

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

**RSA-3480-2019 (O&M)
Reserved on : 22.07.2022
Date of decision : 29.07.2022**

Confed & Another

...Appellants

versus

Food Grain Dealer Association

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pardeep Rajput, Advocate for the appellants.

ALKA SARIN, J.

CM-9425-C-2019 & RSA-3480-2019

The present application has been filed for condoning the delay of 842 days in filing the present regular second appeal.

The present regular second appeal has been preferred by the defendant-appellants against the judgements and decrees passed by both the Courts below whereby the suit for recovery filed by the plaintiff-respondent has been decreed.

The case of the plaintiff-respondent was that it is an association of commission agents working in New Grain Market, Gohana which has been registered by the District Registrar of Firms and Societies, Sonipat. In the financial year 2007-2008, the defendant-appellants ordered the plaintiff-respondent to purchase wheat. The plaintiff-respondent purchased and supplied 255648 bags of 50 kg each i.e. 1,27,824 quintals at the rate of Rs.750/- per quintal and other incidental charges, and bonus of Rs.100/- was

to be paid to plaintiff-respondent by the defendant-appellants. The commission was settled at 2.5% on the amount of costs of wheat and the total commission was amounting to Rs.23,96,700/-. At the time of agreement, market fee @ 2%, cess 2%, labour at the rate of Rs.1.82 per bag for 49997 bags and Rs.1.92/- per bag for 205651/- bags was settled. It was pleaded that the plaintiff-respondent was entitled to Rs.11,54,06,011/-from the defendant-appellants on account of supply of wheat. The defendant-appellants made part payment of the purchased wheat to the plaintiff-respondent and the last cheque was issued in the month of August 2007 but thereafter the defendant-appellants did not make any payment. It was prayed that a decree for recovery of Rs.3,09,998/- alongwith interest @ 18% per annum from the date of purchase of wheat till its final realization may be passed in favour of the plaintiff-respondent.

Upon notice, the defendant-appellants contested the suit and filed written statement. Apart from the preliminary objections raised, on merits it was averred that the wheat was purchased by the Department from New Grain Market and as per the guidelines for procurement of wheat during the season 2007-2008, it was the duty of the plaintiff-respondent to collect the bills from all commission agents and submit a consolidated statement to the Department along with purchase bills of wheat issued by the commission agents. It was stated that it was the duty of the plaintiff-respondent to ensure that the quantity of the wheat supplied to the Department was as per bills but the wheat supplied by the plaintiff-respondent was found short to the extent of 303.48 quintals and as such the

cost of the same was deducted by the Department while making payment to the plaintiff-respondent.

The following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to a decree for recovery of Rs.3,09,998/- alongwith interest @ 18% per annum from the date of purchase of wheat till its final realization ? OPP
2. Whether the suit is bad for notice under Section 80 CPC ? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit of the plaintiff is time barred ? OPD
5. Relief.

On the basis of the pleadings of the parties and the evidence on the record, the Trial Court vide judgement and decree dated 28.02.2014 decreed the suit of the plaintiff-respondent and directed the defendant-appellants to pay the amount which had been deducted on account of alleged shortage of quantity of wheat with interest @ 9% per annum from the date the said amount became due till its final realization. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellants which was dismissed by the lower Appellate Court vide judgement and decree dated 26.07.2016. Hence, the present regular second appeal by the defendant-appellants.

Learned counsel for the defendant-appellants has contended that the wheat supplied by the plaintiff-respondent was short and therefore the defendant-appellants were justified to with-hold the payment for the short quantity. He drew the attention of the Court to the deposition by DW1 in this regard.

Both the Courts below have referred to Rules 24 and 25 of Punjab Agricultural Produce Markets (General) Rules, 1962 to reject the plea taken by the defendant-appellants regarding with-holding of the amount for short supply of wheat. The Trial Court found that :

“A co-joint reading of rules mentioned above takes us to the conclusion that weighment of wheat is to be done in the presence of both the parties and in case either parties does not come deliberately, the matter is to be reported to the Secretary of Market Committee, who would cause weighment done in his presence or in the presence of any other person authorized by him, and the result of such weighment shall be final and conclusive between the parties. In the present case no notice was ever given by defendants to the plaintiff requiring it to be present at the time of weighment of wheat bags, which were supplied by plaintiff association to defendants. Neither there is any proof on record that because of plaintiff, the matter was reported by defendants to Secretary Market Committee, to be present at the time of weighment. So there is clear

violation of the rules discussed above. Defendants were having an opportunity to get the amount of wheat weighted at the time of delivery, but they did not avail that opportunity and got the weighment done, and therefore it does not lie in their mouth to say that since the quantity supplied to them was short, therefore they validly deducted the amount”.

The lower Appellate Court in it’s judgement also held that :

“The appellants-defendants have examined only one witness i.e DW 1 Shri Rameshwar Dass. Although he has deposed in his affidavit Ex.DW1/A that the wheat supplied by the plaintiff was found less to the extent of 303.48 quintals, but he has not stated that the wheat was weighed in presence of both the parties in or in presence of representative of the Board. He has also admitted that 12% moisture is permissible at the time of purchase. The Hon’ble Punjab & Haryana High Court has also held in case of M/s Mohinder Pal Mohan Lal Vs. State of Haryana & Others (supra) that weighment has to be done in the presence of seller and in case he does not come deliberately, the matter has to be reported to the Secretary of the market Committee. It is not the case of defendants that plaintiff refused to come for test weighment. Therefore, defendants were not justified in deducting any amount on the ground that

there was shortage in the wheat supplied by the plaintiff”.

Learned counsel for the defendant-appellants has not been able to make a dent in the findings of fact recorded by the Courts below. He has not been able to show that the said findings are factually incorrect or erroneous. He could not show that the weighment of the wheat was done in the presence of plaintiff-respondent and in case the plaintiff-respondent did not come deliberately the defendant-appellants reported the matter to the Secretary of the Market Committee.

In view of the discussion above, I do not find any illegality or infirmity in the judgements and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present regular second appeal. The appeal is accordingly dismissed.

The appeal is also barred by 842 days. The reasons for this inordinate delay in filing the regular second appeal have not been satisfactorily explained by the defendant-appellants. As per the averments made in the application for condonation of delay (CM-9425-C-2019), the defendants-appellants received a certified copy of the judgement of the lower Appellate Court on 26.07.2016 and approached their counsel on 12.02.2019 after getting the sanction for filing the appeal. There is no explanation as to where the file remained for over 2½ years and why it took such a long time to get the sanction. The defendant-appellants seem to have taken the matter very casually. This Court finds no convincing reasons to condone the delay in filing the appeal. The application (CM-9425-C-2019) is dismissed.

Since the main regular second appeal and the application for condonation of delay (CM-9425-C-2019) have been dismissed, any other pending applications also stand disposed off.

Dismissed.

29.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO