

(2019) 01 P&H CK 0458

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 11374C To 77C Of 2017, Regular Second Appeal No. 4382 Of 2017

Punjab State Civil Supplies Corporation Ltd. And Another APPELLANT
Vs

Sher Singh And Another RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2019) 01 P&H CK 0458

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Deepali Puri

Final Decision : Dismissed

Judgement

Augustine George Masih, J

C.M. No.11374 C of 2017

Application is allowed as prayed for.

Delay of 4 days in refiling the appeal stands condoned. C.M. No.11375 C of 2017 Prayer in this application is for making good the deficiency in the Court fee.

Since the deficiency in the Court fee has been made good, the present application stands allowed.

C.M. No.11376 C of 2017

Application is allowed as prayed for.

Exemption is granted from filing the certified copy of judgement and decree dated 19.03.2014 passed by Civil Judge (Senior Division), Moga.

C.M. No.11377 C of 2017

Prayer in this application is for leading additional evidence under Order 41 Rule

27 CPC.

Learned counsel for the applicant-appellants asserts that although the Enquiry Officer had exonerated respondent No.1 of the charges served upon him but the Punishing Authority had given a dissenting note and had proceeded to impose the punishment of recovery. She contends that the said dissenting note is essential for a just decision of the case as it would throw light on the aspect with regard to the order of punishment as imposed upon respondent No.1.

I have considered the submissions made by learned counsel for the applicant-appellants and on going through the judgements passed by the Courts below, find that the present application is an effort made by the applicant-appellants at a belated stage. There is nothing on the record to indicate that the said document was not available with the applicant-appellants or that the said document could not be produced at the time of evidence before the Courts below.

Therefore, no ground for allowing the present application is made out and the same stands dismissed.

R.S.A. No.4382 of 2017

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Moga, dated 19.03.2014, whereby the suit preferred by the appellant-plaintiffs for recovery of `1,73,81,896/- from respondent No.1 in the light of the fact that he was Inspector Grade II and it was under his charge that the wheat was stored. Because of negligence and inaction on the part of respondent No.1, the wheat got damaged, leading to loss to the appellants and, therefore, the recovery is being sought to be made from him. The said suit has been dismissed by the trial Court. Even appeal filed by the appellant-plaintiffs against the said judgement and decree stands dismissed vide judgement dated 06.01.2017.

It is the contention of learned counsel for the appellants that respondent No.1, being Incharge of the wheat stock, had to take all care and caution to maintain the health of the wheat stored under him. He did not take scientific precautions required to be taken, which has resulted in damage of the wheat bags stored in the godown, resulting in the loss to the appellants. Although the Enquiry Officer had exonerated respondent No.1 but since the punishing authority is the competent authority to come to a conclusion with regard to acceptance of the enquiry report or otherwise and the said Punishing Authority having not agreed with the report of the Enquiry Officer had recorded its dissenting note and thereafter proceeded to impose punishment of recovery, which cannot be said to be not in consonance with the statutory rules, which would call for any interference in the judgements passed, rejecting the claim of the appellants as put forth in the civil suit. She, thus, contends that the judgments passed by the Courts below deserve to be set-aside and the suit of the appellant-plaintiffs decreed.

I have considered the submissions made by learned counsel for the appellants and with her assistance have gone through the impugned judgments.

It is not in dispute that the wheat stock was stored in various stores at Baghapurana under the supervision of respondent No.1. Respondent No.1 was charge sheeted on the ground of his negligence, which led to deterioration of the quality of wheat stock stored under him. The charge sheet, after having been served upon him, an enquiry was initiated and in conclusion, the Enquiry Officer submitted his report Ex.D11. As per the said enquiry report, no evidence was found, which would indicate or show that respondent No.1 could be held guilty of the charges levelled against him. The Enquiry Officer had exonerated respondent No.1 on the ground that wheat stock was stored in a KATCHA and unscientific plinths, which were not fit for long storage and at the best the said accommodation could be considered fit only for transit storage for a period of 5-6 months.

It is an admitted position that the wheat was purchased in April 1999 on behalf of the F.C.I. and the said stock had to be picked up by F.C.I., which admittedly did not lift the same till the year 2004. Because of long delay of five years, the deterioration in the quality of wheat stored had occurred. PW2 Amarjit Singh, Senior Assistant Manager, PUNSUP, had admitted the factual position that the wheat was stored in open plinths. It has also been admitted that respondent No.1 had not right to move the wheat stock without the permission of Food Corporation of India and higher officials of the appellants. There was no technical expert available at Moga during the relevant period. All these aspects go a long way to show that there could be no liability or responsibility fixed upon respondent No.1.

That apart, as a matter of fact no loss as such in the sale of wheat has taken place and the recovery primarily has been ordered only on the plea that the appellant-plaintiffs would have earned profit because of the differential amount. There is no proof thereof on record to substantiate such an allegation and in any case that was never the charge which was served upon respondent No.1. The Courts below have returned a concurrent finding to the effect that the enquiry report is based upon proper appreciation of the evidence, which has been led by the Department and respondent No.1 and there was no reason why the Appellate Authority should not have accepted the said enquiry report.

This Court also does not find any ground to interfere in the well reasoned and justified orders passed by the Courts below for dismissing the suit and appeal of the appellant-plaintiffs.

The appeal, being devoid of merit, therefore, stands dismissed.