(2010) 07 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No.2893 of 2009

Mohinder Pal Mohan Lal APPELLANT

Vs

State of Haryana & Anr. RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 409
Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 24(a), 25(5)

Citation : (2010) 4 Law Herald 3393 : (2010) 4 RCR(Civil) 767

Hon'ble Judges : Rakesh Kumar Jain, J

Advocate : Manish Kumar Singla, Advocates for appearing Parties

Judgement

Mr. Rakesh Kumar Jain, J

1. This is an appeal on behalf of the plaintiff against the judgment and decree dated 12.1.2009 passed by Addl.District Judge, Jind by which judgment and decree of the Addl. Civil Judge (Senior Division), Narwana, dated 14.2.2008, has been set aside.

2. Briefly stated the facts of the case are that the plaintiff had supplied wheat for the year 20022003 of an amount of Rs.1,97,89,357.70 to the defendants against which the defendants made the payment of Rs.1,96,79,590.00 and an amount of Rs. 1,09,764.64 remained due against the defendants. The defendants deducted the amount as per less weight of wheat of the following firms:

S/No. Name of Firm Amount

1. M/s Kishori Lal Balwant Rai Rs.21,207.00

2. M/s Puran Chand Pankaj Kumar Rs.17,751.00

3. M/s Ramphal Ram Mehar Rs.2,925.00

4. M/s Mohinder Pal Mohan Lal Rs.46,070.64

5. M/s Hanuman Trading Co. Rs.20,256.00

6. M/s Kaushik Trading Co. Rs.1,755.00

3. The plaintiff firm after remitting an amount of Rs. 1,755.00 of firm M/s. Kaushish Trading Company, instituted this suit for recovery of an amount of Rs.1,08,009.64 along with interest @ Rs.2/ per hundred per month.

4. In the written statement, it was admitted by the defendants that the plaintiff was working as a BillingcumPayment Agent. It was claimed that the defendant has rightly adjusted a sum of Rs.1,09,764.64 from the payment of the plaintiff on the ground of less weight of wheat. It was alleged that the plaintiff agent was called at the time of weighment and notice was given to him but he did not come, therefore, the question of recovery of the amount alongwith interest does not arise.

5. The plaintiff filed replication in which it was alleged that the plaintiff firm had supplied sealed bags of wheat weighing 50.665 Kg each through FormPR3 on which Inspector/Incharge after accepting true and genuine weight had put his signatures, therefore, the question of less weight in the bags does not arise at all.

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

1. Whether plaintiff is entitled for recovery of Rs.1,32,000/ from the defendant along with interest as prayed for? OPP.

2. Whether suit of the plaintiff is not maintainable? OPD.

3. Whether plaintiff has not come to the court with clean hand and suppressed true and material facts from the court? OPD.

4. Relief.

7. The trial Court after taking oral as well as documentary evidence decreed the suit of the plaintiff partly with proportionate costs for recovery of Rs.1,08,009.64 from the defendants. However, interest was declined. It was also ordered that the defendants shall make the entire payment of the decretal amount within a period of one month. In case of default, they were directed to pay 6% interest per annum from the date of judgment till the date of realization.

8. Both the plaintiff and defendants were not satisfied with the judgment and decree of the trial Court, therefore, the defendants had filed Civil appeal No.38 of 14.3.2008 titled as State of Haryana and another Vs.M/S.Mohinder Pal Mohan Lal and plaintiff filed Civil Appeal No.42 of 17.3.208 titled as M/s.Mohinder Pal Mohan Lal Vs. State of Haryana and another. Both the appeals were clubbed together by the Court below and vide its judgment and decree dated 12.1.2009, accepted Civil Appeal No. 38 of 14.3.2008 filed by the defendants and dismissed the Civi Appeal No.42 of 17.3.2008 filed by the plaintiff.

9. Aggrieved against the judgment and decree of learned First Appellate Court, only the defendants have preferred the present appeal i.e. RSA No.2893 of 2009,

but no appeal has been filed by the plaintiff against the judgment and decree of the First Appellate Court by which their Civil Appeal No.42 of 17.3.2008 was dismissed.

10. In the present appeal, notice of motion was issued on 12.3.2010 for 11.5.2010. On 11.5.2010, following order was passed:

?Present: Mr. M.K. Singla, Advocate, for the appellant

As per office report, notices issued to the respondents have been received back duly served but none is present, therefore, they are proceeded against ex parte.

Adjourned to 21.05.2010 for arguments?.

11. On 21.5.2010, learned counsel for the appellant relied upon the cases of RSA No.3611 of 2003 titled as M/s Prem Chand Chiman Lal Vs. Food Corporation of India through Divisional Manager and RSA No.3109 of 2003 titled as M/s Ram Gopal & Sons Vs. Food Corporation of India through Divisional Manager and also relied upon Rule 24 and 25 of the Punjab Agricultural Produce Markets (General) Rule 1962 and prayed for the summoning of records of the Courts below. Thus, the Registry was directed to summon the record of both the Courts below. Thereafter, learned counsel for the appellant filed C.M.No.7281C of 2010 under Section 151 of Code of Civil Procedure,1908 (for short,CPC) for permission to place on record additional substantial questions of law, involved in this appeal. The said application was allowed by this Court on 7.7.2010 and additional substantial questions of law framed by the appellants were taken on record.

12. Opening his arguments, learned counsel for the appellant pressed the following questions of law for adjudication:

(a) Whether appellant/plaintiff can be held liable for any shortage of wheat specially when the weighment was not done as per rules?

(b) Whether a weighment by the defendants in the absence of the plaintiff/ appellant is in violation of Rules 24 and 25 of the Punjab Agricultural Produce Markets (General) Rules 1962 (for short, the Rules) ?

13. Learned counsel for the appellant has submitted that DW1 Mohan Lal, Accountant of the defendants has admitted in his cross examination that official of the defendants, remained present during the time of purchase of wheat, the commission agent (Aarhtiya) is only concerned with his commission, at the time of weighment, no one from the plaintiff was present. It is also admitted that the amount has been deducted from the payment to be made to the plaintiff on the ground of shortage in the wheat. Learned counsel for the appellant has further referred to the document Exs. P6 to P21 to contend that all the FormPR 3 have been signed by the authorized person of the defendants after checking the total wheat of the bags. It is submitted that the Court below has erred in deciding the case against the plaintiff on the ground that they had been given notice of shortage vide Ex.DW1/D, but despite that they did not come present at the time

of weighment, therefore, they have no right to make any grievance.

14. It is further submitted by learned counsel for the appellant that documents Ex. P6 to Ex.P 21 are for the period from 15.4.2002 to 02.5.2002 whereas notice Ex. DW1/D was issued on 07.5.2002. It is further submitted that there is no notice on record from which it could be gathered that the plaintiff was informed by the defendants to be present at the time of weighment of his bags which were supplied by them under the signatures of defendants'' authorized signatory . He also submits that as per Rule 24 (a) of Rule 25 (5) of the Rules, buyer is responsible to get the agricultural produce weighed immediately after auction or on the day the produce is purchased by him and if the same is not done, then buyer is to be blamed and not the seller. He also submitted that the produce has to be weighed in the presence of both the parties and in case one party evades his presence, the other party may report in writing to the Secretary of the Committee or any employee of the Board, who after satisfying himself as to the correctness of the same shall cause the test weighment to be made in his presence or in the presence of any other official of the Committee authorised by him in this behalf. Thereafter, result of such test weighment shall be final/ conclusive and binding on both the parties. It is further submitted that as it has come in the evidence of DW1 that the plaintiff was not present at the time of weighment and the amount sought to be recovered was deducted only on account of shortage of wheat and there is no document on record signifying the notice to the plaintiff for the presence at the time of weighment, the learned Court below has erred in reversing the judgment and decree of the trial Court.

15. I have heard the learned counsel for the apellant and perused the record with his assistance.

16. Before adverting to his contentions, it would be worthwhile to refer to the provisions of Rules 24 and 25 of the Punjab Agricultural Produce Markets (General) Rules,1962 (for short,the Rules), which are reproduced below:

? 24 Sale of Agricultural ProduceSection 43 (2) (vi)

(i) All agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub market yard provided that with the permission of the Secretary of the Board or any officer authorized by him in this behalf, the agricultural produce may also be brought or sold through bilateral transactions within the notified market area of a committee at a place of business of a licensee out side the principal or submarket yard on the terms and conditions as may be specified by the Board. The buyer shall maintain a register in Form ''R'' and furnish information in Form ''R1'' to the committee along with return in Form M.

(2)Nothing in subrule (1) shall apply to a retail sale as may be specified in the byelaws of the Committee.

(3)A committee may, and on being directed by the 1 [chairman] of the Board or an officer authorized by him] shall fix timing for the starting and closing of the auction in respect of any agricultural produce, other than fruits and vegetables.

(4) The price of agricultural produce shall not be settled by secret signs or secret bid and no deduction shall be made from the agreed price of the consignment.

(5) The auction shall not be conducted by any person other than the person engaged by the committee:

Provided that under special circumstances the [Chairman] of the Board or an officer authorized by him may allow a Committee to make or permit any alternative arrangement:

Provided further that nothing in this subrule shall apply to the auction of vegetables and fruits.

(6)The highest bid offered by a buyer at an auction and at which the seller of the produce gives his consent to sell his produce, shall be the sale price of the produce.

(7)The buyer shall be considered to have thoroughly inspected the produce for which he has made a bid and he shall have no right to retract it.

(8)As soon as the auction for a lot is over the auctioneer shall fill in the particulars in a book to be maintained in Form ''H'' and shall secure the signatures of both of the buyer and the seller or their respective representatives, whoever may be present at the spot.

(8A) A Register in Form ''H'' shall be maintained by the Committee in which the agricultural produce which remained unsold during the course of auction be entered and it shall be obligatory for every dealer or Kacha Arhtiya or Commission agent, as the case may, to report about the unsold produce to the Committee as soon as his agricultural produce is sold.

(9)The buyer shall be responsible to get the agricultural produce weighed immediately after the auction or on the same day the produce is purchased by him [and the seller] or the buyer shall be liable for any damage to, or loss of, or deterioration in, the produce after the auction according to the local usage or custom [or as per provisions of rule 13].

(10)A person engaged by a producer to sell agricultural produce on his behalf shall not act as a buyer either for himself or on behalf of another person in respect of such produce [without the prior consent of the producer:]

Provided that a Cooperative Society shall be exempt from the operation of this rule.

(11)The Kacha Arhtiya shall make payment of the seller immediately after the weighment is over.

(12)Every Kacha Arhtiya shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under Rules and byelaws the counterfoil shall be retained by the Kacha Arhtiya;

Provided that nothing in the sub rule shall apply where agricultural produce, being vegetables or fruit, not exceeding one quintal is weight in delivered.

(13)In the absence of any written agreement to the contrary the sale price of agricultural produce purchased under these rules shall be paid by the buyer to the Kacha Arhtiay on delivery of Form I.

(14)Deliver of agricultural produce after sale shall not be made or taken unless and until the Kacha Arhtiya or, if the seller does not employ a Kacha Arhtiya, the buyer has given to the seller a sale voucher in Form J, the counterfoil whereof shall be retained by the Kacha Arhtiya or the buyer, as case may be.

25. WeighmentSection 43(2)(x)

(1)The Board shall fix standards of net weight of agricultural produce to be filled in a packing unit such as bag, a half bag or a palli within each notified market area.

(2)No person shall fill or cause to be filled any agricultural produce expect in accordance with standards fixed under subrule(1).

(3)All transactions in a market in terms of packing units shall be deemed to have been entered into in accordance with standards fixed under subrule (1).

(4)Immediately on the completion of weighment of a lot of agricultural produce within a notified market area, either party to the contract may cause a test weighment of ten percent of the units of packing in a lot or two packing units whichever is more. The test weighment shall be carried out at the site of weighment and if no test weighment is held at the site, the produce shall be deemed to have been correctly weighed.

(5)Test weighment under subrule (4) shall be carried out in the presence of both the parties to the contract. In case any of the parties refuses or otherwise evades presence, the other party may report in writing to the Secretary of the Committee or any employee of the Board not lower in rank to that of [the Secretary of the Committee] who, after satisfying himself as the correctness of the report, shall cause the test weighment to be made in his presence or in the presence of any other official of the Committee authorized by him in this behalf, and the result of such test weighment shall be final, conclusive and binding on both the parties.

(6) Before any agricultural produce weighed in pursuance of a contract of sale or purchase within a notified market area is removed from the place of its weighment, the Chairman, the Secretary of the Committee or any employee of the Board not lower [in rank to that of [the Secretary of the Committee or

Agricultural Inspector (marketing) or assistant Marketing Officer of the Marketing section of the department of Agricultural & Forests (Agricultural Wing) shall, with a view to satisfying himself that such weighment has been correctly made or is filled in accordance with standards fixed under subrule (1), be entitled at any time and without any previous notice, to check the weighment by means of weights and instruments kept by the Committee or any other agency in the presence of the purchaser and the seller and if either or both of them evade presence, test weighment may be carried out in the presence of any two persons present there. Provided that the proof of making payment of market fee in the State from which Paddy (Basmati) has been imported along with the purchase bill, documents relating to transportation and Form K2 is furnished by the dealer to the concerned committee.

(7) If the weighment checked under subrule

(6) is found to be defective, the persons checking the weighment may order the lot to be reweighed. The reweighment shall be made at the cost of the buyer, if its is not filled in accordance with the standards fixed under subrule (1), and at the cost of the weighment concerned, if the weighment is otherwise defective. Such order shall be final and the buyer or the weighman, as the case may be, shall immediately comply witth order. This subrule shall operate without prejudice to any other Punishment that they may be awarded under the Act, these rules or byelaws made thereunder.

17. The aforesaid rules at least Rules 24 (9) and 25 (5) of the Rules specifically provide that weighment has to be done in the presence of the seller and in case, he does not come present deliberately, the matter has to be reported to the Secretary of the Market Committee, who would cause weighment in his presence or in the presence of any other person authorised by him and the result of such test weighment shall be final and conclusive between the parties.

18. From the record, I find that there is no notice given by the defendants to the plaintiffs requiring them to be present at the time of weighment of the wheat bags which were supplied by them nor there is any proof that in the absence of the plaintiffs, the matter was reported by the defendants to the Secretary Market Committee to be present at the time of weighment. Thus, in my view, the present matter is squarely covered by the decisions of this Court rendered in RSA No.3611 of 2003 (O&M) titled as M/s. Prem Chand Chiman Lal Vs. Food corporation of India through Divisional Manager, Delhi Road Hisar and RSA No. 3109 of 2003 (O&M) titled as Ram Gopal & Sons Vs Food Corporation of India through Divisional Manager, Delhi Road, Hisar, decided on 26.3.2010.

19. In view of the aforesaid observations, I feel that the defendants have violated Rules 24 (9) and 25 (5) of the Rules, while weighing the bags and as such, are not entitled to deduct the amount which is sought to be recovered. In this view of the matter, the present appeal is allowed and the judgment and decree of the learned First Appellate Court is set aside and that of the trial Court

is restored with costs.

