

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 3802 of 2010 (O&M)

Date of decision: November 30, 2011

Nand Kishore

.. Appellant

Vs.

Punjab State Civil Supplies Corporation Ltd.

.. Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Manvinder Singh Sidhu, Advocate for the appellant.

A.N. Jindal, J

This regular second appeal is directed against the judgment and decree dated 26.10.2009 passed by the Appellate Court, dismissing the appeal against the judgment dated 11.6.2008 passed by the learned Additional Civil Judge (Sr. Division), Ferozepur decreeing the suit of the plaintiffs- respondents (herein referred as, 'the plaintiff') for recovery of ₹1,52,975/- (i.e. ₹1,12,475/- as damages on account of shortage in the wheat stock and ₹40,500/- as interest calculated on the above said amount at the rate of @ 12% per annum) with costs. The plaintiffs were further granted pendente lite and future interest @ 6% per annum on the principal amount.

The defendant No.1 (performa respondent) is the supervisory authority, whereas, the defendant No.2 was the Public Distribution Clerk of PUNSUP at the relevant time. On 18.4.1997, the District Manager, Punsup had directed the defendant No.1- Raj Kumar Chauhan to purchase wheat crop year 1997-98 from Mandi Lohgarh and defendant No.2 Nand Kishore PDC, was directed to purchase the wheat crop for year 1997-98 from Mehman Mandi. The defendant No.1 purchased 24817 bags weighing 23578.75 qtls. from the said market and the defendant No.2 purchased 14145 bags weighing 13437.75 qtls. from Mehman Mandi. The said wheat purchased by both of them was stored in the premises of Paul Rice Mills also known as Paul Trading Company, Ferozepur Cantt. The wheat was in joint custody of the defendants. The defendants delivered the wheat stock from 6/97 till 11/99 and the balance became nil in the month of November, 1999. The accounts branch after examining the record calculated the loss

caused by the defendants with respect to the wheat in their custody lying at the Paul Rice Mills vide report dated 20.1.2000/3.3.2000 indicating that as against 37027.50 qtls of wheat the defendants had delivered 203.30 qtls. short wheat causing to the tune of ₹1,12,475/-, on account of shortage caused by them.

The suit was contested by the defendant No.1. In his written statement, he denied the allegations. However, he admitted that both the defendants had purchased the wheat and stored at the place as indicated by the plaintiff-Corporation but further pleaded that though the defendant No.1 was in joint charge of the stock with defendant No. 2, but due to bad weather and the high rate of moisture contents, the quality of the wheat could not be maintained, therefore, the shortage occurred.

Defendant No.2 in his written statement, while denying that he never dealt with the stock in question, also prayed for dismissal of the suit.

From the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiffs are entitled to recover suit amount from the defendants on account of shortage in wheat stocks along with interest?OPP
2. Whether this suit is within limitation?OPP
3. Whether this suit is bad for non joinder of necessary parties?OPD
4. Whether this suit is not maintainable as prayed?OPD
5. Whether the plaintiffs are estopped by their own acts and conduct from filing the suit?OPD
6. Whether this suit has not been filed competent person?OPD
7. Whether this suit is barred under the provisions of order 2 rule 2 CPC?OPD
8. Whether the suit is not properly verified, if so, its effect?OPD
9. Relief.

Both the parties led evidence and ultimately, the suit was decreed in the aforesaid terms. The two separate appeals filed by the defendants were also dismissed by the Appellate Court.

Arguments heard.

Having heard the contentions raised by the learned counsel for the appellant-defendant, it transpires that the wheat was purchased by him and the other defendant on the direction of the plaintiff in the year 1997-98 and the appellants as well as the Raj Kumar Chohan were having joint custody and they delivered 203.30 qtls. short as against the actual delivery of wheat weighing 37027.50 qtls. to the F.S.L. to which they could not explain. The appellant- defendant Nand Kishore while appearing in the witness box has admitted during cross-examination that they were having joint charge. It is also not disputed that the price of the shortage comes to ₹1,12,475/-.

Much stress has been given by the learned counsel for the appellant on the judgment delivered in case ***Punjab State Civil Supplies Corp. Ltd. v. Sikander Singh AIR 2006 SC 1438.***

Having examined the said judgment, the same, being on different fact and situation is not applicable to the facts of the present case. It is not disputed that the defendant- appellant was the Public Distribution Clerk and engaged in purchase of the wheat along with Raj Kumar Chauhan Inspector Grade-I. Both were having joint charge. Both the defendants had delivered the wheat and they were duty bound to maintain the health of the stock and had to supply the purchased wheat as per rules and they had worked under the supervision of Baldev Raj Field Officer who on account of his dereliction of duties was suspended on 5.6.1997 and thereafter Bachan Lal Field Officer joined on 25.10.1997 and there was no Field Officer from 6.6.1997 to 24.10.1997. The short supply made by the defendant was on 16.6.1997. Thus, the short supply was not on account of mere negligence or misfeasance but on account of malfeasance. In ***Sikander Singh's*** case (*supra*), the allegations were that the shortage took place on account of lack of proper supervision but in the instant case, the appellant was the actual custodian of the stocks. There is no dispute that the civil liability as well as departmental liability are quite independent of each other, therefore, distinction could be created between mere negligence and deliberate pilferage resulting into short supply of the wheat under his check. In ***Sikander Singh's*** case (*supra*) the Apex Court had proceeded to allow the appeal preferred by the defendant No.2 only on account of loss suffered

by the employer due to the dereliction of duty and lack of supervisory control which was attributable to him. Since the respondent in that case was having only supervisory capacity, therefore, the court under those circumstances held that the negligence in the performance of duty under a contract of employment could give rise to the disciplinary proceedings and loss caused due to such negligence could be recovered by way of punishment. In any case, in the instant case, the loss took place due to the lack of active responsibility of the appellant and the respondent No.3 resulting into loss of the stocks, therefore, the civil suit was maintainable.

In the said judgment, the person in actual control of stocks had deposited the price of loss caused, therefore, in those circumstances, observations were made by the Apex Court in favour of the person who was facing enquiry due to dereliction of duty. The pendency of enquiry does not in any way dis-entitle the employer to proceed for recovering the amount by way of civil remedy for the following reasons :-

1. The amount may be so heavy which could not be recovered from the amount of salary or other arrears payable to him.
2. The enquiry is dropped due to the death or retirement of the employee.
3. The loss of crores of rupees is not feasible to recover due to his less salary or less period of service. In any way the recovery could be made by deducting not more than 1/3rd from his salary.
4. Pendency of enquiry does not create a bar to the civil action.

As such, the courts below have taken right view of the matter.

No substantial question of law for determination arises in this case.

Resultantly, finding no merit in the appeal, the same is dismissed.