

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Suit No.558 of 1997**

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Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Trading Corporation of Pakistan (Pvt.) Ltd.  
Through Mr. Ghulam Haider Shaikh,  
Advocate.

Defendant : M/S Syed Corporation, A propriety firm of  
Tariq Pervez (Late) through LRs., namely  
Muhammad Sharique Ali & others.  
Through Agha Zafar Ahmed, Advocate.

Date of hearing : 23.11.2017

Decided on : 23.11.2017

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiff has filed this suit for Accounts and Recovery of Rs.184,351,681/- from the defendant.

2. Brief facts of the case are that the plaintiff is duly registered corporation under the Companies Ordinance, 1984 and owned by the Federal Government. The main function of the plaintiff is to collect store and ensure proper handling, clearing, forwarding and shipment of Rice for export for and on behalf of Government of Pakistan.

3. The plaintiff invited tender for handling of Rice crop for 1989-90 season at their godown at Bin Qasim, Landhi and KPX godown. The defendant submitted tender for handling Rice at Bin Qasim godown, Landhi and their tender was accepted. The plaintiff entered into a written contract with the defendant on 7<sup>th</sup> January, 1990 bearing No.RECP-5/M&M/89-90/3 and thus the defendant was appointed as contractors/handling agents to export the Rice

crop of 1989-90 from Bin Qasim Rice godown of the corporation as well as for the handling of any other Rice stock which the plaintiff may entrust to the defendant during the currency of the said contract. The defendant according to the contract had to exercise all care in respect of stocks including its by-products etc., entrusted to them and were liable for and make good any loss or damages. The defendant was entrusted with large quantities of Rice of various qualities, gunny bags and dunnage in terms of the contract for handling the Rice. According to the tender document the period of contract was two years upto **7.1.1991** from the date of acceptance of tender but since a considerable amount of Rice crop 1989-90 could not be exported, the plaintiff's management extended the validity period of contract upto **30.9.1995** by invoking Clause 4(b) of the tender document. The plaintiff asserts that services rendered and work performed by the defendant throughout the handling of Rice crop 1989-90 was found unsatisfactory and the plaintiff in this regards had written letters to the defendant from time to time. The plaintiff appointed an independent surveyor for physical verification of the stocks in custody of the defendant and surveyor submitted his report on **27.8.1996**. The plaintiff called upon the defendant by letter dated **31.10.1996** to deposit **Rs.183,356,672/-** being the cost of shortage of **27,906/- M/Ton** of Rice as reported by the surveyor in his report dated **27.8.1996**. The defendant failed to render the account of **8,794** new Gunny bags, **11,946** Hessian Bags, **40446** Heavy Cess Bags (total 61,186 bags) given to the defendant for packing of exportable Rice. The defendant as handling agent under the terms and conditions was liable to render account for the bags entrusted to him and was liable to pay **Rs.995,009/-** being the

value of bags found short. Therefore, the plaintiff filed the instant suit and prayed for the following relief(s):-

- 1) *Decree for a sum of Rs.184,351,681/- against the defendant/s jointly and severally with interest/markup @ 14% per annum from the date of the suit till recovery.*
- 2) *In the alternatively the plaintiff prays for a judgment and decree against the defendant/s to render true and faithful account of the stocks of Rice and Bardana entrusted to the defendant as mentioned in the plait and to pass final decree for the amount ascertained on rendition of account.*
- 3) *Cost of the suit.*
- 4) *Any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

4. The Defendant filed written statement wherein the agreement entered into between the plaintiff and the defendant was admitted but the allegations of unsatisfactory work was denied and it was contended that the plaintiff has entrusted only 3,25,000/- metric tons of Rice (various varieties) vide Goods Transfer notes No.GTR2181/012/STR/218601 dated **6.1.1990** without any scale, weighment, counting and without any identification of location in utter disregard to **clause 12-A** of the contract. The Rice crop of 89-90 for which the contract was executed could not be exported by the plaintiff in time, therefore, the period of contract was repeatedly extended from 7.1.1991 to 30.9.1995. The plaintiff corporation instructed the defendant to continue to provide services even after **30.9.1995** as the plaintiff corporation has intended further extension of the contract period and on such verbal instructions the defendant continued to provide services till **15.3.1996** to the entire satisfaction of the plaintiff corporation but the plaintiff did not pay to the defendant current prevailing market rate as per terms of the contract for the

extended period of contract from **7.1.1993** to **31.12.1993** amounting to Rs.5831316.90 for the period after **30.9.1995** amounting to Rs.424715.68. The plaintiff corporation also issued satisfactory work performance certificate to the defendant.

5. This Court from pleadings of the parties on 03.11.2008, framed the following issues:-

- (i). *Whether the defendant has failed to render the accounts of Rice of 27,906 M.Tons and 61,186 hags entrusted to him, if so, its effect?*
- (ii). *What quantity of Rice and bags entrusted to the defendant by the plaintiff for handling purposes?*
- (iii). *Whether the loss in weight of Rice comes to 0.42% of the total quantity entrusted to the defendant, which comes within the range of 3.5% to 6% as per international standards? if so, its effect?*
- (iv). *Whether the Board of Directors of the plaintiff agreed and approved in principle 3% loss in weight of Rice?*
- (v). *Whether the stocks of Rice and bags were handled by the defendant within the four walls of the plaintiff's godown under the plaintiff's own security, management and control? If yes, whether the defendant can be held liable for any alleged shortage?*
- (vi). *Whether one sided departmental survey of bags carried out by the plaintiff after the defendant was removed from the godown of the plaintiff has any legal bearings?*
- (vii). *What should the Judgment and decree be?*

On the same date i.e. 03.11.2008, Mr. Sabir Cheepa, (Retd. District Judge) was appointed as Commissioner for recording evidence of the parties. The plaintiff's Deputy General Manager (Godown) CSD has filed his affidavit in evidence on 26.11.2008 as Ex.4-A. He was cross examined by learned counsel for the defendant and learned counsel for the plaintiff closed their side for evidence. Defendant has filed his affidavit in evidence on 3.3.2009 as Ex.D/1. The plaintiffs' counsel had cross examined the defendant and their

counsel closed the side of defendant for evidence. Thereafter the learned commissioner had returned the commission on 14.9.2009.

6. I have heard learned counsel for the parties at length and perused the record and evidence. My findings on the above issues with reasons thereon are as under.

7. My findings on the above issues are as follows:-

**Issue Nos.1, 2 & 5.**

8. At the very outset both the counsel have conceded that no formal findings are required on issues No.1, 2 and 5 since these three issues are of no consequence. The place of stock is irrelevant, since the handling of the Rice was the responsibility of defendant in terms of the contract dated 7.1.1990 and the only material issue is *“whether the defendants are responsible for the losses in handling the Rice entrusted to them under an agreement and the value of the losses comes to Rs.184,351,681/-”*. This issue is covered by issue Nos.3 and 4, therefore, issue Nos.1, 2 & 5 are dropped.

**Issue Nos.3 & 4.**

9. Learned counsel for the plaintiff in support of his claim has referred to the tender document and contended that the defendants were appointed contractors under written agreement (**Ex:5/2**) on acceptance of their tender. The formal terms and conditions of the agreement were incorporated in tender documents which have been filed as **Ex:5/2-1**. He has referred to the various clauses/terms & conditions of the tender No.RECP-5/M&M/89-90 available at page-61 to page No.93 of the evidence file. In fact in terms of the contract the defendants were to handle the entire Rice crop for the year 1989-90 available in the godown of

the plaintiff at Port Qasim and as per **clause-7(a)** of the contract. The Defendants were under obligation to exercise all care in respect of the stock of Rice, its by-products etc. and it was agreed that they shall be liable to make good any loss or damage whatsoever is caused and according to **clause 7(f)** it was also obligation of contractor to render every assistance to the plaintiff corporation for the purpose of inspection and verification of the stocks and stores. The inspection and verification was to be done at the risk and cost of the contractor (defendant). He had to keep the corporation indemnified against all claims and losses identified in the inspection and verification of stocks and stores. Therefore, the plaintiff has asked the defendants to cooperate for the purpose of verification of stocks through various letters which were produced as Ex:5/3, 5/4, 5/5 and 5/6. Even penalties of Rs.10,000/- were imposed on the defendants for breach of the terms and conditions on failing to provide sufficient number of Trucks and Labours for physical verification of the Rice at the godowns from where the defendants were required to handle Rice for export on thorough verification of stocks and stores, the net amount of loss of Basmati Rice and other varieties and gunny bags comes to Rs.184,351,681/- and the calculation sheet was produced as **Ex:5/10**.

10. Learned counsel for the defendant has in the first place objected to the very survey report Ex.P-5/9 since the has been exparte survey by the Surveyor appointed by the plaintiff themselves after the contract has expired. The defendants performance was upto the mark and the plaintiff have acknowledged themselves when a certificate of satisfactory work was issued by the plaintiff. As far as Ex.P-5/4, 5/5 & 5/6 are

concerned, these letters were not about unsatisfactory work. Learned counsel for the defendant contended that no loss has occurred at all since by now it is an admitted position that 3% of losses in handling of rice has internationally been considered as justifiable / permissible. In the calculation sheet (Ex.5/10) relied upon by the plaintiff even from their own surveyor, the Surveyor has not accounted for the possible losses which are adjustable. The defendants counsel further contended that in para-9 of the affidavit-in-evidence of the defendant the calculation of losses with reference to Ex.5/10 has been given by the defendant and it is very categorically mentioned in it that losses were far less than 3% of total rice handled by defendant. He further contended that the counsel for the plaintiffs has not raised any question to deny the calculation referred by the defendant in para-9 of their affidavit-in-evidence.

11. The calculation sheet of plaintiff Ex.P-5/10 is based on the surveyor report Ex.5/9 submitted by the surveyor appointed by the plaintiff. With the help of the learned counsel for the plaintiff, I have also gone through the survey report and the other documents about the stocks which include Ex.5/7, Ex.5/8 & Ex.5/9 also. The learned counsel for the plaintiff could not dispute the fact that none of the stocks report and surveyor's verification of stocks has mentioned the admissible losses upto 3% in handling and processing of Rice. Even in Ex.P-5/10 the total quantity of Rice found short is **2.21%**. The claim of the plaintiff for payment of an amount equivalent to the losses in terms of contract was not justified. The plaintiffs have failed to show from their own evidence that shortage of rice was over and above the admissible natural losses. This aspect of the natural losses in grain handling contract

has been discussed in various case laws including; (i). *Messrs Rice Export Corporation ..Vs.. Messrs A.H. Corporation and 3 others (2002 CLC 607)* (ii). *Rice Export Corporation ..Vs.. INT. Exports (PLD 2004 Karachi 705)* and (iii) unreported case of M/s. Raisuddin Khan through LR's ..Vs.. Trading Corporation of Pakistan (Pvt) Ltd., (**HCA No.96/2008**). In all these cases plaintiffs were not found justified in claiming loss below 3% of the total quantity of grain handling contracts. In view of the above discussion, Issues No.2 & 3 are decided in negative.

**Issue No.6.**

12. The logical conclusion of decision on issues No.2 & 3 was that the suit was dismissed by short order dated **23.11.2017** and these are the reasons for the same.

J U D G E

*Karachi*  
*Dated: \_\_\_\_ .01.2018*

*Ayaz Gul/PA\**