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FA-167-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

FIRST APPEAL No. 73 of 2017

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

DINESH KUMAR BANSAL AND ANOTHER

.....
Appearance:

Shri S.S. Kushwah, Government Advocate for applicants/State.

Shri Raghvendra Dixit, Advocate for respondent No.1.
.....

FIRST APPEAL No. 167 of 2016

V.S. TOMAR

Versus

DINESH KUMAR BANSAL AND OTHERS

.....
Appearance:

Ms. Padamshri Agrawal and Shri Santosh Agrawal, Advocates for the applicant.

Shri Raghvendra Dixit, Advocate for respondent No.1

Shri S.S.Kushwah, Government Advocate for respondents/State.
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Reserved on : 9/10/2025

Pronounced on : 13/10/2025
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ORDER

By this common judgment, F.A. No.167/2016 shall also be disposed of.

2. Both these first appeals have been filed, under Section 96 of CPC, against the judgment and decree dated 11/7/2016 passed by I Additional



District Judge, Sheopur, in Civil Suit No. 3-B/2013, by which the suit filed by respondent No. 1 Dinesh Kumar Bansal has been decreed and it has been held that the defendants are jointly and severally responsible to return 36 quintals of *Cheed Gond* (Chir pine) or its value ₹1,75,000 within two months, and in case if the aforesaid article is not returned or the value is not paid, then plaintiff would be entitled for interest at the rate of 6% per annum. If the amount is refunded by defendant Nos. 1 to 3 to the plaintiff, then they would be entitled to recover the same from defendant No. 4 or any other person who is responsible.

3. The facts necessary for disposal of both the appeals, in short, are that respondent No. 1 filed a suit for recovery of ₹1,75,000 on the ground that the plaintiff had purchased 12 quintals of *Chhal* (bark) and 36 quintals of *Cheed Gond* from shopkeeper Hazari Adivasi. The *Cheed Gond* was purchased at the rate of ₹50 per quintal, whereas *Chhal* was purchased at the rate of ₹3 per kg. On 29/7/2006, defendant No. 4 along with his employees, illegally seized the Truck and took the Truck to Gadi Range, and at Gadi Range, seizure memo of 71 bags of *Cheed Gond* and 37 bags of *Barna Chhal* was prepared. The seizure memo was signed by Narottam Prasad Sharma, Forest Guard. Thereafter, defendant No. 4 took the truck to Virpur Range, where Narottam Prasad Sharma registered Forest Offence POR No. 22941/16. It was pleaded that defendant No. 4 had not got the seized articles weighed and had merely counted the bags. It was further pleaded that it was the duty of defendant No. 4 to get the seized articles weighed, but that was not done. Defendant No. 4 handed over the seized truck as well as the seized



articles to the godown in-charge, namely Jayaram Adivasi, Forest Guard, and the articles were kept in open for six months. Thereafter, the truck was handed over to the owner on *Supurdgi* and the seized articles were kept in the godown. In the meanwhile, the Forest Guard Jayaram Adivasi was transferred to Virpur, and prior thereto, defendant No. 3, by order dated 11/7/2007, had directed to hand over the seized *Cheed Gond* in *Supurdgi* to plaintiff and also directed to forfeit the *Barna Chhal*. Thereafter, the plaintiff went to defendant No. 3 for release of the articles. However, by that time the godown in-charge was already transferred, who had left for Sheopur without handing over the charge of the godown. Thereafter, plaintiff approached defendant No. 4, but he always avoided by saying that the godown in-charge has not handed over the charge, therefore he is unable to hand over the seized articles. On 26/7/2007, the godown in-charge, namely Jayaram Adivasi, came to Virpur and informed that 51 bags of *Cheed Gond* are available and therefore he should take the same. On 22/1/2008, Jayaram Adivasi came to his house and demanded the key, then his children informed that the key has been taken away by defendant No. 4. Thereafter, the godown in-charge contacted defendant No. 3 and till then the key of the godown was with defendant No. 4. The key was handed over to the godown in-charge and it was found that the articles were not kept in the godown. On inquiry, defendant No. 4 informed the godown in-charge that the articles are kept in the garage. Then, godown in-charge handed over 51 bags of articles i.e. 5 quintals 74 kg 500 grams of *Cheed Gond* and 37 bags of *Barna Chhal*. Thus, it was claimed that defendant No. 4, by opening the lock of the godown, had



misappropriated the goods. It was also claimed that the seized articles were also changed and fresh *Cheed Gond* was placed in place of dry *Cheed Gond* which was purchased by the plaintiff. It was submitted that the enquiry was done in which defendant No. 4 admitted that he had seized 71 bags of *Cheed Gond* and 37 bags of *Barna Chhal*, and the same were handed over by him to Jayaram Adivasi on 29/7/2006.

4. In nutshell, it was the case of the plaintiff that after the order of release was passed, there was a shortage of 36 quintals of *Cheed Gond*, and accordingly it was prayed that either 36 quintals of *Cheed Gond* be directed to be returned to the plaintiff or the value of the short supply i.e. ₹1,75,000, be paid to the plaintiff.

5. Defendants Nos. 2 and 3 filed a written statement. It was claimed that the truck was seized while it was transporting *Barna Chhal* in an illegal manner. *Cheed Gond* was also loaded on the truck. It was claimed that defendant No. 4 was directed to return the *Cheed Gond* and action is being taken.

6. Defendant No. 4 filed his written statement and denied the plaintiff's averments.

7. The trial Court, after recording the evidence, decreed the suit. Challenging the judgment and decree passed by the trial Court, State of M.P., as well as, defendant No.4 have filed separate appeals.

8. Challenging the judgment and decree passed by the Court below, it is submitted by counsel for appellant that respondent has failed to prove that 36 quintals of *Cheed Gond* were seized. He has not filed copy of the seizure



memo. He has not examined the witness(s) who had sold 36 quintals of *Cheed Gond* to Hazari (PW2) from whom Dinesh Kumar Bansal (PW1) had purchased the *Cheed Gond*. Even plaintiff has not filed copy of receipt to show that he had purchased 36 quintals of *Cheed Gond* from Hazari (PW2). Plaintiff has relied upon Panchnama (Ex.P/1 and P/2). In Ex.P/1, it is mentioned that approximately 12 quintals of *Chhal* was sold by Hazari to Dinesh, and the truck was seized by forest officers and 36 quintals of *Cheed Gond* was loaded on the truck. Panchnama (Ex.P/2) speaks about loading of *Chhal* on the truck. In both these panchnamas (Ex.P/1 and Ex.P/2), it is mentioned that *Chhal* was sold and in the last line, it was also mentioned that 36 quintals of *Cheed Gond* was loaded on the truck. It is nowhere mentioned in Ex.P/1 and P/2 that *Cheed Gond* was also purchased by Dinesh Kumar Bansal (PW1) and was sold by Hazari (PW2). Furthermore, Hazari (PW2), in paragraph 4 of his cross-examination has stated that he is an illiterate person and he does not know on what date panchnama (Ex.P/1 and P/2) were prepared. He also stated that he does not know what is mentioned in panchnama (Ex.P/1 and P/2). He denied that he had signed on a blank paper. He claimed that some person amongst them had prepared the panchnama, however, he was not able to disclose the name of the person who was the scribe of panchnama. He stated that he and Hardol had signed the panchnama but was unable to disclose the names of the other signatories. Except panchnama (Ex. P/1 and P/2), there is no other document to show that either Hazari had purchased *Cheed Gond* from the Adivasis or Hazari (PW2) had sold *Cheed Gond* to Dinesh Kumar Bansal (PW1). In absence of sale of a



particular quantity of *Cheed Gond* by Hazari (PW2) to Dinesh Kumar Bansal (PW1), it is difficult for this Court to hold that 36 quintals of *Cheed Gond* was seized by defendant No. 4. It is mentioned in the plaint that a seizure memo was prepared at the time of seizure, but for the reasons best known to the respondent, the said seizure memo has also not been produced. The seizure memo of the articles which were seized at the relevant time would have been the best evidence to show how much *Cheed Gond* was seized by defendant No. 4 and in absence of the seizure memo, as well as, corresponding evidence to show that Adivasis had sold 36 quintals of *Cheed Gond* to Hazari (PW2) or that Hazari (PW2) had sold 36 quintals of *Cheed Gond* to Dinesh Kumar Bansal (PW1), this Court is of considered opinion that plaintiff had failed to prove that 36 quintals of *Cheed Gond* was seized by the defendant No. 4. Thus, in absence of quantity which was seized by defendant No. 4, it cannot be held that less quantity was returned to the plaintiff.

9. Under these circumstances, this Court is of the considered opinion that the trial Court committed a material illegality by holding that either defendants must return the 36 quintals of *Cheed Gond* or must pay the amount of ₹1,75,000 with 6% interest till the actual payment is made.

10. As plaintiff has failed to prove his case, therefore the judgment and decree dated 11/7/2016 passed by I Additional District Judge, Sheopur, in Civil Suit No. 3-B/2013 is set aside. The civil suit filed by the plaintiff is hereby dismissed.

11. The first appeals succeed and are hereby allowed.



12. Decree be drawn accordingly.

(G. S. AHLUWALIA)
JUDGE

(and)