

2024:PHHC:143329



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-266-1999 (O&M)
Reserved on: 21.10.2024
Pronounced on: 05.11.2024

HAFED GINNING AND COTTON SEED
PROCESSING COMPLEX

... APPELLANT

Vs.

M/S RAM CHANDER ARJAN DAS
(A REGISTERED PARTNERSHIP CONCERN)
COTTON MERCHANTS AND COMMISSION AGENTS,
HANSI, HISSAR

.... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jaiswal, Advocate, for the appellant.

Mr. Rajinder Goel, Advocate, and
Mr. Siddharth Gupta, Advocate, for the respondent.

DEEPAK GUPTA, J.

Civil Suit No.46-C of 1987/1993 filed by the plaintiff-firm (*respondent herein*) against defendant (*appellant herein*) for rendition of accounts and recovery was decreed by the then Id. Sub Judge, 1st Class, Sirsa, leaving the parties to bear their own cost, vide judgment dated 26.09.1994. Appeal [CA N: 24 of 1994/98] filed by defendant – appellant against the said judgment and decree, was dismissed on 23.10.1998 by the First Appellate Court of the then Id. Additional District Judge, Sirsa, though modifying the judgment to the extent that appellant-defendant will have to bear the cost of the suit. Against this concurrent finding of the Courts below, defendant of the case has approached this Court by way of the present Regular Second Appeal.

2.1 Facts in brief are that auction of cotton seeds Chilky was conducted by the appellant-defendant on 18.02.1986. The bid made by the plaintiff (*respondent herein*) for purchase of 20 trucks load of cotton seeds

Chilky from the first lot at the rate of ₹225/- per quintal; and 13 trucks load of cotton seeds from the second lot at the rate of ₹206/- per quintal was accepted as per the details given in para No.3 of the plaint. It is also not in dispute that an amount of ₹72,000/- was deposited by the plaintiff as security which was required to be adjusted at the time of final lifting of all the bags. Admittedly, plaintiff actually lifted 16 trucks load from the first lot and 10 trucks load from the second lot as per details given in para No.5 of the plaint. This way plaintiff did not lift 4 trucks load from the first lot and 3 trucks load from the second lot.

2.2 The case of the plaintiff is that when it lifted the cotton seeds Chilky on 17.03.1986, it transpired that out of the total trucks load of the cotton seeds, which had been released to them, the officials of the defendant with the *mala fide* intention had misappropriated and taken out some of the best quality cotton seeds Chilky from the total auctioned lot and also mixed inferior/rejected type of the cotton seed Chilky in that lot to the detriment and interest of the plaintiff. It is the specific case of the plaintiff that project manager of the defendant was immediately informed in this regard and written objection dated 18.03.1986 was sent, but no heed was paid by the defendant. Lot of correspondence ensued between the parties in this regard. Plaintiff alleges that due to their own gross negligence and fraudulent action, the defendant re-auctioned the un-lifted cotton seed.

2.3 On the other hand, the case of the department-appellant (*defendant*) is that lots of letters were written to the plaintiff to honour its commitment of lifting all the trucks load of the cotton seeds, but it failed to do so and ultimately, the remaining 7 trucks load of cotton seeds had to be re-auctioned causing loss to the defendant. As per them, had the plaintiff lifted the entire lot, the department would have received an amount of ₹1,15,418.40 from the plaintiff. Some preliminary objections were also raised by the defendant to the effect that suit for rendition of accounts was not maintainable.

2.4 Plaintiff prayed for directing the defendant to provide proper and full accounts and ascertain the amount which was due to the plaintiff; whereas, defendant claimed that it had adjusted the security amount of ₹72,000/- and after adjustment thereof, defendant had still suffered the loss.

2.5 Necessary issues were framed. The trial Court found that as per the own admissions made by the witness of the defendant, an amount of ₹674.30 was lying credited in the account of the plaintiff. It was further found that defendant had forfeited the amount of ₹72,000/-, but no evidence was produced to show that this could have been done, as no conditions were attached with the auction and so defendant could not have forfeited the security amount of ₹72,000/-. Trial Court further held that suit was maintainable. However, trial Court directed the plaintiff to pay Court fee on the decretal amount of ₹72,674.300 after adjusting the Court fee already paid along with interest @ 8% per annum. Parties were left to bear their own costs.

2.6 In the appeal filed by the defendant-appellant, the Appellate Court upheld the finding of the trial Court to the effect that amount of ₹72,000/- could not have been forfeited by the defendant. It will be relevant to refer to the observations made by the first appellate Court in this Regard: -

“9. First of all the learned counsel for the appellant raised the plea the respondent has *refused* to lift the stock as per condition of the auction and the security amount has been adjusted after giving the due notice. Secondly, it was urged that the evidence of the witnesses produced by the respondent is contradictory to each other. On the one hand it has been submitted that the officials of the appellant malafidely had misappropriated and taken out some of the best quality cotton seeds Chilky from the total auctioned lot and had mixed inferior type of cotton seeds Chilky in the total lot to the detriment of the interest of the respondent. On the other hand it has come across in evidence that the market prices of the auctioned goods had gone high during the period and so the appellant refused to give the delivery of the goods.

10. DW2 Sham Lal has stated that the security amount of Rs. 72,000/- has been forfeited vide entry recorded at page 16 of the Ledger and the same has been adjusted in the record of the respondent. However, he has not placed any condition regarding the auction of the cotton seed Chilky crop. The witness has placed a copy of statement of account issued by the Accounts Officer, Hafed Ding which reveals the lifting of the cotton seeds-Chilky in trucks by the respondent-firm and the firm was being paid through demand draft which stood credited against each lifting and credit balance of Rs. 674.30 is shown. DW2 Sham Lal has further admitted in his cross-examination that security and the remains the dispute that amount of Rs. 72,000/- was taken as security and same was not in adjusted the accounts. There remains no dispute that an amount of Rs. 674.30 as recorded in ledger produced by the appellant was due to the respondent-firm at the time of the dispute. The learned counsel for the appellant submitted that the respondent has nowhere pleaded his willingness to lift the goods and it was required for the respondent to establish that the "breach" has been committed by the appellant. Neither PW1 Satya Pal has submitted that the cotton seeds Chilky were of inferior quality nor PW3 Jag Bhushan has asserted anything about the same. The learned counsel for the appellant has relied upon **AIR 1963 Andhra Pradesh 185 Joint Family Firm of M/s. Girdhari Lal Prabhu Dayal Vs. Jeth Mat Prop. Fire Chatur Bhuj Jeth Mal Hingoli** wherein it was held that under the Sales of Goods Act the agent has the right to re-sell the goods in respect of the unpaid purchase money. He vehemently argued that the Department of Hafed/appellant was justified in forfeiting the security amount of the respondent, as the respondent failed to comply with the conditions of the auction. The referred authority is not applicable in the circumstances of the present case because the appellant has not decided the objections put forth by the respondent before forfeiting the security amount. The copies of objections/notices Ex.P1 to Ex.P3 have been placed record. Even DW1 Bal Kishan has admitted in his cross-examination that the objections/notices were received in the office of the Hafed on 18.3.86, 21.3.86 and 27.3.86.

11. The learned counsel for the respondent vehemently argued that the condition for forfeiture of the security amount was never conveyed to the

respondent at the time of the auction nor the same was ever agreed to in between the parties. The notices, Ex.P2 to Ex.P4 issued by the Hafed Department are illegal and the same are not based on the basic agreement in between the parties.

12. The learned counsel for the appellant lastly submitted that an express contract means the promises made in the words and that a promise conveyed otherwise than by words is an implied promise. An express contract means the reciprocal promises contained in the words of the contract or resulting from a true construction of them and excludes stipulations which may arise out of any usage or custom or which may be Inferred from the conduct or course of dealings between the parties. Here the contracts of sale and the stop loss letters did not explicitly say anything about the buyers application for delivery. The contracts were for the sale of the cotton seeds Chilky and the time and place were fixed. It was also fixed that the appellant shall be paying the price in exchange for the lifting of the goods and the parties had thus expressly agreed that the price would be paid concurrently with the lifting of goods. There was obligatory on the part of the respondent to lift the goods or in exchange lose the money/security as per the contract under the sales of Goods Act. The learned counsel for the appellant has also relied upon **AIR 1958 Andhra Pradesh 550 Alapaty Ramamoorthy Vs. Poliseti Satyanarayana.** The referred authority is not applicable in the circumstances of the present case because in the referred case, at the end of contract the plaintiff issued some letters and the other party agreed to pay the damages in lieu of the delivery. In the present case, the respondent never agreed to pay the damages or forfeit his security. Since his objections Ex.P1 to Ex.P3 were never disposed of by the appellant, therefore, he did not lift the cotton seeds Chilky. There was no pre-condition for the purposes of forfeiting the security amount and the act of the appellant has been rightly held illegal by the Trial Court. The amount of security has been forfeited erroneously and which is liable to be returned to the respondent. The findings given by the Trial Court under issues No.1 to 4 are affirmed.”

2.7 The First Appellate Court further upheld the finding of the trial court to the effect that suit for rendition of account was maintainable, as it

was found that Court fee had already been affixed after passing of the decree by the trial Court. While concluding, the First Appellate Court held that trial Court was not justified in leaving the parties to bear their own cost, as costs were required to follow the event. As such, the amount incurred by the plaintiff for affixing the Court fee was held to be recoverable and as such suit was decreed with costs. The judgment of the trial Court was modified accordingly and the appeal of the defendant-appellant was dismissed.

3. Before this Court the only contention raised by Id. counsel for the appellant is that suit for rendition of account was not maintainable. Id. counsel has referred to ***K.C. Sakaria Vs. Government of Kerala, 2006(1) RCR (Civil) 460***, wherein it has been observed by Hon'ble Supreme Court as under:-

“To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognised under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.”

4. For the same reasoning, reliance is also placed on ***M/s Pramod Kumar & Company and others Vs. The Haryana Warehousing Corporation and another, 2013 (6) RCR (Civil) 658***.

5. Refuting the aforesaid contention, it is submitted by Id. counsel for the respondent-plaintiff that condition of forfeiture of ₹72,000/- as security was not part of contract between the parties, as it was not a pre-condition. Rather, the said condition was mentioned at the time of grant of

contract. Ld. counsel has also drawn attention towards the observations made by the First Appellate Court in this regard. Ld. counsel has further referred to Section 74 of the Contract Act and relied upon **Suresh Kumar Wadhwa Vs. State of Madhya Pradesh And Others, (2017) 16 Supreme Court Cases 757** to support his contention.

6. In the present case, in the first place, it has come in evidence that defendant did not decide the specific objections raised by the plaintiff to the effect that the officials of the defendant had mixed the low quality of the cotton seed Chilky and thus breached the contract. Written communications were made, but no heed was paid to them. Apart from this, it has been rightly observed by the First Appellate Court that plaintiff never agreed to pay the damages or forfeit his security. As observed that objections raised by the plaintiff were never heeded to and therefore, he did not lift the cotton Chilky seed. It was also observed that there was no pre-condition for the purpose of forfeiting the security amount and as such, the act of the appellant-defendant had been rightly held to be illegal by the trial Court and so the amount of security was erroneously forfeited by the defendant, which was liable to be returned to the plaintiff.

7. In the aforesaid facts and circumstances, when there was no pre-condition for the purpose of forfeiting the security amount, this Court does not find any fault in the concurrent findings returned by the Appellate Court, inasmuch as plaintiff was not sure as to what the defendant had done with the amount of ₹72,000/-, which was deposited by it.

8. In this regard, it will be relevant to refer to the observations made by Hon'ble Supreme Court in **Suresh Kumar Wadhwa's case (Supra)** wherein it was held as under: -

“23. Reading of Section 74 would go to show that in order to forfeit the sum deposited by the contracting party as "earnest money" or "security" for the due performance of the contract, it is necessary that the contract must contain a stipulation of forfeiture. In other words, a right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to

stipulate a term in the contract in that behalf. A fortiori, if there is no stipulation in the contract of forfeiture, there is no such right available to the party to forfeit the sum.”

9. The aforesaid authority is squarely applicable to the present case because in this case also, the defendant – appellant has been unable to show that prior to entering into contract between the parties or at the time of auction, any contract was entered between the parties containing stipulation of forfeiture of the security amount. As the right to forfeiture is a contractual right and penal in nature, therefore, parties to contract must agree to stipulate a term in the contract in that behalf. As clarified by Hon’ble Supreme Court, when there is no stipulation in the contract for forfeiture, there is no such right available to the party to forfeit the amount. Defendant in this case utterly failed to produce any such stipulation at the time of auctioning the cotton seed Chilky.

10. On account of the entire discussion as above, this Court finds that Courts below did not commit any error in decreeing the suit of the plaintiff. First Appellate Court rightly modified the decree to the effect that plaintiff was also entitled to the cost of the suit, as cost follows the event. This Court does not find any error in the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence.

11. As such, finding no merit in the present appeal, the same is hereby dismissed with cost.

05.11.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>