

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

Date of decision: 11.04.2019

1. RSA-4408-2018 (O&M)

Messer's Capital Rice Mills

...Appellant

Versus

State of Punjab and others

...Respondents

2. RSA-4409-2018 (O&M)

Messer's Capital Rice Mills

...Appellant

Versus

Gurcharan Singh and others

...Respondents

3. RSA-4410-2018 (O&M)

Messer's Capital Rice Mills

...Appellant

Versus

M/s Sachdeva Agro Industries and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mukand Gupta, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM-11669-C-2018 in RSA-4408-2018

This is an application that has been filed under Section 151 CPC for condoning the delay of 1485 days in refiling the present appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 1485 days in refiling the appeal stands condoned.

Main cases

1. This order of mine shall dispose of above referred three regular second appeals as the same have arisen out of the same judgments and decree passed by the Courts below. For brevity facts are being extracted from RSA No. 4408 of 2018.
2. This regular second appeal has been filed seeking to assail the judgment and decree dated 27.09.2011 passed by Civil Judge (Sr. Divn.), Sri Muktsar Sahib and the judgment and decree dated 03.12.2013 passed by District Judge, Sri Muktsar Sahib whereby the suit filed by the appellant stood dismissed.
3. In brief the facts are, that the appellant herein filed a suit *inter alia* for permanent injunction restraining defendants No. 1 to 3 from taking any action against them for non-supply of rice under custom milling agreement entered into between the parties. It was contended that the firm was doing the work of custom milling of paddy and in terms of the agreement the appellant firm had supplied 1491.60 quintals of rice to respondent No.3, namely District Manager, PUNSUP, Sri Muktsar Sahib

out of which 1600 bags weighing 1192 quintals were stocked in B shed godown of F.C.I. and 400 bags weighing 298.40 quintals were got stocked in MARKFED godowns at Muktsar. The rice of the abovesaid stock was duly approved by F.C.I. It was stated that under political pressure the District Manager, FCI-respondent No.5 did not release the amount to respondents No.2 & 3 and on account of non supply of rice, they were being threatened with dire consequences by PUNSUP. It is in this background, they were seeking an injunction restraining the respondents from taking any action against them for non-supply of rice with a further prayer seeking a direction to delete the quantity of the rice supplied from the custom milling account of the appellant-firm as well as for directing F.C.I. to release the rice lying with them. The suit was contested by PUNSUP - respondents No.1 & 2 taking the plea that the appellant firm was a defaulter and had not supplied 1491.60 quintals of rice valuing ₹ 4,62,177/- which stood misappropriated.

4. In the written statement, it was stated that the appellant firm with the help of employees of Food Corporation of India had manipulated the record and an inquiry had been conducted by the Food Corporation of India, who had found the plaintiff firm guilty along with the employees of the Food Corporation of India.

5. Food Corporation of India filed separate written statement and took the preliminary objection denying that the appellant firm had supplied any rice to it and that while further submitting that the weight check memos purportedly issued by Food Corporation of India were forged and fabricated documents.

6. Replication was filed to the written statement and issues were framed in this regard. Evidence was led by both the parties and thereafter, the trial Court proceeded to dismiss the suit holding that the appellant firm had miserably failed to prove on record that any rice had in fact been supplied to Food Corporation of India. The Lower Appellate Court too affirmed the said finding, which led the instant second appeal being filed.

7. Learned counsel appearing on behalf of the appellant vehemently argues that no fault can be attributed to the appellant herein and that the appellant firm is entitled to the injunction as prayed for. It is argued that the rice had been checked and verified by the Quality Inspector of Food Corporation of India, who had issued A-Notes, which are available on the record as Ex. PW-1 to PW1/19. After having received the rice and issued weight check memos, there was no occasion for any person to hold that there has been non-supply of rice. It is also argued that both the Courts below have dismissed the suit primarily while relying upon the departmental inquiry, in which inquiry report, the trial Court has failed to appreciate the fact that the official of the Food Corporation of India who had issued and signed the weight memos, namely, Harmukh Meena, AM(D), was a Member of the Departmental inquiry, while contending that the trial Court had erred in holding that Kirpal Singh, who is father of Rajbir Singh, one of the partner of the appellant firm, who was working as AG(III) (O) with the Food Corporation of India had connived with other officials.

8. I have heard learned counsel for the appellant as well as have also perused both the judgments and decree challenged in this appeal.

9. Both the Courts below have looked into the inquiry report as

conducted by the Food Corporation of India and it was found out that one Kirpal Singh was related to Rajbir Singh, partner of the appellant, who had manipulated the record and had made wrong entries in the master ledger. The inquiry report is available as Ex. D-2 on the record. On appreciating the evidence, both the Courts below came to the conclusion that the appellant firm had miserably failed to show any entry in the outward register maintained by them to show that they had in fact sent the rice for depositing the same with the Food Corporation of India. In the inquiry report, there is also an admission by one Sh. G.P. Panday, who admitted that it was Kirpal Singh, who had manipulated the record. The outward register maintained by the Food Corporation of India, quality check register and the weighment register were also purportedly to have been lost which led the Courts below to come to a conclusion that the same had been taken away by Kirpal Singh intentionally. The Courts below on appreciation of evidence have come to the firm conclusion that there is no evidence available on the record to substantiate the plea that the appellant firm had milled the rice and had deposited the same in the Food Corporation of India godowns as claimed by them. Moreover, it is interesting to note that the inquiry report has itself not been challenged in any proceedings. Having accepted the same, the appellant would not be able to take the plea that inquiry should not have been relied upon.

10. It is well settled that this Court has not to appreciate the evidence in regular second appeal of concurrent finding of fact recorded by the Courts below and further no substantial question of law arises in these appeals.

11. Dismissed.
12. A photocopy of this order be placed on the files of the other connected cases.

11.04.2019	(JAISHREE THAKUR)
Satyawan	JUDGE
Whether speaking/reasoned	Yes.
Whether reportable	No.