

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

105

Regular Second Appeal No.1915 of 2017
Date of Decision: July 15th, 2019

Punjab State Warehousing Corporation Limited, Moga

...Appellant

Versus

Paramjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Bedi, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 08.09.2016 passed by the Additional District Judge, Moga, whereby the judgment and decree passed by the Civil Judge (Junior Division), Moga, dated 24.08.2013, whereby the suit filed by the appellant-plaintiff for recovery of an amount of ₹60,000/- from the respondent-defendant along with 6% interest per annum till the date of recovery was decreed, has been set aside by allowing the appeal and dismissing the suit of the appellant-plaintiff.

2. It is the contention of learned counsel for the appellant that the judgment and decree passed by the learned trial Court was based upon proper appreciation of the evidence and the documents on record. He contends that the suit for recovery which has been preferred by the appellant-plaintiff was based upon a departmental inquiry which was held against the respondent-defendant, wherein he had been held responsible for the shortage of stocks apart from release of funds to the commission agents (*arhtias*). Since there is a departmental inquiry which was held in which the respondent-defendant has been found guilty, no further evidence was

required to be produced for proving the factum of the loss suffered by the

appellant-plaintiff. His contention is that the respondent had acted upon a certificate issued by Shri Jagtar Singh, Godown Assistant, who had been placed under suspension and, therefore, did not have the authority to issue such certificate. He, without verifying the authenticity of the said certificate or that the employee was not the competent authority to issue such a certificate, was negligent in performance of his duties leading to the loss which has been suffered by the appellant-plaintiff. He, thus, contends that the judgment passed by the Lower Appellate Court is based upon erroneous assumptions overlooking the facts on record and the evidence which has been produced by the parties. He, thus, contends that the appeal deserves to be allowed by setting aside the judgment and decree passed by the Lower Appellate Court and restoring that of the trial Court.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the records of the case.

4. The basis plank of the argument of learned counsel for the appellant is that the respondent-defendant had acted upon the certificate issued by one Shri Jagtar Singh, Godown Assistant, who was placed under suspension and, therefore, was not authorised person to issue such a certificate. An unauthorised person having issued the certificate could not have been acted upon as it did not have any legal sanctity. The said plea of learned counsel for the appellant cannot be accepted in the light of the admission made by PW-1 Manpreet Singh, Accountant of the respondent-Corporation in his cross-examination, wherein he had stated that although Jagtar Singh was under suspension but vide letter dated 14.05.2001, said Jagtar Singh had been assigned responsibility to perform duties of a

Godown Assistant and to issue the said certificates. It has also been admitted by this witness that the stock, on the basis of which shortage was reported and payment of commission agents stopped by the then District Magistrate, was purchased by the Godown Assistant Jagtar Singh. Admission has also further been made in the cross-examination that the payment of the stock is to be made at the time of the purchase of the stock itself in the presence of the commission agents and shortfall, if any, has to be so recorded in writing and reported to the commission agent. No record has been produced to show any payment in the presence of the commission agent at the time of purchase of the stock. That apart, no record has been produced by the appellant to actually show any loss having been caused to the corporation. Merely relying upon the inquiry report would not be enough in a suit for recovery. Actual loss having occurred by the Corporation has to be established which is absent here as no evidence has been produced on record to substantiate such an assertion and, therefore, the contention of learned counsel for the appellant that the respondent-defendant had acted upon a certificate issued by an unauthorised person, cannot be accepted.

5. As regards the contention of learned counsel for the appellant that the report of the departmental inquiry was enough to establish the shortage and the loss which has occurred, as observed above, this plea cannot be accepted in the light of the fact that no stock shortage has been proved on record, what to say of establishing loss by the Corporation. Assertion of the counsel for the appellant that the respondent-defendant was required to himself verify with regard to the stock having been purchased and kept in the godown and should not have merely acted upon the

certificate issued by Jagtar Singh, suffice it to say that no rules or regulations have been produced which put such a responsibility/duty upon respondent-defendant nor is there such a pleading by the appellant-plaintiff. In the absence of the pleadings and the evidence on record, this plea of the counsel for the appellant cannot be accepted.

6. In view of the above, the judgment and decree dated 08.09.2016, as passed by the Lower Appellate Court, cannot be faulted and is upheld.

7. The appeal, therefore, stands dismissed.

July 15th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No