

Sheela Devi v Surender Dhalta ; HPKU070005302023

Sheela Devi v Surender Dhalta
CNR: HPKU070005302023
Civil Suit No. 63/2020
Instituted on **06-03-2020**
Decided on **January 2, 2025**

Smt. Sheela Devi wife of Late Sh. Ailu Ram R/o village Shil.
P.O. Tung, Tehsil Banjar, Distt. Kullu H.P.

.... Plaintiff(s)

versus

Sh. Surender Dhalta Proprietor of Dhalta Vegitable Commission
agent, New Apple Market, Shop No.81, Sector-20 Panchkula,
Haryana.

.... Defendant(s)

Civil Suit for Recovery

Present Sh. Parma Nand Kashyap, Ld. Advocate for the
plaintiff
Defendant(s) already ex-parte.

J U D G M E N T

Brief facts emerging from the pleading

1. The plaintiff has filed this suit for Recovery of rupees 2,36,753/- along with interest at the rate of 12% per annum from September 2019 till payment with cost of the suit.

2. The Plaintiff has pleaded that he is owner in possession of apple orchard situated at village Shil Post office Tung tehsil Banjar Distt Kullu H.P in the name and style of "lucky orchard" and the plaintiff is sole proprietor of this orchard. The defendant is also doing fruit business in various parts of Kullu and Banjar and is well known to the plaintiff. In the fruit season of 2019 the plaintiff sent 757 boxes of apple for sale to defendant, which fruits have been received by the defendant in the market and as per sale proceeds a sum of rupees 6,59,085/- net sale has been shown by the defendant in the bills. In order to discharge his liability, the defendant issued post dated four cheques no 288191 dated 10-10-2019 of Rs. 92,600/, cheque no 288192 dated 20-10-2019 of rupees 1,00,000/-, cheque no 288203 dated 30-10-2019

of rupees 1,00,000/-, cheque No 288204 dated 12-11-2019 of rupees 1,15,000/- total rupees 6,59,085/- net sale proceeds has been shown by the defendant in the bills and rupees 14,732/- paid in cash only which is adjusted by the defendant in bill dated 22-9-2019 and rupees 2,36,753/- remained also due towards the defendant for which he has not issued cheques. The aforesaid cheques issued by the defendant have been dishonoured and the plaintiff has filed complaint under section 138 of Negotiable Instrument Act against the defendant which is pending before the court of learned C.J.M. Kullu. The defendant was served with the legal notice dated 13-12-2019 vide which he was required to make the payment and was also informed that the Cheques issued have been dishonoured and also pay Rs 2,36,753/-. But the defendant despite the service of legal notice has failed to make the payment. Per the Plaintiff, the defendant was asked orally as well as telephonically to admit the claim of the plaintiff and to pay rupees 2,36,753/- along with interest to the plaintiff. But the defendant has failed and refused to make the payment of above said amount. Hence this suit.

3. The Plaintiff has further pleaded that the cause of action has arisen firstly in the fruit season of 2019 when 757 boxes of apple were sent for sale to defendant and sold in the market by the defendant and defendant has failed to make the payment and finally when the defendant has totally refused to admit the claim of the plaintiff.

4. Summons of the suit were issued and duly served on the defendant(s), however, the defendant neither entered appearance nor filed any WS. Accordingly, vide order dated 24-09-2022, the defendant was proceeded ex-parte.

Ex-Parte Argument

5. I have heard the final arguments advanced by learned counsel for the plaintiff and perused the record. Ld. Counsel for the plaintiff has argued that the defendant has been proceeded ex-parte and therefore, case of the plaintiff stands proved by virtue of unchallenged & uncontroverted evidence. Plaintiff has prayed that the suit of the plaintiff be decreed accordingly.

6. In accordance with Order 8 Rule 5(1) of the Code of Civil

Procedure, 1908, the absence of denial of allegations in the plaint by the defendant leads the Court to presume the facts as admitted. Section 58 of the Indian Evidence Act stipulates that admitted facts, even through any rule of pleading, need not be proved. Nevertheless, both provisions permit the Court to require proof of admitted facts, whether expressly or impliedly. Order 8 Rule 5(2) of the Code of Civil Procedure, 1908, mirrors Section 58 of the Indian Evidence Act. Furthermore, Order 8 Rule 10 of the Code of Civil Procedure, 1908, grants the Court discretion to pronounce judgment or issue other orders in the absence of a written statement. The Hon'ble Supreme Court, in **Balraj Taneja & Anr v. Sunil Madan & Anr, (1999) 8 SCC 396**, emphasized that "a court, at no stage, can act blindly or mechanically." Hence, exercising these powers and as a precaution, this Court required the plaintiff to substantiate the case through evidence.

Evidence of the Plaintiff

7. To establish the case, the plaintiff PW1 Sheela Devi tendered her proof affidavit Ex.PW1/A which is a reiteration of her plaint.

The also tendered the following documents in support of her claim:

- a) Legal Notice Ex.PW1B
- b) Bills Ex.PW1/C to D
- c) Copy of Postal Receipt Mark A
- d) Copies of Cheques a/w Return Memos Mark B to K
- e) Postal Receipt Mark L

Findings

8. The testimony of the Plaintiff remained unrebutted, unchallenged, and uncontroverted and relying on these testimonies as well as the documentary evidence cited in support, especially the Bills Ex.PW1/C &D, prove the case of the plaintiff on a preponderance of probabilities. Section 118 and 139 of the NI Act carve out a presumption in favour of the plaintiff regarding the cheques, however, since the original cheques have not been presented, the plaintiff will not benefit from the same. That apart, there is nothing on record to disbelieve the plaintiff.

9. The suit is within the limitation period of 3 years.

10. In respect of the quantum of interest claimed, plaintiff has

sought interest @12% per annum from the date of filing of the suit till realization of decreed amount. However, the interest prayed for by the plaintiff, in the opinion of the court, is exorbitant and unwarranted. It is trite law that the grant of pendente-lite and future interest is a subject matter of the discretion of the Court. Thus, the plaintiff is granted pendente-lite and future interest at the rate of 8% per annum, which appears to be just and equitable.

Relief / Order

11. Accordingly, suit is decreed in favour of the plaintiff and against the defendant for a sum of Rs.2,36,753/- (Two lacs thirty six thousand seven hundred and fifty three rupees) alongwith pendente-lite & future interest @8% per annum from the date of filing of the suit, till realization of the decreed amount. It is clarified that should the plaintiff succeed in receiving the decreetal amount in proceedings under the Negotiable Instruments Act and the liability of the defendant is discharged then the decreetal amount shall stand reduced by the

compensation so awarded. The decree shall be drawn accordingly, and upon completion and compliance, this file shall be consigned to record.

**Pronounced in the open court on Thursday, January 2, 2025
at Banjar, HP.**

Karam Pratap Singh Thakur
Civil Judge, Banjar, H.P.

List of Witnesses

Sr. No.	Witness Number and Name	Witness of/for
1.	PW1-Sheela Devi	Plaintiff

List of Exhibits

Sr. No.	Exhibit No.	Description	Date of Exhibited
1	Ex.PW1/A	Affidavit	17.12.2022
2	Ex.PW1/B	Legal notice	17.12.2022
3	Ex.PW1/C	Net Sell Bill dated 22.09.2019	17.12.2022
4	Ex.PW1/D	Net sell Bill dated 06.10.2019	17.12.2022
5	Mark-A	Copy of postal receipt	17.12.2022
6	Mark-B	Copy of Cheque no.288191	17.12.2022
7	Mark-C	Copy of Cheque no.288192	17.12.2022
8	Mark-D	Return memo	17.12.2022
9	Mark-E	Copy of intimation memo (concern)	17.12.2022
10	Mark-F	Copy of Cheque no.288203	17.12.2022
11	Mark-G	Return memo dated 04.12.2019	17.12.2022
12	Mark-H	Intimation memo (concern)	17.12.2022

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13	Mark-J	Copy of Cheque dated 12.01.2019	17.12.2022
14	Mark-K	Return memo dated 27.11.2019	17.12.2022
15	Mark-L	Track consignment	17.12.2022

Karam Pratap Singh Thakur
Civil Judge, Banjar, H.P.