

2023:PHHC:119397

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

RSA-2266-2018 (O&M)
Date of decision: 11.09.2023

Sarwan Singh

..Appellant

Versus

Zira Cooperative Marketing-cum-Processing Society Limited
and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Tushar Madaan, Advocate for
Mr. Mansur Ali, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by the courts below is assailed by the defendant no.4 in this Regular Second Appeal.

2. The plaintiff's suit for recovery of Rs.42,53,146/- alongwith interest at the rate of 12% per annum has been decreed by both the courts below. In substance, the plaintiff's case is that the society was authorized to purchase wheat grain from the market on behalf of 'MARKFED', which is a State agency. For purchasing the wheat, defendant no.1, who was working as a commission agent in Thotha Mandi, was engaged by the plaintiff. Out of 8542 bags of wheat, the defendants supplied only 995 bags to the agency. The defendants, while contesting the suit, claim that the entire wheat stock has been taken away by the officials of the plaintiff-Society. Both the courts, on appreciation of evidence, came to the conclusion that there was a shortage of 7547

bags of wheat and defendant has failed to produce its 'gate passes' to prove that the entire wheat grain packed in 8542 bags was ever supplied.

3. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook. The learned counsel representing the appellant, while referring to the statement of PW3- Hari Kumar, Branch Manager, MARKFED, submits that it would be the responsibility of the Society to shift the entire wheat stock from the premises of the defendant. He submits that in view of the aforesaid statement, the plaintiff's suit is liable to be dismissed.

4. This Court has considered the submissions made by the learned counsel representing the appellant and has carefully read the statement of a witness which has been reproduced in the grounds of appeal. The witness has stated that the commission agent is responsible till the entire stock is shifted from the Grain Market to the Government godown. He has also stated that the commission agent is responsible to make provision for moving the stock from the Grain Market to the Government godowns. In such circumstances, there is no substance in the submission made by the learned counsel representing the appellant that the entire wheat stock was supplied by the defendants to the plaintiff or to the 'MARKFED'. Moreover, it will not be appropriate to give precedence to the oral evidence, over the documentary evidence. The movement from the grain market is recorded in the 'gate passes' issued to the vehicles. It was the responsibility of the appellant to produce the same.

Moreover, the appellant has also not produced its account books that the entire wheat stock was supplied.

5. Keeping in view the aforesaid facts, no ground to interfere is made out.
6. Hence, dismissed.
7. All the pending miscellaneous applications, if any, are also disposed of.

11.09.2023
rekha

(ANIL KSHETARPAL)
JUDGE

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