

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

RSA-3410-1998

Date of decision: 13.09.2023

MARKET COMMITTEE NARNAUL AND ORS.	Appellants
Versus	
M/S UMRAO SINGH HARPARSHAD	...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Praveen Chander Goyal, Advocate for the appellants.

HARKESH MANUJA. J.(Oral)

By way of present appeal, challenge has been laid to the judgment and decree dated 27.02.1998 passed by First Appellate Court whereby judgment and decree dated 07.03.1991 passed by the trial Court was reversed thereby decreeing a suit for permanent injunction filed at the instance of respondent-plaintiff.

2. Briefly stating, the respondent-plaintiff i.e. a registered partnership firm carrying business of sale and purchase of foodgrains, having license for the said purpose from the appellants, made few purchases from the grain market against payment of market fee @ 3%. Later, the market fee was reduced to 2% with retrospective effect and excess amount of Rs.1,08,241.25/- was accordingly refunded to the respondent-firm. Subsequently, again in view of change in law, the market fee was retrospectively validated to 3% and the refunded amount was sought to be recovered by the appellants-defendants from the respondent-plaintiff. In this regard notice dated 30.08.1986 was served, asking for refund of Rs.1,08,241.25/- on account of reduction of market

fee from 3% to 2%. In the plaint it was further stated that once the amount refunded in favour of respondent-plaintiff firm was further distributed among the different firms from whom the purchase was made, the recovery could not be effected.

3. On the other hand, the appellants-defendants filed a written statement. While contesting the suit it was submitted that the same was not maintainable for want of notice under Section 31 of The Punjab Agricultural Produce Markets Act, 1961. Even on merits, it was submitted that the excess amount returned to the respondent-plaintiff was liable to be refunded in pursuance to the change in market fee @ 3% with retrospective effect.

4. The trial Court vide judgment and decree dated 07.03.1991 dismissed the suit filed by respondent-plaintiff. Aggrieved thereof, First Appeal was filed which came to be allowed vide judgment and decree dated 27.02.1998. As a matter of record, the appellants-defendants were though initially represented through an Advocate in the First Appellate Court, however, later, learned counsel representing appellants-defendants withdrew himself, thereby resulting into consideration of the First Appeal by proceeding appellants-defendants as ex parte. At the time of preliminary hearing of the present appeal, making challenge to judgment and decree dated 27.02.1998 passed by first Appellate Court, the matter was adjourned sine die so as to await the outcome of application filed under Order 9 Rule 13 CPC, at the instance of appellants-defendants.

5. Today, Mr. Praveen Goyal, Advocate appearing on behalf of appellants informs this Court that the said application was dismissed by the then Ld. District Judge, Narnaul on 01.03.2001 which became final on account of non-filing of any civil revision against the said order. This is how the present appeal has now been listed and taken up for preliminary hearing again.

6. Assailing the findings recorded by the First Appellate Court, learned counsel for the appellants-plaintiffs submits that once the market fee was validated to 3% with retrospective effect, the suit filed at the instance of respondent-plaintiff seeking injunction from effecting recovery for the refunded amount could not have been entertained especially in view of the fact that no notice under Section 31 of The Punjab Agricultural Produce Markets Act, 1961 was ever served upon appellants-defendants.

7. I have heard learned counsel for the appellants and gone through the paper-book.

8. A perusal of the judgment passed by the First Appellate Court shows that a finding of fact based on comprehensive appreciation of evidence has been recorded to the effect that the excess amount of market fee refunded in favour of respondent-plaintiff was further distributed among the sellers of the respondent-plaintiff firm from whom the purchase of agricultural produce was made. The same was even proved on record vide document Ex.P-1. Even during the First Appeal, refund to the respective parties was proved by way of account books,

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cash books, ledger, nakal bahi which was produced on record as Ex.AW-1/1 to Ex.AW1/53, besides the certificates Ex,AW-1/54 to Ex.AW-1/63 furnished by the respective sellers, accepting the adjustment of 1% of the excess amount of market fee.

9. Moreover, the own witness of appellants-defendants, namely Murari Lal (Mandi Supervisor) while appearing as RW1 specifically admitted in his cross-examination that once, the respondent-plaintiff firm had refunded the amount of market fee to its sellers, the same could not be recovered from it.

10. Still further, there is no merit in the contention raised on behalf of the appellants-defendants that the suit in the absence of Notice under Section 31 of The Punjab Agricultural Produce Markets Act, 1961 was not maintainable. In this regard, it may be pointed out here that while submitting replies Ex.P-3 and P-4 to the notice dated 30.08.1986 served by the appellants-defendants, it was clearly mentioned on behalf of respondent-plaintiff that the replies be also treated as notices for the purposes of compliance under Section 31 of The Punjab Agricultural Produce Markets Act, 1961. Thus, in these circumstances, the suit filed at the instance of respondent-plaintiff was rightly entertained by the First Appellate Court.

11. In view of the discussions made hereinabove, finding no illegality and perversity in the judgment passed by the First Appellate Court below, the present appeal is dismissed.

12. Pending applications if any shall also stand disposed of.

13.09.2023 (HARKESH MANUJA)
tejwinder JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

