
(2003) 07 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2962 of 2003

Punjab State Warehousing Corporation and Others

APPELLANT

Vs

Amar Nath Vinod Kumar

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24, Order 6 Rule 14

Citation : (2003) 135 PLR 860 : (2003) 4 RCR(Civil) 37

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Anil Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is defendant's appeal filed u/s 100 of the CPC (for brevity "Code") against the concurrent findings of facts recorded by both the Courts below holding that the plaintiff-respondent is entitled to recover a sum of Rs. 176,716.00 which represent Rs. 74,003.02 as principal amount and Rs. 102,713.00 as interest on the balance sale consideration of paddy. The fact that the defendant-appellant had purchased paddy from the plaintiff-respondent at the rate of Rs. 470 per quintal, has not been disputed. It has also not been disputed that the payments have been withheld. However, the plea set up by the defendant-appellant was that the paddy supplied by the plaintiff-respondent was sub-standard in quality, short in weight and therefore, the plaintiff-respondent did not deserve to be paid. However, no evidence was produced by the defendant-appellants to substantiate their allegations justifying that they were entitled to withhold the payment. Therefore, it has been concurrently found by both the Courts below that sum of Rs. 74,000.02 is due to the plaintiff-respondent. It has also awarded interest @ 12% p.a. from the date of institution of the suit till its realisation. The views of the learned Additional District Judge, are as under;

"13. Moreover, if the respondent firm had mixed inferior quality paddy with standard paddy or the bags contained less weight, the appellants should have

stopped the payment of the respondent firm or had given show cause notices to this effect. There is no dispute between the parties that the appellants had purchased paddy from the respondent firm and the amount of Rs. 74,003.02 is due against them.

14. The appellants had also failed to examine any expert or analyst to prove the mixing of inferior quality paddy with standard paddy and also contractor etc. to prove the less weight in the bags, if any, given by the respondent firm if the stock had been pilferaged by the respondent firm before lifting, then it was the duty of the appellants to have got registered a criminal case of theft against the respondent firm. It was the duty of the appellants department to have taken an appropriate action at the relevant time against the respondent firm, if they had committed default in supplying sub-standard paddy or bags containing less weights of paddy. In the absence of any evidence, the appellants department was not competent to retain the balance payment of Rs. 74,003.02 belonging to the respondent firm."

2. Mr. Anil Malhotra learned counsel for the defendant-appellant has argued that the Additional District Judge has wrongly held that the appeal was not maintainable as the same had been filed by the Additional Managing Director, Punjab State Warehousing Corporation, Chandigarh on behalf of the appellants because no resolution authorising the Additional Managing Director was placed on record. Mr. Malhotra has further submitted that even the findings on merit are liable to be set aside because various notices have been issued to the food grains traders including the plaintiff-respondent to mend their ways. According to the learned counsel, it cannot be concluded that no evidence was led showing that the paddy supplied to the Corporation was sub standard.

3. I have thoughtfully considered the submissions made by learned counsel. On merits the findings of the facts recorded by both the Courts below that the plaintiff-respondent has supplied the paddy and payment for the aforementioned paddy supplied to the defendant-appellants has not been made cannot be disputed because these are concurrent findings of facts. The findings are based on cogent evidence and cannot be re-opened in an appeal filed u/s 100 of the code. Therefore, I do not find any legal infirmity in the said findings of facts. I am of the firm opinion that the decree has been rightly passed by both the Courts below.

4. The other argument that the appeal before the learned District Judge is maintainable raised by Mr. Anil Malhotra, deserves to be accepted because it has been held by the Supreme Court in *United Bank of India v. Naresh Kumar and Ors.* A.I.R.1997 S.C. 3 that a public Corporation should not be non-suited on the basis of mere technicalities or a procedural defect unless there are allegations of fraud. The observations of their Lordships read as under:-

""In case like the present where suits are instituted or defended on behalf of a public corporation public interest should not be permitted to be defeated on a

mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of procedural irregularity which is curable.

It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the Company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a Corporation the Secretary or any Director or other Principal officer of the Corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the Code of Civil Procedure, it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the CPC as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the Company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of the individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court came to the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, came to the conclusion that the corporation had ratified the act of signing of the pleadings by its officer.

The Courts below could have held that Shri L.K.Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Shri L.K.Rohatgi in signing the plaint. If, for any reason whatsoever, the Courts below were still unable to come to this conclusion, then either of the appellate Courts ought to have exercised their jurisdiction under Order 41, Rule 27(1)(b) of the CPC and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K.Rohatgi to sign the plaint. Such a power should be exercised by a Court in order to ensure that injustice is not done by rejection of a genuine claim."

The aforementioned view was followed by this Court in the case of Municipal

Corporation Vs. Preet Builders Pvt. Ltd. and Others, and also in the case of Municipal Committee Sirhind v. Bawa Vttam Gir Chela and Anr., R.S.A. No. 1732 of 1981, decided on 7.9.2001. Therefore, the appeal before the Additional District Judge is held to be maintainable.

5. In case where the appeal is held to be maintainable by reversing the view of the lower appellate Court ordinarily the case is sent back to the concerned Court for deciding the same on merit. However, in the present case decision has been rendered by the learned Additional District Judge on merit, therefore, no such necessity arises. The observation of the Additional District Judge affirming the findings have already been noticed above. Therefore, the instant appeal is without merit and is dismissed subject to the modification mentioned above.