

RSA-1185-2020 (O&M)

- 1 -

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

120

**RSA-1185-2020 (O&M)
Decided on : 23.08.2023**

M/s Surinder Traders Commission Agents and Anr.

. . . Appellant(s)

Versus

M/s Chardi Kalan Rice Mill and Ors.

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sunny K. Singla, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by the plaintiffs (appellants herein) against the concurrent findings of dismissal of their suit by the Courts below.

2. A suit for recovery of an amount of Rs.12,42,878.12/- inclusive of interest @ 1% per annum on the principal amount of Rs.9,38,301.12/-, was instituted by the plaintiffs. Case of the plaintiffs is that plaintiff-firm is registered as per the Indian Partnership Act, 1932 and doing the business of commission agents at Village Manvi, Tehsil Malerkotla. The business of sale & purchase of the paddy and wheat is done through the market committees, and in that regard, business entries are made in the account books. In the suit, plaintiffs also pleaded that the cash books are maintained on daily basis by making relevant entries in regard to the sale & purchase.

As per the pleaded case of the plaintiffs, defendant-firm has purchased the paddy on 16.10.2012 from their firm on credit vide bill No.3, dated 16.10.2012, through Market Committee, Amargarh of an amount of

RSA-1185-2020 (O&M)

- 2 -

Rs.3,32,849.48/-. Entry dated 16.10.2012, of said transaction was made in the cash book of the plaintiff-firm. Again, defendant-firm purchased the paddy on 22.10.2012 from the plaintiff-firm on credit vide bill No.05, dated 22.10.2012, through Market Committee, Amargarh, of an amount of Rs.4,58,540.89/-.

Again the defendant-firm purchased the paddy on 09.10.2013, from the plaintiff-firm on credit vide bill dated 09.10.2013, through Market Committee, Amargarh, of an amount of Rs.1,46,910.7589/-.

3. In the written statement, filed by the defendants, there was complete denial that ever any such paddy or wheat was purchased by the defendant-firm, on the alleged dates, for the proposed amount by the plaintiff-firm.

4. Considering the pleadings of the parties, learned Trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to recover the principal amount of Rs.9,38,301.12/- along-with interest Rs.3,04,577/- ? OPP
2. Whether the plaintiff is entitled to recover the amount of Rs.3,32,849.48/- of bill dated 16.10.2012? OPP
3. Whether the plaintiff is entitled to recover the amount of Rs.4,58,540/89/- of bill dated 22.10.2012? OPP
4. Whether the plaintiff is entitled to recover the amount of Rs.1,46,910.75/- of bill dated 09.10.2013? OPP
5. if the issues No.2 to 4 are proved whether the plaintiff is entitled to recover interest, if so, at what rate? OPP
6. Whether the suit is filed within limitation? OPP
7. Whether the suit of plaintiff is not legally maintainable? OPD
8. Relief.”

5. Onus to prove issues No.1, 2, 3 & 4 i.e. in regard to the disputed amount, was upon the plaintiff. It has been held by both the learned Courts below that plaintiff-firm has completely failed in proving the bills Ex.P5, Ex.P7 & Ex.P10, produced by it. Person, who has appeared/issued bills, or in whose presence the paddy was purchased by the defendants, has not been examined. Even, plaintiff failed to prove the signatures of the defendant firm or its representative over the bills of the cash memos. Plaintiff-firm failed to disclose the name of the persons, who issued the alleged bills i.e. Ex.P5, Ex.P7 & Ex.P10. Meaning thereby, bills, which formed base for recovering the amount in question remained unproved.

One witness – Jaspal Singh, appeared as PW-2 in support of the case of the plaintiffs, but he specifically deposed that he has not issued bills No.3 (Ex.P5), bill No.5 (Ex.P7) and bill No.202 (Ex.P10). Even, he failed to disclose the name of the person, who has issued these bills. While examining the cash books and ledger books, Court found that same are not maintained on regular basis, because no bill number or even date of the crop as to when it was sold, has been mentioned in the cash book.

Had the cash book been prepared on the basis of the bills issued by the plaintiff-firm to the purchaser, same must have been found mentioned in the cash book. However, in the cash book (Ex.P6, Ex.P8 & Ex.P11), column of bill number is lying vacant, which shows that the cash book is not maintained in regular course of the business. Even in cash book (Ex.P6), cutting at point 'A' and 'B' in the date of column has been noticed by the Court and no explanation was given by PW-2 – Jaspal Singh, in this regard.

Plaintiff failed in proving his case, and accordingly, the suit was dismissed by the trial Court.

6. In the first appeal filed by the plaintiff-firm, the Appellate Court has taken note of the submissions again; and found that plaintiff-firm, only proved the making of entries in the register regarding the sale of the paddy, but merely making the entry was not sufficient to prove the pleadings. Learned First Appellate Court found that Kehar Jit Singh, who appeared as PW1, to prove the case of the plaintiff-firm, deposed that *“Whenever any paddy is purchased by the Commission Agent through Market Committee, the Commission Agent is required to issue ‘J-Form’”*. It was also admitted by him that no ‘J-Forms’ were issued by the plaintiff-firm in the present case.

7. Statement PW-2 – Jaspal Singh was again analyzed by the learned First Appellate Court and lastly, it was concluded that the plaintiff completely failed in proving its case.

8. Counsel for the appellants (plaintiffs) tried to explain during the addressing of argument that in the register of the Market Committee, entries of selling of the paddy in the name of the defendant(s) is mentioned. For substantiating his submissions, counsel failed to show/refer any document, even before this Court, bearing the signature of the defendant-firm or its representative or partner.

To the view point of this Court, both the learned Courts below have thoroughly examined the record before reaching to the conclusion that plaintiff-firm failed in proving his own pleadings. Thus, finding no substance in the submissions addressed by learned counsel for the appellants/plaintiffs, the findings recorded by the learned Courts below are worth to be affirmed.

Even no question of law, much less, any substantial question of

RSA-1185-2020 (O&M)

- 5 -

law arises for consideration in the present appeal for causing any interference in the impugned judgments & decrees passed by the Courts below.

Thus, for the reasons recorded herein-above, the instant appeal *sans* merits, and thus, dismissed. The judgments & decrees passed by both the Courts below are affirmed.

Civil Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 23, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*