

# **IN THE HIGH COURT OF SINDH AT KARACHI**

## **High Court Appeals No.108 & 109 of 2008**

Before:

**Mr. Justice Nadeem Akhtar &**

**Mr. Justice Muhammad Iqbal Kalhoro**

Appellant : ALI NOOR (Pvt) Limited  
through Mr. Aga Zafar Ahmed advocate.

Respondent : Trading Corporation of Pakistan (Pvt) Limited  
through Mr. Mazhar Jafri, advocate.

Dates of hearing : 14.11.2014, 02.12.2014, 16.12.2014 &  
23.12.2014.

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

**MUHAMMAD IQBAL KALHORO, J:** - While hearing the appeals in hand, we formed a tentative opinion that in the impugned judgments particularly on issues three and four (3-4) the learned Single Judge had not given cogent reasons to justify findings reached therein by him. The learned counsel for the respondent was conveyed our provisional opinion and was put on notice to satisfy us on that point. The learned counsel on a subsequent date viz. 23.12.2014 submitted his arguments to support the impugned judgments by contending that the learned Single Judge had reasonably discussed the entire evidence to reply the above issues in accordance with law, which could not be taken exception to. The counsel for the appellant opposed the said contention. We however reserved these appeals to appreciate the arguments of the parties made in the above context and to determine whether the appeals should be heard on merits in case we concluded that findings on above issues were in

accordance with law as provided by sub section (9) to section 2, read with Order 20 Rule 4 (2), 5 CPC. Otherwise the matters be remanded back to the learned Single Judge with directions to rewrite the judgment by discussing the relevant evidence and after hearing both the parties within a certain period.

2. With this arrangement in mind, the relevant facts to the point are reproduced herewith. The respondent filed suit No. 564 of 1997 and 572 of 1997 against the appellant for accounts and recovery. In the former suit the recovery amount is Rs86, 989, 087/-, where as in the latter the amount is Rs. 101,225,535/-. The respondent being Rice Export Corporation of Pakistan granted contract to the appellant for handling rice crop for the year 1990-1991 and 1991-1992 after completing required formalities. The initial contract for two years was extended further until 30.9.1995. The respondent entrusted large quantities of rice and gunny bags to the appellant. The appellant though required under the contract to render account for the stocks entrusted to it failed to do so. Hence, the surveyor conducted an audit / physical verification of the stock on 27.08.1996 and found shortage therein. In suit No. 564/97 Rs. 80,748,033 were calculated towards value of shortage and cost of rice; and Rs. 6,241,054 being the value of 359,156 bags found short. Whereas in suit No.572/1997 Rs.95, 821,191/- as cost of the rice and Rs. 5,404,344/- towards alleged shortage of new bags were worked out. The prayer was made for recovery of above amounts with interest/Mark-up @ 14% thereon until recovery.

3. The appellant in the written statement made counter claim for the refund of 'security' and 'retention' money. On merits, the case of the respondent was denied. The loss in weight of the rice was stated to have

occurred due to process and procedure that comprised many stages i.e. loading, unloading, screening, polishing, transportation, filling in gunny bags, securing services and prolonged storage upon which the appellant had no control. The Board of Directors of the Respondent had allowed 3% rebate on handling losses and they sent the appellant's case to SGS (Pvt.) Limited, a reputed international assessors/loss adjusters firm, which reported that 3.5% to 6% loss per annum was natural. The alleged shortage, therefore was claimed to be within the limits allowed by the Respondent. The appellant in the written statement as a counter claim prayed for refund of Rs.3,5000,000 being security amount, Rs.1,691,436 being retention money and Rs.5, 451,007 being profit @ 15% from 1.1.1995 to 30.9.2001.

4. The learned trial Court in both the suits on following points found the parties at variance.

- “i. What quantity of rice and bags entrusted to the defendant by the plaintiff for handling purpose at the time of contract?”*
- ii. Whether there was any shortage of rice and bags, if so to what percentage of quantity as to rice and numbers as to bags?*
- iii. **Whether shortage in rice, if any, comes within the expected range of 3.5% to 6% if so its effect?***
- iv. **Whether the defendants are entitled to claim relaxation benefit under the contract between the parties as to rice bags?**  
(Emphasis supplied)*
- v. Whether the plaintiff had any control, over the management or over the stock of the goods in the godown, if so to its effect?*

- vi. *Whether the defendant is liable to pay plaintiff's claim of shortage of rice and bags? If so what amount?*
- vii. *Whether the plaintiff have illegally retained the security amount and retention money, if so its effect?*
- viii. *Whether the plaintiffs are liable to pay any profit to the defendant on retention money, if so to what amount?*
- ix. *Whether the defendant has cause of action and counter claim is maintainable?*
- x. *Whether the survey report dated 14.1.1999 is illegal, if so its effect?*
- xi. *To what relief, if any, the parties are entitled to?"*

5. The parties led their oral and documentary evidence in support of their respective claims and on conclusion of the trial, the learned Single Judge, vide impugned judgments dated 07.02.2008 decreed the suits of the respondent as prayed and dismissed the counter claim of the appellant. Through these separate appeals, the appellant has called into question the findings of the leaned trial Court in both the suits.

6. We heard learned counsel for the parties as stated above and perused entire material as well as the reasons recorded by the learned trial Court on issues 3 and 4.

7. The case of the appellant in short is that alleged loss that occurred in the weight of rice or in missing the bags is due to lengthy process involved in handling the rice and it besides being natural is within permissible limits.

Essentially, the appellant does not deny the case of the respondent to the extent of loss in weight of rice. Nevertheless, it has emphasized that the causes and justification for such loss were but natural. The controversy in the light of such statement by the appellant conveniently trickles down to issues 3 and 4. It becomes, therefore impetrate for the Court to examine the assertions raised by the parties in the said context by referring to the evidence and its legal effect by applying attentive mind. The impugned judgments however do not reflect any reference to the evidence, its legal fall out or conscious application of mind to conclusion drawn on issues 3 and 4. The term judgment defined in section 2 (9) CPC means the statement given by the judge of the grounds of a decree or order. The grounds must lead to a formal expression of adjudication (decree) conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit. In the case of Raja Muhammad Afzal versus Ch. Muhammad Altaf Hussain and others (1986 SCMR 1736) the Hon'ble Supreme Court has while defining the judgment has observed as under:-

*“ ‘Judgment’ has been defined in section 2, clause (9) of the Civil Procedure Code as ‘judgment’ means the statement given by the Judge of the grounds of a decree or order and Order has been defined in clause 14 of the same section as ‘formal expression of any decision of a civil Court which is not a decree’. Further, Order XX, Rule 4, sub-rule (2) prescribes that judgment of Courts other than the Court of a small causes ‘shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision’. Rule 5 of the same Order provides ‘in suits in which issues have been framed the Court shall state its finding or*

*decision upon any one or more of the issues sufficient for the decision of the suit.”*

8. The prerequisites of a judgment can be summarized in the light of above Judgment as (i) a precise and brief statement of the case (ii) the points for determination that is to say the issues (iii) the findings of the Court on each issue, and (iv) the reasons leading to such findings. It is necessary for the Court to record its findings on each issue by discussing relevant evidence adduced by the parties in support of their respective claims. While deciding a particular issue, the Court is required to take into consideration and discuss the relevant piece of evidence having direct nexus with that specific point and record reasons justifying its findings thereon. The matters that are irrelevant or extraneous and unnecessary neither can be introduced nor can be construed while replying a specific issue. The characteristic of whole discussion must be speaking one to qualify as a judgment. The above criterion of the judgment that is required by Order XX Rule 4 and 5 CPC must be adhered to, so that the rights of the parties in relation to controversy in the suit are conclusively determined. In the given backdrop, we proceed to examine the findings of the learned Single Judge on issues 3 and 4, which as per respective pleas of the parties cover the entire controversy between them.

9. Excepting the different figures involved in both the suits, the tenor of discussion adopted/used by the learned Single Judge in the impugned judgments on issues 3 and 4 in both suits is identical. Hence, for ready reference the findings out of one are reproduced herein below.

*Suit No.572/1997 issue No.3 & 4:*

*“I will deal these issues together as both are interconnected. On the basis of shortage of 11,543 M/tons rice as compared to admitted total quantity of 238,447 M/Tons Rice entrusted to the defendant for handling purposes for the crop 1991-92 under the Contract in question comes to 4.848%. It is stated that even this percentage of loss/shortage is not permissible/ allowable as there is no provision/s in the Contract (Exh-P/2) and / or its supplements annexures I to V between the parties. Resolution of Board of Directors of the plaintiff of no consequences as it was subject to approval of Govt. of Pakistan, Ministry of Commerce, which approval was not accorded. In the result, the defendant is liable for the admitted shortage of rice to the plaintiff. The defendant could avoid this admitted loss/ shortage of rice by taking care as mentioned /quoted/ pointed out in para 5 herein above but he failed to do so though it was responsibility of the defendant to protect and take care of the stock of rice and bages entrusted to it by the plaintiff, which the defendant has been neglected as Bailiee as such the defendant is liable for the shortage in question in terms of clause 13(xiii) of annexure III supplemented to the contract Ex.P/2. The defendant as bailee was liable to discharge of his duty imposed upon him under Section 151 of contract Act, 1872. Nothing has been stated / deposed by the DW in this regard in evidence. The defendant as bailee was bound down to take was much care of the stocks of rice in question as a man of ordinary prudence would, under similar circumstances, take of his own goods. It was duty of the defendant to take all reasonable precaution to obviate risks, which may be reasonable apprehended or foreseeable, his duty would be to take proper measures for the protection of goods when such risks were imminent or had actually occurred. The defendant has failed to discharge his onus as cast upon him as bailee under Section 151 R/w Section 152 CPC of the Contract Act, 1872, as such as per section 176 ibid is responsible to the plaintiff for the shortage of rice and*

*bag in question and he cannot legally avoid his liability thereto on any excuse. (Sic). Learned counsel has placed reliance on the following case law; (i) M/s MASTER SONS V. M/S. EBRAHIM ENTERPRISES AND ANTOHER reported in 1988 CLC 1381 (a) relevant page 1386 A*  
*(ii) Q.B.E INSURANCE LTD. VS. THE TRUSTEES OF THE PORT OF KARACHI THROUGH CHAIRMAN AND OTHERS reported in 1992 CLC page 904(F).”*

10. A bare recital of above discussion by the learned Single Judge would show that the shortage in rice was whether within the expected range, in-between 3.5% to 6 % has not been determined nor in this regard, any material has been referred to. The complete silence in the impugned judgments with regard to entitlement to the relaxation benefit in view of expected loss of weight in rice as claimed by the appellant is sufficient to depict that the mandate of law, which enjoins the Court to specify findings with reasons on each issue, has been unnoticed. In addition to above issues, with the assistance of leaned counsel, we examined the findings of leaned trial Court on issue No.1. They too are sketchy and imprecise with particular reference to number of bags entrusted to the appellant and it is unclear on what basis the respondent was found entitled to the amount claimed towards shortage of the bags.

11 In view of above discussion, we are satisfied that the findings on issues 3 and 4, which are essential and relevant to the controversy between the parties, and reasons thereon cannot be declared a legal and valid judgment passed in accordance with law. Resultantly, the impugned judgments and decrees are set aside, the appeals are accepted. The cases are remanded back to the learned trial court with direction to proceed with the cases afresh from the stage of hearing the arguments and decide the same within a period of six (6) months of receipt of this judgment after giving full opportunity of hearing to the parties.



In above terms, the captioned appeals and listed applications are disposed of with no order as to costs.

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