

JUDGMENT SHEET

**IN THE HIGH COURT OF SINDH KARACHI**

*Mr. Justice Muhammad Shafi Siddiqui*  
*Mr. Justice Omar Sial.*

High Court Appeal No. 354 of 2016

Appellant: Trading Corporation of Pakistan (Pvt.) Ltd.  
through Mr. Rafiq Ahmed Kalwar, Advocate  
along with M/s. Ghulam M.Dars and  
Muhammad Yasir, Advocates.

Appellant: Punjab Trading Agency through Mr. Khalid  
Daudpota, Advocate along with M/s. Faisal  
Daudpota and Junaid Daudpota, Advocates.

Date of hearing: 13.02.2024.

Date of judgment: 09.05.2024.

**J U D G M E N T**

**OMAR SIAL, J.** -Trading Corporation of Pakistan (“TCP” - the appellant in these proceedings and formerly known as Rice Export Corporation of Pakistan) required a handler for its 1988-89 rice stock lying in its Bin Qasim and Landhi warehouses. For this purpose, it floated a tender in October 1989. The successful bidder for the Bin Qasim warehouse was Punjab Trading Agency (“PTA” the answering respondent in these appeals). The terms and conditions of the appointment were laid out in several documents; all made part of the contract between the parties on 14.01.1990. The rice stocks taken over by PTA at the commencement of the agreement were under the control of another handling agent named Behri Enterprise. The stock in the warehouse was not physically verified but was taken over on a “book balance” basis. We understand from the counsels that “book balance” means the quantity of stock lying in the warehouse according to the TCP’s books. According to TCP, the “book balance” of stock was approximately 525,000 metric tonnes of the 1988-

89 crop. PTA entered into the contract being aware of such an estimate and agreed to take over the stock on a *book balance* basis.

**2.** PTA's contract was renewed from time to time till 1995. Finally, in 1995, TCP alleged that PTA was liable to pay Rs. 234,577,337 (the value of the rice shortage) and Rs. 17,936,412 (the value of the shortage of rice bags). PTA denied that they were at fault or that shortage had occurred due to their acts or omissions. To affect recovery, TCP filed Suit No. 571 of 1997. On 28.09.2016, a learned Single Judge of this Court dismissed the Suit. TCP, not being happy with the decision, preferred this appeal.

**3.** We have heard the learned counsel for the parties and have perused the record with their assistance. Their arguments are reflected in our observations and findings below.

**4.** Bailment is an area of law that governs the rights of owners of property and those who receive possession of property. It is an area of law of wide application. It applies automatically. A bailment's terms may vary by a contract governing ownership and possession of goods passing between two legal entities. There is little doubt that the contract between TCP and PTA was one of bailment. Section 148 of the Contract Act of 1872 defines that a "bailment" is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the objective is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

**5.** To make out a cause of action in bailment requires (i) a transfer of possession of the property; (ii) an obligation to do something with the property, such as to store it, use it for a specified purpose, or hold it subject to the satisfaction of security, whether or not for payment

and (iii) to return the stock or dispose it of as instructed by the bailor.<sup>1</sup> An essential ingredient for a contract of bailment is that a transfer of possession (delivery) of the bailed goods must occur. The delivery to the bailee may be made by doing anything that puts the goods in possession of the intended bailee or of any person authorised to hold them on his behalf. The delivery can be actual or constructive.<sup>2</sup> The former is when the bailor hands over actual physical possession of the goods to the bailee. The latter is when, based on any act or conduct of the parties, the law assumes the delivery to have been made. What that act would be is difficult to limit expressly; however, in the present case, that aspect is not an issue. In the current case, the 1988-89 crop stocks were being handled by Behri Enterprises at the Bin Qasim warehouse when TCP took over the warehouse. No complaint of rice shortage from Behri Enterprises was brought to the record. In such a situation, the explanation of section 148 provided in the Act of 1872 becomes relevant. The explanation highlights that *“if a person already in possession of the goods of another contract to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.”*

6. Although learned counsels spent a substantial time expounding what would constitute “delivery of goods” and, in this regard, cited several judgments, we find that whether or not rice was “delivered” to PTA was not an issue. At no time did the PTA deny that they did not take over the 525,000 metric tonnes of rice on a book balance basis. PTA willingly agreed to take over and assume the responsibility for the rice stock from the previous bailee, i.e. Behri Enterprises. Their grievance had been that a substantial quantity of rice taken over by them was in bad shape, and due to a delay caused by TCP in exporting rice, more quantities

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<sup>1</sup>Mst. Hanifa Bai v. Muhammad Siddiq Abdul Sattar, PLD 1965 (W. P.) Khi. 259 (paragraph 18), Messrs Masterson v. Messrs Ebrahim Enterprises, 1988 CLC 1381 (paragraph 14 and 15), Faysal Bank v. Messrs Zimindara Rice Mill, 2007 CLD 1164 (paragraph 17), Rampal Singh vs Murry, (1900) ILR 22 All 164 (paragraph 3).

<sup>2</sup> Chitty on Contracts, Volume II, at page 98 and 99 [33-002 and 33-003], Sweet and Maxwell Limited 1999 edition

of rice were losing weight. PTA's stance in the matter was reflected in its letter dated 30.01.1990. PTA categorically informed TCP that *"the stock left over by Behri Enterprises was taken over by us in August 1989. You know that since then, a very nominal quantity of Basmati rice has been exported, leaving a considerable quantity awaiting export. Since the last over two years these stocks are lying in a dumped position which are very heavily infested with the result the grain has converted into powder. Under these circumstances, rice is likely to lose weight to a considerable extent."* Suffice it to say that the ownership of the rice stocks at all times was with the TCP. ("bailor"), whereas their physical custody was handed over or deemed to have been handed over (on a book balance basis) to PTA ("bailee") for handling purposes. A contract of bailment was established between the parties.

**7.** The statutory rights and obligations of the bailor and bailee have been provided in Chapter IX of the Contract Act, 1872. The bailor's obligations are (i) to disclose faults in goods bailed (section 150) and (ii) to be liable to the bailee should the bailor not have been entitled to enter into a contract of bailment (section 164). Whereas the obligations and rights of bailee are to (i) take care of the goods as a man of ordinary prudence would (section 151), (ii) have the freedom to assume a higher duty of responsibility, as opposed to the one in section 151, by entering into a special contract (section 152), (iii) be liable for unauthorised use of goods (section 154), (iv) return the goods to bailor at the time of expiration of the agreement (section 160) and (v) to have a lien over the bailed goods should his remuneration not be paid by the bailor. In the current case, neither side has denied destruction/damage to the rice and the rice bags. TCP terms it a "shortage", whereas PTA claims that a substantial quantity of rice was damaged/decayed. Be that as it may, it is clear that a significant loss to the State exchequer was caused. We have scrutinised the record produced at trial to determine who was at fault.

**8.** We are astonished and dismayed to see the callous, insensitive and negligent manner in which TCP and PTA have dealt with a

substantial quantity of rice. The ultimate victim of their respective negligence has undoubtedly been the common man of this country. It is clear from the record that absolutely no checks and balances were in place. The massive quantity of rice was taken from the custody of Behri and given to PTA without an iota of paperwork. No formal handing over taking over was recorded. From 1990 to 1995, both parties did not play a responsible role. Apart from writing letters to each other, both parties sat and watched the rice and the rice bags deteriorating to unusable levels. A summary of the efforts taken, if they can even be termed as efforts, by both parties was as follows:

- (i) **14.01.1990** The contract between TCP and PTA was executed.
- (ii) **On 15.05.1991**, PTA wrote to TCP informing them that a specific part of the stock they had taken over was in very bad condition. They cautioned TCP that there could be a shortfall due to the damaged stock.
- (iii) **03.12.1991, 03.10.1992 and 20.10.1992**, TCP wrote letters to PTA asking them to render accounts.
- (iv) **On 30.04.1992, 10.08.1992, 17.09.1992, and 06.10.1992**, PTA once again wrote to TCP, reminding them that a survey was needed as a “huge weight shortage is likely to occur.”
- (v) **07.11.1992** TCP wrote to PTA informing them that a shortage in the 1988-89 stock had been reported after conducting a general survey.
- (vi) **16.11.1992 and 21.11.1992**, TCP sent reminders to PTA for its letter of 07.11.1992.
- (vii) **On 18.11.1992 and 22.11.1992, PTA wrote to TCP**, informing them yet again that a large portion of stock they had taken over from Behri was in very bad condition. They demanded a survey so that they could be absolved of their liability.

- (viii) **03.04.1993** PTA wrote to TCP asking them that a survey at their expense be held.
- (ix) **On 31.10.1995**, TCP informed PTA that a shortage of 46,281 metric tonnes was found in a physical verification of stock carried out.
- (x) **13.11.1995** TCP wrote to PTA alleging that PTA was creating obstacles in the physical verification of the stock.
- (xi) **15.11.1995, 07.01.1996** PTA wrote to TCP alleging that a considerable weight loss in the stock had occurred due to TCP's lethargy in addressing the issue.
- (xii) **15.06.1996** was the second letter TCP wrote to PTA imposing a penalty of Rs. 10,000 for PTA's reluctance to conduct a physical verification.
- (xiii) **18.06.1996** was the second letter that TCP wrote to PTA imposing a penalty of Rs. 10,000 per day on account of slow rice loading into trucks.
- (xiv) **On 12.11.1996**, PTA wrote to TCP informing them that the stocks/stores of the 88-89 crop were not physically handed over to them and that they were not responsible for any loss.
- (xv) **14.01.1999** TCP ordered a departmental inquiry; however, we note that the inquiry was restricted to observations made in the audited accounts for the year ending 30.09.1997.

The above is all that the parties do to prevent or mitigate the loss.

**9.** Ordinarily, PTA would have been governed by section 151 and would have been absolved of liability if it had taken such care of the bailed goods as a reasonable man of ordinary prudence would of his own goods. However, in the instant situation, section 152 would apply by virtue of a special contract executed between the parties, in this instance, the handling contract, whereby PTA voluntarily took upon the onerous duty that it *"...shall be liable for and make good any loss or damage howsoever caused. They shall not have any right to retainer or lien on*

*stocks of rice or stores for remuneration or otherwise howsoever.*" (Clause 7(a)). For the sake of convenience, section 152 of the Contract Act, which allows for the execution of a special contract, is reproduced as follows;

*152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.*

**10.** A contract is a legally binding agreement between two or more parties. While contracts can be of various types, certain specific and special contracts have been recognised by the Contract Act, 1872 to attribute some formality to them. The Act recognises five kinds of special contracts: indemnity, guarantee, bailment, pledge and agency. A "special contract" has been defined in the Black's Law Dictionary as "A *contract with peculiar provisions that are not ordinarily found in contracts relating to the same subject matter.*" Hence, as per section 151, the bailor cannot hold the bailee responsible for any damage as long as it can demonstrate that it discharged its duty of ordinary prudence towards the care of the bailed goods. However, owing to freedom of contract, which has been catered for in section 152, the bailor can contractually hold the bailee to a higher standard of care and provide for him to be responsible for the loss, destruction or deterioration of the bailed goods where the bailee fails to meet his contractual duty as provided for in a particular contract. No judgment from the Pakistan courts has been cited to us. Courts in India, however, have made observations regarding the same. The Madras High Court in **Sheik Mahamud Ravather v. the British India Steam Navigation Co. 1. IND.CAS.977** held that "*The incident of the contract before us that the bailee is exempt from taking the care required by Section 151 appears inconsistent with that section. Section 152 seems to make this clear. It declares that the bailee's liability is limited as declared by Section 151, "in the absence of any special contract," or in other words, he may by contract undertake a higher responsibility, for instance, that of an insurer...*" In **Mahendaraum Chandulal v. Central Bank of India at (1984) 1GLR 237**, the

Court held that *“But the bailee may as well provide in a special contract under Section 152 where under it chooses to undertake larger responsibility under such terms as it may like.”*

**11.** PTA has failed to provide convincing evidence at trial to absolve itself of its contractual liability or to show that it actively took steps to mitigate the risk of loss. It cannot be allowed to plead ignorance and ignore the contractual terms that it agreed to – in essence; it would be liable no matter how much loss, damage, or deterioration occurred. Nor can its argument that it used its best efforts be appreciated or accepted without compelling evidence. While the quality of evidence led at trial could have been far better, it is a matter of record that PTA did not say that stock was not handed over to it or was handed over in a compromised condition at the time of transfer. It tried to discharge its burden by throwing the buck to TCP and holding it responsible for the decay because of the latter’s negligence. Different situations that may arise in connection with the stocks were not taken into account when the contract terms and conditions were accepted. At that time, PTA happily took over stocks on a book balance basis and indemnified TCP from all liability and responsibility if the loss occurred. It appears that the attention of the learned Single judge was not drawn to the contract terms between the parties and sections 151 and 152 of the Contract Act.

**12.** The record-keeping of the storage and transport of rice maintained by both TCP and PTA was atrocious if the evidence presented as their best evidence at trial is any indication. The record presented at trial reflects both parties' lethargy in dealing with their duties. It was primarily TCP's obligation to ensure that the rice stock of this country stays accounted for and safe and secure. It failed to fulfil this duty. Due to the considerable wastage and pilferage of rice caused by the conduct of TCP, the common man was the ultimate victim. Nothing but writing letters was done by TCP. It continued with the same contractor for five years despite everything going on. Neither party sought the assistance of law enforcement agencies or the courts of law to prevent the ongoing loss of



the rice stock. The stock decayed and deteriorated in front of their eyes. Neither TCP nor PTA did anything meaningful to stop it except keep writing each other meaningless letters and giving ultimatums.

**13.** However, before parting with this judgement, we would like to mention that the mandate of the TCP is essentially to ensure trust for the people of this country. They cannot be allowed to violate that trust easily. Substantial rice stocks were wasted, and there is nothing on record to show that TCP demonstrated adequate concern or kept a record of the actual stock damaged/lost, which could have potentially guarded this claim. Approximately 450 cases have involved TCP in this High Court, and a substantial number have arisen from similar issues. There has been complete apathy on the part of TCP. In the future, TCP shall ensure that its accounting and management systems connected with commodities handling are effective, upgraded, and computerised. Better controls for stock safety are implemented. Officers responsible for fiascos like the one adjudicated in this case are proceeded against appropriately without fear or favour. The ultimate responsibility for loss caused by negligence in handling stock will be the responsibility of the members of the Board of Directors. Chairman TCP to ensure that this direction is included in the minutes in the next meeting of its Board of Directors.

**14.** Let a copy of this judgment be sent to the Chairman TCP to take note of the directions given above.

**15.** For the above reasons, we hold that the terms of the handling contract enhanced PTA's liability for the rice stocks, and the blanket indemnity given by PTA to TCP would supersede PTA's statutory responsibility, thus making them liable for the loss suffered. The appeal, therefore, stands allowed.

JUDGE

JUDGE