



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

(108)

RSA-1295-2022 (O&M)
Date of Decision: **12.05.2026**

M/S SAGAR ENTERPRISES AND ORS

... Appellants

Versus

HP COTTON TEXTILE MILLS LIMITED

... Respondent

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Navmohit Singh, Advocate
for the appellants.

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VIRINDER AGGARWAL, J. (Oral)

1. The instant Regular Second Appeal (hereinafter referred to as the “RSA”) has been preferred by the appellants–defendants assailing the decree and judgment dated 25.01.2021 passed by the learned District Judge, Hisar, whereby the findings and conclusions recorded by the learned Trial Court were affirmed in toto. The learned Additional Civil Judge (Senior Division), Hisar, vide decree and judgment dated 26.05.2016, had partly decreed, with costs, the suit instituted by the respondent–plaintiff for recovery of a sum of ₹2,48,712/-. Aggrieved against the concurrent findings returned by both the learned Courts below, the appellants have approached this Court contending that the impugned judgments and decrees suffer from patent illegality, misappreciation of evidence, and material errors of law, thereby rendering the same unsustainable in the eyes of law.



2. The case of the respondent–plaintiff, as pleaded in the plaint, is that the plaintiff-company, vide letter No. HP/HIS/080104/J.N.S./F.C.-119 dated 08.01.2004, invited offers for sale of cotton waste through an open auction held on 20.01.2004 at its mill premises situated at 15 K.M. Stone, Delhi Road, Hisar. The appellants–defendants participated in the auction and submitted a bid for purchase of gutter waste at the rate of ₹10.75 per kilogram, which was accepted by the plaintiff. Pursuant thereto, the defendants deposited a sum of ₹30,000/- as earnest money/security in terms of the auction conditions.

2.1. It was averred that the defendants were contractually bound to lift the waste material generated during the period from 01.01.2004 to 30.06.2004 on a fortnightly basis against 100% advance payment. The terms further provided that, in the event of default, the plaintiff would be entitled to dispose of the material at the risk and cost of the defendants and recover the consequential loss after adjustment of the earnest money. According to the plaintiff, the defendants failed to lift the material after March, 2004 despite repeated requests and legal notices, compelling the plaintiff to dispose of the accumulated stock to third parties at lower rates. Consequently, after adjustment of the earnest money, the plaintiff allegedly suffered a loss of ₹2,48,711.59, recovery whereof was sought through the present suit.

3. Upon notice, defendant No.2 appeared and filed a written statement raising various preliminary objections regarding maintainability, absence of cause of action, concealment of material facts, and mis-joinder of parties. On merits, the defendants denied the claim of the plaintiff and



contended that the amount of ₹30,000/- was deposited merely as security and not as earnest money. It was further pleaded that disputes arose between the parties as the actual material offered for delivery materially differed from the sample shown at the time of auction, on account whereof the defendants declined to lift the material.

3.1. Subsequently, an application under Order I Rule 10(2) and Order VI Rule 17 read with Section 151 CPC was allowed vide order dated 09.05.2006, whereby defendant No.3 was impleaded as a party. Defendant No.3 also filed a written statement reiterating substantially similar pleas and further instituted a counter-claim alleging concealment of the original agreement and complete terms by the plaintiff, while seeking refund of the security amount along with special costs under Section 35-A CPC.

4. The respondent-plaintiff thereafter filed a replication controverting the preliminary objections and averments raised in the written statements, while reiterating and reaffirming the assertions made in the plaint. Upon a comprehensive consideration of the pleadings and the rival stands advanced by the parties, the learned Trial Court, with a view to effectively adjudicate the controversies arising for determination, framed the following issues for consideration:-

1. Whether the plaintiff is entitled for recovery of Rs.2,48,712/- alongwith interest as prayed for?OPP.
- 1-A Whether the counter-claimant is entitled to the refund of security and initiation of proceedings by the court against the plaintiff as prayed for in the body of counter claim?OPD.
2. Whether the plaintiff has no locus standi or cause of action to file present suit?OPD.



3. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts?OPD.
 4. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction?OPD.
 5. Whether the suit is not maintainable in its present form? OPD.
 6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD.
 7. Relief
5. Both parties were afforded adequate and effective opportunity to adduce evidence in support of their respective claims and defences. Upon appreciation of the pleadings, oral testimony, and documentary evidence available on record, the learned Trial Court partly decreed the suit in favour of the respondent–plaintiff and held the plaintiff entitled to recovery of ₹1,98,712/- along with interest at the rate of 6% per annum from the date of institution of the suit till realization, while simultaneously dismissing the counter-claim preferred by defendant No.3.
- 5.1. The appeal preferred by the appellants–defendants came to be dismissed by the learned First Appellate Court, which affirmed the findings recorded by the learned Trial Court by observing that, in terms of the Delivery Clause contained in Ex.P1, the loss suffered on resale of the material at lower rates was recoverable from defendant No.1 and that the respondent–plaintiff was legally entitled to recover the amount due after adjustment of the earnest money/security amount.
- 5.2. Aggrieved against the concurrent findings and decrees rendered by both the learned Courts below, the appellants–defendants have instituted the present Regular Second Appeal before this Court.



6. I have heard learned counsel for the appellants at considerable length and have bestowed thoughtful consideration upon the submissions advanced, while carefully examining the pleadings, evidence, and the concurrent findings recorded by the learned Courts below.

7. Both the learned Courts below have rightly concluded that the agreement executed between the parties pertained solely to the purchase of gutter waste material and did not contain any stipulation whatsoever regarding any assured or minimum standard of quality. The contractual terms unequivocally provided that, in the event of failure on the part of the appellants–defendants to lift the material and make payment thereof, the respondent–plaintiff would be entitled to dispose of the same to third parties and recover the resultant deficiency in price from the defaulting party.

7.1. The evidence on record clearly establishes that the appellants–defendants failed to perform their contractual obligations and refused to lift the material on the pretext of inferior quality, despite there being no such condition embodied in Ex.P1. The respondent–plaintiff thereafter sold the material through a subsequent tender process at rates lower than those agreed upon by the appellants, thereby suffering a quantified loss of ₹2,48,711.59. The said loss stood duly substantiated through calculation sheet Ex.P5, proved on record by the Senior Manager of the plaintiff-company.

7.2. Once the appellants had categorically refused to accept delivery of the material, no further notice calling upon them to lift the same was legally necessitated, as the breach of contract stood crystallized upon



such refusal itself. In these circumstances, both the learned Courts below have rightly held the appellants liable for the loss suffered by the respondent–plaintiff and awarded recovery accordingly along with interest.

7.3. This Court does not find any perversity, illegality, or material irregularity in the concurrent findings recorded by the learned Courts below warranting interference in exercise of jurisdiction under Section 100 CPC. Consequently, finding no merit in the present appeal, the same is hereby **dismissed**.

8. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, shall also stand disposed of accordingly. No further orders are required to be passed in that regard.

12.05.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No