

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

**RSA NO. 1491 OF 1991 (O&M)
DATE OF DECISION : 26.02.2020**

Food Corporation of India and others

...Appellants

versus

Prem Sukh Goyal

...Respondent

RSA No. 1524 of 1991 (O&M)

Prem Sukh Goyal

...Appellant

versus

Food Corporation of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. H. S. Dhandi, Advocate,
for the appellants.

Mr. Amarjit Markan, Advocate,
for the respondent.

ARUN MONGA, J. (ORAL)

Vide this common judgment, Regular Second Appeal titled as "Food Corporation of India and others v. Prem Sukh Goyal" and cross Regular Second Appeal titled as "Prem Sukh Goyal v. Food Corporation of India and others", are being disposed of as common questions of law and facts are involved therein.

2. Succinct factual matrix as noticed by the First Appellate Court is being taken from RSA No. 1491 of 1991.

3. Having suffered concurrent adverse findings by the two Courts below, the appellant is before this Court in Regular Second Appeal assailing the trial Court judgment and decree dated 17.01.1989, as upheld by the First Appellate Court vide its judgment and decree dated 09.04.1991.

4. Food Corporation of India ("FCI" for short) deals in sale purchase of Bardana (gunny bags), Hessain, Sutli (packthread) etc. It offered to sell certain quality of gunny bags from its Ahmedgarh depot in March, 1985. Plaintiff purchased gunny bags for a sum of ₹1,82,718.40 and deposited the entire amount. FCI delivered only 1,13,425 gunny bags as against the requisite total number of 5,87,519. Remaining gunny bags were not delivered to plaintiff despite repeated requests. Plaintiff sent various letters to the officers of FCI for delivery of remaining gunny bags but in vain. Plaintiff thus suffered loss of ₹1,00,000/- for non-supply of gunny bags by FCI. Hence, civil suit for recovery with interest.

4. Upon notice, FCI filed written statement controverting allegations of plaintiff. It, *inter-alia*, took preliminary objections regarding maintainability of suit; plaint not properly verified etc. On merits, it was pleaded that the gunny bags, as mentioned by the plaintiff, were offered for sale through public auction on the basis of "*as is where is*". The plaintiff himself did not lift the

remaining bags purchased by him in auction despite several opportunities. On the other hand, storage charges for non-lifting the gunny bags were claimed by FCI.

5. No replication was filed. Based on the rival pleadings of the parties, following issues were framed :-

- 1) Whether the suit in the present form is not maintainable ? OPD
- 2) Whether the plaint is not properly verified ? OPD
- 3) Whether the defendants are entitled to receive the storage charges from plaintiff ? OPD
- 4) Whether the gunny bags as claimed by the plaintiff in the suit were auctioned to the plaintiff on the basis of 'as is where is'. If so, to what effect ? OPD
- 5) Whether the plaintiff is entitled to recover the suit amount ? OPD
- 6) Relief.

6. In order to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective oral as well as documentary evidence.

7. Based on the collective appreciation of evidence adduced by both the parties, the trial Court partly decreed the suit for a sum of ₹1,47,443.23 against the FCI.

rendered by the trial Court and upheld the judgment and decree passed pursuant thereto. Hence, the present second appeal by Food Corporation of India.

9. While on the other hand, the defendant-respondent also filed a cross civil suit against Food Corporation of India for recovery of Rs.2,25,000/- towards damages along with interest, which was part decreed against Food Corporation of India to the extent of Rs.1,47,443/- without interest. The First Appellate Court upheld the judgment and decree of trial Court. Hence, the cross second appeal No.1524 of 1991 filed against Food Corporation of India seeking interest on the damages awarded in the said civil suit.

10. I have heard learned counsel for the appellant and have perused the judgments and decrees of both the Courts below.

11. It has rightly been observed by the Courts below that it was admitted case of the parties that auction was made through public auction in March, 1985 for sale of 'C' class gunny bags numbering 5,87,519. It was also admitted that the same were purchased by the plaintiff after depositing ₹1,82,718.40. The entire dispute was regarding the fact that the plaintiff did not perform his part of contract by not lifting the entire gunny bags which he purchased in public auction as the highest bidder on the basis of fact that "*as the bags were and in whether condition they were lying*". The trial Court rightly held that plaintiff was not

entitled to any damages because the FCI never stopped him from lifting the remaining gunny bags. Vide letters Exhibits P-9 and P-10, the defendant-FCI admitted that 4,74,094 bags were not delivered to the plaintiff and as such, he was entitled to recover of ₹1,47,443.23.

12. To be noted that there is a candid admission vide letters Exhibit P-9 and P-10, whereby officials of FCI admitted that an amount of ₹1,47,443.23 was legitimately payable to the respondent towards the undelivered 4,74,094 bags. The said admission weighed on the mind of the trial Court while partly decreeing the suit. The said finding returned by the trial Court has been affirmed by the First Appellate Court and to my mind, rightly so. Interest of justice warranted that the plaintiff ought to have been paid interest also on the amount which was found legitimately due and payable to him in view of exhibits P-9 & P-10. Non grant of interest by trial Court on the premise that P-9 & p-10 were procured by plaintiff in collusion with Senior Regional Manager of Food Corporation of India is based on conjectured logic without any evidence in support thereof. Accordingly, the decree passed by the trial Court in Civil Suit No.201 of 23.05.1986 is modified to the extent that decretal amount shall be payable to the plaintiff along with interest @ 6% per annum from the date of filing the suit.

13. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by

appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

14. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

15. In view of the above, RSA No. 1491 of 1991 is dismissed.

16. In the premise, Regular Second Appeal No. 1524 of 1991 is partly allowed qua interest part and the claim regarding damages is rejected. The cross appeal also stands disposed of in above terms.

17. Pending application, if any, also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 26, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |