IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R-351 **RSA No.1550 of 1992**
Date of Decision : 30.05.2023

Punjab State Civil Supplies Corporation Ltd. ....Appellant

VERSUS

Ramesh Kumar ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.S. Randhawa, Advocate for the appellant.

Mr. Satinder Khanna, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present appeal has been filed against the concurrent findings of fact recorded by both the Courts below non-suiting the plaintiff-appellant vide judgments and decrees dated 18.01.1986 and 12.03.1992.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit against the defendant-respondent for recovery of Rs.40,955.50 ps. on the ground that the plaintiff-appellant has its registered office at Chandigarh and is a body corporate registered under the Companies Act, 1956. The plaintiff-appellant has its district office at all the district headquarters in the State of Punjab including Ropar and the business of the Corporation is mainly to procure foodgrains and other essential commodities including wheat and sale thereof through the Public Distribution System. It is the case set up by the plaintiff-appellant that the defendant-respondent, who was posted at Majri Centre on 16.04.1982 as Sub Inspector, was incharge of all the essential commodities which were to be distributed to the

public against the permit issued by the Government authorities. During the period of his stay, he misappropriated essential commodities as handed over to him by the plaintiff-appellant for public distribution. The plaintiff-appellant's audit party audited the account pertaining to the period from 01.10.1983 to 31.03.1984 connected with all essential commodities which were in custody of the defendant-respondent for the distribution to the public and found shortage of stock amounting to Rs.40,955.50 ps.

3. The suit was contested by the defendant-respondent on the ground of non-joinder of necessary parties because the Procurement and Distribution Clerk and Procurement and Distribution Helper and Assistant Manager, who during the illness of the defendant-respondent operated the godowns and were accountable for the goods lying there, were not impleaded as party. It was admitted that the defendant-respondent was posted as Sub Inspector at Majri Centre and took the charge on 16.04.1982. It was further the stand taken that the defendant-respondent met with an accident and due to the said accident remained confined to bed for long period of time and in his absence the Procurement and Distribution Clerk, Procurement and Distribution Helper and Distribution Manager in connivance with the superior officers of the plaintiff-appellant misappropriated the articles after breaking open the lock of different godowns. The audit report was also stated to be false and that the defendant-respondent was never informed about conducting of the audit.

4. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the suit has been properly instituted by an authorized person ? OPP

2. Whether the amount claimed by the plaintiff is payable by the defendant ? OPP
3. Whether the suit is bad for non-joinder of necessary parties ? OPD
4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD
5. Whether the plaintiff is entitled to the recovery of the amount mentioned in the plaint ? OPP
6. Whether the plaintiff is entitled to the interest, if so, at what rate ? OPP
7. Relief.

5. The Trial Court vide judgment and decree dated 18.01.1986 dismissed the suit of the plaintiff-appellant. Aggrieved by the same, an appeal was preferred which appeal also met with the same fate vide judgment and decree dated 12.03.1992. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant would contend that there was sufficient material on record to show that the defendant-respondent had misappropriated the commodities and hence both the Courts below have erred in non-suiting the plaintiff-appellant.

7. *Per contra* learned counsel for the defendant-respondent has contended that both the Courts below have returned concurrent findings of fact to the effect that PW-5 Parshotam Soni, Accountant, who conducted the audit, admitted in his cross-examination that the release orders, stock ledgers, stock register and release book Nos.765 and 909 were not available

in the office at the time of audit. He also admitted that the said documents were material for the purpose of audit.

8. I have heard learned counsel for the parties.

9. It was held by the Courts below that it was a non-controverted fact that the defendant-respondent remained absent from duty w.e.f. 21.03.1984 to 31.03.1984 and in the absence of defendant-respondent the godowns were under the charge of different personnel. It was also taken note of that in the criminal case the defendant-respondent stood acquitted. Learned counsel for the plaintiff-appellant has not been able to convince this Court that it was a valid audit in view of the clear admission of PW5 Parshotam Soni that audit had been conducted in the absence of release orders, stock ledgers, stock register and release book Nos.765 and 909, which were material documents for the audit. Further, there is nothing on the record to show that the misappropriation did not take place during the period the defendant-respondent remained absent from duty.

10. In view of the above, I do not find any illegality or infirmity in the concurrent judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. The appeal, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
30.05.2023 **JUDGE**
jk

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