

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

127

RSA No. 180 of 2021 (O & M)

Date of Decision: 13.09.2021

The Branch Manager, Markfed Patti, District Tarn TaranPetitioner(s)

vs.

M/s. Joban Trading Co. Merchant and Commission Agent

.....Respondent(s)

CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present:- Mr. Sarthak Gupta, Advocate,
for the appellant.

G.S. SANDHAWALIA, J. (ORAL)

C.M. No. 1318-C of 2021

Application for condonation of delay of 30 days in refiling the appeal is allowed, in view of the averments made in the application supported by affidavit.

RSA No. 180 of 2021 (O & M)

The present regular second appeal filed by the defendant-Markfed is against a princely sum of Rs.19,625/- alongwith simple *pendente lite* interest @ 9% per annum and 6% per annum till actual realization of the amount. The suit was decreed by the Additional Civil Judge (Sr. Divn.), Patti on 15.04.2014 and has been upheld by the Additional District Judge, Tarn Taran on 13.08.2019.

The amount decreed is on account of the supply made by the appellant-Cooperative Society for purchase of paddy. The Courts below have found that there was an auction, as such, conducted in which the number of bags were mentioned and the bills also gave the number of bags purchased by the present appellant. The defence of the present appellant, as

such, was that there was a shortage, on which account, the demand was not admissible. The Courts below found that the suit was initially for recovery of Rs. 40,910/- but keeping in view the fact that the bills were photocopies, the claim was partly allowed to the extent of the admission by the defendants of the purchase for the specific dates of auction i.e. 01.10.2010, 02.10.2010, 07.10.2010, 11.10.2010 and 14.10.2010. Resultantly, the suit was partly decreed.

The Appellate Court also noted that Exs. P-11 to P-17 were admitted as the bills and the same had been mentioned in the consolidated statement Ex.D-13 and, therefore, came to the conclusion that the defendants had to make payment of 3100 bags to the plaintiffs without any deduction and decreed the suit.

Section 102 of Code of Civil Procedure, 1908 provides:-

“102. No second appeal in certain cases. - No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees”.

The said issue was put to counsel for the appellant on the last date of hearing. He has vehemently submitted that the relevant Rules, as such, would require examination regarding the issue of weightment and the fault as such lay on the part of the plaintiffs, as such. He relied upon the judgment of the Apex Court in **Nagar Palika, Thakurdwara vs. Khalil Ahmed and others, 2016 (9) SCC 397** to contend that the amount claimed and the subject matter of the original suit has to be seen and, therefore, Section 102 CPC would not apply since the suit was filed for Rs.40,910.50/-.

A perusal of the said judgment would go on to show that the

Apex Court has rather noticed the purpose of enactment of Section 102 CPC and that it is to reduce the litigation. The relevant part of the judgment in *Khalil Ahmed's case (supra)* reads as under:-

“14. The purpose behind enactment of Section 102 of the CPC is to reduce the quantum of litigation so that courts may not have to waste time where the stakes are very meagre and not of much consequence. In the instant case, though apparently the amount which was sought to be recovered was Rs.11,006.07, looking at the prayer made in the plaint, the consequences of the final outcome of the litigation would be far-reaching.

15. So as to avail advantage of the provisions of Section 102 of the CPC, the subject matter of the original suit should be only recovery of money and that too, not exceeding Rs.25,000/-. If the subject matter of the suit is anything other than recovery of money or something more than recovery of money, provisions of Section 102 of the CPC cannot be invoked.”

In the present case, the situation is even worse in as much as the decreed amount is below Rs.25,000/- and the recovery is only for Rs.19,625/-, which is below the limit as prescribed under Section 102 CPC. The purpose for which the salutary provisions have been incorporated has already been noticed by the Apex Court. In spite of that, the Cooperative Society continues to litigate for such petty sums burdening not only this Court but burdening itself financially. The judgment, as such, in the case relied upon is regarding the fact whether the area falls within the municipal limits of Nagar Palika and whether restraint from recovering any tax, as such, was also subject matter of consideration. Therefore, appeal of such Nagar Palika has been allowed while remanding the matter so that it would

not set a precedent, as such, in the area.

In the present case, it is only a suit for recovery, which has been decreed in the peculiar facts and circumstances regarding the transaction between the society and the plaintiff and it would have no such negative effect upon the society qua other litigation which is pending which cannot be said to be binding in any manner to that extent that facts and evidence have to be examined independently

Accordingly, this Court is of the opinion that the present appeal is not only maintainable in view of the bar, as such, but also has no merit which would require consideration as a substantial question of law. The same is accordingly dismissed in limine.

13.09.2021
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(G.S.SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No