.1987 (Annexure P-2) ordered that a sum of ₹ 5600/- would be paid by the appellant along with interest @ 17½% and the remaining amount of ₹ 27090.99 along with interest @ 17½% and cost of ₹ 2250/- would be paid by respondent No.6. Against the said award, respondent No.6 filed an appeal before respondent No.3. Respondent No.3 vide order dated 10.11.1988 (Annexure P-3) set aside the award and held the appellant liable for the amount of ₹ 32,690.99. Against the order, Annexure P-3, the appellant filed revision petition before the Registrar, Coop. Societies, Punjab which was marked to respondent No.3 who vide order dated 7.8.1991 (Annexure P-4) set aside the order, Annexure P-3, and restored the order of the Arbitrator. Feeling aggrieved by the order, Annexure P-4, respondent No.6 filed revision petition before respondent No.1. Respondent No.1 vide order dated 23.7.1992 (Annexure P-5) dismissed the said revision petition being not maintainable.

Court by way of CWP-10611-1992. This Court vide order dated 11.1.2016 allowed the said writ petition and directed respondent No.6 to deposit the admitted amount of ₹ 5820/- within a period of one month from the date of receipt of the said order. Hence, the present Letters Patent Appeal by the appellant.

4. We have heard learned counsel for the parties.

5. The dispute was raised before the Arbitrator against the appellant and respondents No.6 to 13 by the Society. The Arbitrator vide award dated 19.1.1987 (Annexure P-2) held that the difference between the admitted value as against ₹ 37,388.09 was the liability of respondent No.6 only to make good and not the appellant. Respondent No.3, on appeal, set aside the award and fixed the liability of the appellant vide order dated 10.11.1988 (Annexure P-3). The appellant filed revision before respondent No.2 who set aside the order, Annexure P-3 and restored that of the award passed by the Arbitrator vide order dated 7.8.1991 (Annexure P-4). Against the order, Annexure P-4, respondent No.6 filed revision petition before respondent No.1. Respondent No.1 vide order dated 23.7.1992 (Annexure P-5) dismissed the said revision petition being not maintainable. Against the orders, Annexures P-4 and P-5, respectively, this Court allowed the writ petition.

6. Learned counsel for the appellant argued that Annexure P-1, dated 16.1.1986 was signed by appellant-Dilbagh Singh and also by Swaran Chand-writ petitioner (respondent No.6 in the appeal). It was claimed that the learned Single Judge could not rely upon Annexure P-1 against the appellant when the same was not taken into consideration while adjudicating the revision petition by respondent No.2 and instead it was

appropriate for the Writ Court to have remanded the matter to him for fresh adjudication after examining the said document and after putting it to the parties concerned.

7. After hearing learned counsel for the parties, we find force in the said submission of learned counsel for the appellant. In the facts and circumstances of the case as respondent No.2 had not expressed any opinion on the said document, it would have been appropriate for the Writ Court if the matter was remanded back to respondent No.2 who after examining and considering the document, Annexure P-1, had decided the matter afresh in accordance with law.

8. Accordingly, the present appeal is allowed and the order dated 11.1.2016 passed by the learned Single Judge and orders (Annexures P-4 and P-5) passed by respondents No.2 and 1, respectively are set aside. The matter is remanded back to respondent No.2 to decide the same afresh within a period of six months from the date of appearance of the parties, after verification and examining the document, Annexure P-1, in accordance with law.

9. The parties are directed to appear before respondent No.2 on 29.5.2019.

(AJAY KUMAR MITTAL)
JUDGE

March 26, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No