

**IN THE HIGH COURT OF SINDH, KARACHI**  
HCA No.309 of 2006

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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Present:

Mr. Justice Irfan Saadat Khan  
Justice Mrs. Kausar Sultana Hussain

Trading Corporation of  
Pakistan (Pvt) Ltd.,  
Appellant

: through Mr. Mazhar Jafri,  
Advocate.

..Vs..

Musharraf Hussain Mufti,  
Respondent No.1.

: through Ms. Naheed A. Shahid,  
Advocate.

Nasim Gul through LR's.  
Respondent No.2.

: through Kh. Shams-ul-Islam,  
Advocate.

Date of hearing

: 03.04.2023

Date of decision

: 11.04.2023

JUDGEMENT

**IRFAN SAADAT KHAN, J.** This High Court Appeal (HCA) has been filed against the judgment passed in Suit No.680/1992 dated 10.5.2006.

2. Mr. Mazhar Jafri, Advocate has appeared on behalf of the Appellant and stated since he is not feeling well and cannot properly stand he may be allowed to file written synopsis, which may be considered his arguments in the instant matter. Vide order dated 18.8.2020 he was allowed to file written synopsis.

3. Ms. Naheed A. Shahid, Advocate appearing for Respondent No.1 and Kh. Shams-ul-Islam, Advocate appearing for legal heirs of

Respondent No.2 have also filed their written synopsis and stated that their written synopsis may be considered as their arguments.

4. Briefly stated the facts are that the appellant filed a suit for accounts, damages/recovery of losses against the Respondent No.1 for a sum of Rs.9485186/-, being the value of the shortage of the rice with interest @ 14% from the date of the suit till payment of the said claim. They have also claimed recovery of unserviceable bags, being in the custody of the respondent No.1. The matter proceeded before the learned Single Judge, who through his exhaustive order came to the conclusion that the plaintiff in the suit has failed to substantiate their claim with cogent material then dismissed the suit on both counts i.e. shortage in rice and shortage in unserviceable bags.

The points taken up by Mr. Mazhar Jafri, Advocate through his written arguments, are summarized as under:-

*i. That the contract was awarded to the Respondent No.1 for handling rice of 1984-85 crop at Landhi Rice Godown vide contract dated 07.3.1985.*

*ii. Vide the said contract the Respondent was responsible to take care of the stock. However when the contract was terminated and stock available with the Respondent was measured through surveyor who noted that there was a shortage of 2973.645 M.Tons of rice in the said godown.*

*iii. That the learned Single Judge was not justified in not considering the witnesses, cross-examination and the report of the surveyor, with regard to the shortage of rice.*

*iv. That the Respondent as per the terms of the contract was responsible for losses of the rice and to make available the unserviceable bags.*

v. *That the learned Single Judge was not justified in observing that the shortage was due to the natural causes.*

vi. *That the learned Single Judge has failed to take into consideration the judgments cited before him.*

vii. *That the Respondent No.1 was duly apprised about the shortage in the rice through various correspondence addressed to them.*

viii. *The learned Single Judge has erred in not taking into consideration the value of the rice shown as "book balance" value.*

ix. *That the learned Single Judge has dismissed the case on mere technicalities.*

5. The main points, as mentioned in the written synopsis filed by Ms. Naheed A. Shahid counsel for the Respondent No.1, are summarized below:-

i. *That at the time of award of the contract the rice shown in the book balance though was 5072 M.Tons but the Respondent was never allowed to have physical examination of the weight of the stock.*

ii. *That the godown was 24 hours under surveillance and watch of the appellant, hence the question of taking out even a single bag from godown was not possible.*

iii. *That whenever any part of the stock was taken out a proper receipt of the same was given by the appellant staff posted at the godown, hence there was no question of manipulation in the stock, which was being managed by the appellant staff itself.*

iv. *That the responsibility of uploading or unloading / transport was that of by the appellant as the Respondent No.1 was simple a handling agent, who has been awarded the*

*contract to receive the goods from upcountry and to transfer the same, wherever it was needed, as directed by the appellant.*

*v. The learned Single Judge has quite rightly observed that no manipulation in the record or shortage in the stock was made by the Respondent No.1.*

*vi. The learned Single Judge has also clearly observed that the issue of unserviceable bags as claimed by the appellant, was not proved through cogent material.*

*vii. That the position of the stock was duly communicated by the Respondent No.1 to the appellant through various communications, but the same were never considered by them. It is also averred that in fact the Respondent No.1 was never allowed to measure the quantity of the rice, as per the book balance as claimed by the appellant, which fact has duly been noted by the learned Single Judge.*

*viii. The report of the surveyor is uncalled for since the same was neither signed, stamped nor witnessed by any person and has never been communicated or confronted to the Respondent.*

*ix. It is further averred that the surveyor while preparing the so called report has not considered the factor of the weight losses of the rice.*

*x. That the request of the Respondent to constitute a committee for inquiry for assessing the actual facts was never considered by the appellant.*

*xi. From the evidences produced and from the examination of the witnesses the appellant has miserably failed to prove the losses, as could be seen from the deposition of the witnesses.*

In support of her contention, the learned counsel has placed reliance on the decision given in the case of *Rice Export Corporation ..Vs.. Int. Exports (PLD 2004 Karachi 705)* and *Messrs Rice Export Corporation ..Vs.. Messrs A. H. Corporation and 3 others (2002 CLC 607)*. She therefore has finally prayed that this HCA may be dismissed and the order of the learned Single Judge may be upheld.

6. The bullet points of the written synopsis filed by the counsel of Respondent No.2 Mr. Khawaja Shams-ul-Islam are summarized as under:-

*i. That the contact was awarded to the said Respondent on furnishing a guarantee of Rs.8,00,000/-, which has not been refunded even today.*

*ii. That the Respondent No.1 did not took any physical possession of the rice as per book balance as claimed by the appellant, the claim of the appellant with regard to losses of stock and gunny bags is totally illegal and uncalled for and the appellant has miserably failed to prove both these claims in the suit through cogent material and evidences and even the witness produced by the appellant has not supported their claim. The entire handling of the stock was being carried out by the staff of the appellant present at the godown hence the question of any manipulation hardly arises.*

*iii. That the Respondent No.2 was only responsible to handle rice from upcountry to the godown and the subsequent transport of the rice was the concern of the appellant. The appellant has not shown a single document to prove that the rice brought from up country or from some foreign country was in any manner short. That the constructive possession of the stock was always with the appellant as the custody of the rice was being looked after by the appellant staff.*

*iv. It is further averred that the surveyor through his so called bogus report has not considered the element of losses usually occurred in maintaining the stock of rice. He further stated that the stock was never physically weighed.*

Mr. Shams ul Islam, while adopting the arguments of Ms. Naheed A. Shahid, submits that the order of the learned Single Judge do not suffer from any illegality and infirmity, the same may therefore, be upheld by dismissing this appeal with cost.

7. We have considered the written synopsis of all the learned counsel and the decisions relied upon by them.

8. Facts of the case reveal that a suit bearing No.680/1992 was filed by the present appellant on 09.8.1992 against the present Respondent No.1 for accounts and damages / recovery on the ground that the appellant entered into a contract with the Respondent No.1 on 07.3.1985 for handling the rice crops 1984-85 at Landhi Rice Godown. It was the claim that after the contract the Respondent No.1 was entrusted with large quantity of rice in gunny bags for handling the said rice. The terms of the contract was for two years but by looking at the good performance of the Respondent No.1 the contract was further extended for a period of two years. The appellant however subsequently found the performance of the Respondent unsatisfactorily in handling the rice, as after expiry of the contract on 05.3.1989, as per the appellant, the Respondent No.1 should have 5072 M.Tons of different varieties of rice in the godown. The appellant then appointed Shah Rehman & Company, as surveyor, to inspect the stock and prepare the report. The then surveyor prepared report

and submitted the same to the appellant, who mentioned that a quantity of 2973.645 M.Tons was short in quantity. The surveyor also mentioned that some 165000 unserviceable gunny bags were also missing; thereafter some correspondence took place between the parties with regard to making good the shortage of rice and the gunny bags. However when the same did not culminate and materialize thereafter the suit was filed by claiming a Rs.9485186/- as damages.

9. The matter proceeded before the learned Single Judge. As many as 12 issues were framed on 21.3.1993, however at the time of arguments first four issues were not pressed and the matter was decided on issues No.5 to 12. Since in the matter security in the shape of Defense Saving Certificates were deposited by the Respondent No.2, they were made a party vide order dated 03.4.2010, as Defendant No.2 in the instant suit.

10. The plaintiff produced only one witness namely Liaquat Ali, who works with the appellant corporation. He was duly examined and cross-examined by the counsel for the Respondents. On behalf of the Respondents the proprietor of the Respondent No.1 appeared himself and was examined and cross-examined by the Counsel for the Appellant. For Respondent No.2, the Respondent No.2, who is now deceased, appeared who was examined and subsequently cross-examined by the counsel for the appellant.

11. Perusal of the matter also reveals that the Respondent No.1, when given the contract, was apprised that in the godown some 5072 M.Tons of rice was available, based on book balance.

However, it is an admitted position that the Respondent No.1 was never allowed to physical weigh the said goods. It is also an admitted position that on the godown staff of the appellant was permanently posted and not a single gunny bag could be taken out without permission or gate pass. The contract was awarded to the appellant after cancelling the contract of two other contractors whose performance was found below standard hence Respondent was allowed to handle the stock whatever was left by those two contractors on book balance. It is noted that some correspondence took place between appellant and the Respondent No.1 with regard to alleged shortage of rice but it is interesting to note that the appellant neither communicated to the Respondent No.1 the actual physical quantity of the rice apart from intimating the stock as per the book balance. It is also noted that the surveyor's report, upon which the whole edifice of the suit was built, was never communicated or confronted to the Respondent No.1. It is also a matter of record that the issue with regard to unserviceable bags was never proved with cogent material by the appellant and even the report of the surveyor seems to be vague and silent on this aspect.

12. It is also noted that the Respondent No.1, at the very outset, denied losses of stock and in the alternative stated that as per the universal accredited principles in handling rice usually 3% storage loss occurs. It was also pleaded by the Respondent No.1 before the learned Single Judge and in the written statement that this aspect of loss of storage was never considered by the appellant though they were fully aware of the fact about the natural losses and other



losses taking place due to various other factors. The Respondent No.1 before the learned Single Judge and in their written arguments has categorically demonstrated that the losses, if any, were less than universally recognized 3% loss, which was duly appreciated by the learned Single Judge in his detailed order. It may further be noted that when the witness of the appellant was asked the question with regard to losses in stock and to explain what the corporation meant by the term "book balance" and about the natural losses caused in handling the cargo, no satisfactory reply was given by him rather he admitted that he cannot produce any document to substantiate claim of the corporation but stated that the corporation assessed the stock on the basis of book balance and has no other means to properly adjudge the weight of the stock physically and mostly depended upon the report of the surveyor. It was also admitted by the witness that the surveyor report was never confronted to the Respondent No.1 and that the surveyor report was based on estimation only and not on the basis of physical weighing of the stock lying at the godown which according to him was not particularly possible. The witness further stated that he does not have any document to prove as to how much rice has been transported from other parts of the country to the godown and unloaded there. It was also admitted that no stock could be taken out from the godown without proper gate pass, which was issued by the staff present at the godown. The learned Single Judge while passing the order has elaborately discussed the deposition of the witness Liaquat Ali, a representative from the

corporation, and the shortcomings found in those depositions, which are available at page 59 to 71 of the File.

13. From the deposition of the Respondents No.1 & 2, who were present themselves at the time of examination no adverse material was found. They were properly cross-examined by the counsel of appellant. It is thus evident that the appellant was not in position to produce any cogent material or evidence in support of their claim of the losses and even their witness has not given any substantial material to justify their claim. Moreover the issue that the Single Judge has not considered the decisions relied upon by the appellant is also found to be misplaced.

14. We, therefore, in view of the above facts which are evident from the record, have not find any illegality or infirmity in the order passed by the learned Single Judge and thus are not inclined to interfere in the order of the learned Single Judge, which is hereby upheld. This HCA is found to be without any merit, the same therefore stands dismissed alongwith all the listed and pending applications, with no order as to costs.

JUDGE

JUDGE

Karachi  
Dated: 11.04.2023