

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

**RSA No.2492 of 2017 (O&M)
Date of Decision.02.04.2019**

Punjab State Civil Supplies Corporation Ltd. and another

...Appellants

Vs

Duni Chand Inspector, Grade-II and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Deepali Puri, Advocate
for the appellants.

:-

AMIT RAWAL J.(ORAL)

C.M. No.6118-C of 2017

For the reasons stated in the application, delay of 13 days in re-filing of the appeal is condoned.

Application is allowed.

Main case

The present regular second appeal is directed at the instance of PUNSUP against the dismissal of the suit for recovery of ₹45,84,625.75 i.e. Rs.37,41,314.54 as principal and ₹8,43,311.21 as interest @15% per annum upto 31.12.2004 (compound yearly) on account of shortage in wheat stock, stock of articles less excess in wheat stock along with pendente lite and future interest @15% per annum, which has been affirmed in the appeal before the lower Appellate Court.

The plaintiffs in the suit aforementioned alleged that defendant No.1, Duni Chand was transferred from PUNSUP Centre, Khanna to PUNSUP Centre, Samrala for purchase of wheat Bardana etc. along with double lock system of above stock with Karnail Singh

Inspector Grade-I and independent charge was given to defendant No.1 for distribution of articles from Samrala Centre to other districts and centres. He was given charge on 3.4.1999 and at that time the stock was found to be intact. Defendant No.2 Darshan Singh was transferred from PUNSUP Mukatsar to PUNSUP Ludhiana and thereafter on 5.3.2003 transferred to PUNSUP Centre Samrala with the direction that he will do the work with Duni Chand as Double Locker System and will be responsible for the shortage of Wheat Bardana. Defendant No.1 purchased and stored wheat crop for the year 1998-99 to 2003-2004 which was also double locked by Darshan Singh pertaining to the stock under the PUNSUP Centre, Samrala i.e. 2001 to 2004. The claim was based on physical verification and enquiry conducted in departmental proceedings .

Defendant No.1 opposed the suit and objected to the claim as the alleged storage of the stock was not as per the instructions of the PUNSUP Department and accounts manual as the stocks were stored in open kuchha at village Bondli, which was totally unfit, risky and unsafe for storage.

Defendant No.2 also raised similar objections.

Plaintiffs in support of pleadings attempted to bring on record umpteen number of documentary evidence through testimony of five witnesses. Defendants also examined two witnesses.

Ms. Deepali Puri, learned counsel appearing on behalf of the appellants submitted that along with appeal an application under Order 41 Rule 27 CPC has been filed seeking leave of this Court for placing on record order of recovery dated 7.7.2005 and 6.1.2011 as

Annexure A-1 and A-2 on the basis of the enquiry proceedings as the defendants were charge-sheeted. On merit, it was submitted that the suit was filed in the year 2005 at the time when both the chargesheets dated 31.12.2003 and 3.11.2004 were served but the report came subsequently. In order to prevent losses to PUNSUP, the suit aforementioned was filed as the outcome of the departmental proceedings was uncertain. Both the Courts below have erroneously non-suited the plaintiffs on having not disclosed the factum of initiation of recovery proceedings as there was no *mala fide* or *mens rea*.

I am afraid aforementioned argument is not sustainable in the eyes of law as no direct and cogent evidence of alleged loss or loss report duly signed by the defendants placed on record. It is a matter of record that the appellant-Corporation has already started recovering the amount in view of the outcome of the departmental proceedings but in order to succeed in independent suit for recovery certain other material is required to be placed on record not only the enquiry proceedings. Plaintiffs miserably failed to discharge onus as per the provisions of Section 101 of the Indian Evidence Act.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No