

**(2019) 02 CHH CK 0535**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 69 Of 2002

State Of Chhattisgarh And Ors

APPELLANT

Vs

Sunil General Storesm And Ors

RESPONDENT

**Date of Decision:** Feb. 28, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** V.B. Singh, Keshav Dewangan, Vinod Deshmukh

**Final Decision:** Dismissed

**Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 11-2- 2002 passed by the District

Judge, Bastar, at Jagdalpur (CG) in Civil Suit No. 1B/1999 wherein the said court decreed the suit filed by the respondent No.1 for recovery of the

amount for articles supplied to Office of Deputy Director, Public Institution, Bastar, MP now CG., to the tune of Rs.1,84,981/- with interest.

2. The appellant had issued tender for supply of 2260 number of footballs and other articles and contract was given to respondent No.1. In fact

respondent No.1 supplied only 1168 number of footballs as such there was shortage of 1072 number of footballs from the supply. Respondent No.1 in

connivance with respondent No.2 who is Upper Diversion Clerk in appellant No.2 office has obtained fake receipt that is why payment of 1072

number of footballs was withheld, but the trial Court decreed the suit against factual matrix and legal aspect of the matter.

3. Learned counsel for the appellants/State submits as under:

I) As per version of Rajendra Jha (DW/1), when stock was verified and counted number of footballs were found to be 1188 and 1072 number of footballs were missing. Enquiry was ordered and FIR was registered in which Kelvin John (PW/3) was prosecuted, therefore, State is not liable to pay cost of 1072 number of footballs which were really not received in the stock of the office.

ii) Ex.P/6 which is the receipt of 2260 number of footballs is issued by Kelvin John (PW/3) in collusion with respondent No.1, therefore, the same is not reliable document.

4. On the other hand, learned counsel for the respondents submits as under:

I) Respondent No.1 supplied footballs 2260 in number, rubber balls 4520 in number, skipping ropes 4520 in number and the total value of the articles is Rs.1,62,494/- as per Ex.P/4. Again, respondent No.1 supplied Air Pump 452 in number costing to Rs.22,487/- as per Ex.P/3 and it was received by Office of the District Education Officer, Jagdalpur.

ii) There is only dispute regarding less supply of footballs and there is no dispute regarding other articles. When the stock incharge namely Kelvin John (PW/3) deposed before the trial Court that he received footballs 2260 in number, there is nothing to disbelieve his statement and there is no evidence that he had any collusion with respondent No.1. His version is unshaken and liable to be acted upon.

Iii) Finding of the trial Court is based on oral and documentary evidence adduced by both the parties, therefore, the same is not liable to be disturbed.

5. I have heard learned counsel for the parties and perused the impugned judgment/decrees passed by the trial Court.

6. It is not in dispute that the respondent No.2 was Incharge of stock in the office of appellant No. 2. The said incharge of stock namely Kelvin John (PW/3) deposed before the trial court that he received footballs 2260 in number and there is nothing on record to rebut his evidence orally or documentary. The trial Court opined that unless his version is shaken, there is nothing to disbelieve his statement.

7. From the record, it appears that one departmental enquiry was initiated regarding less number of footballs found in the store, but the fact remains

that same is internal matter of the department and that enquiry is not sufficient to say that 2260 number of footballs were not supplied by respondent

No.1 but he has receipt of supplying the same endorsed by Incharge of Stock room. There is only dispute regarding less quantity of supply of footballs

and there is no dispute of other articles. After evaluating the evidence, the trial Court opined that the footballs were supplied as per order. The finding

of the trial Court is based on evidence adduced by both sides and same is not based on irrelevant or extraneous material, therefore, this court has no

reason to substitute contrary finding. The appeal is liable to be dismissed.

8. Accordingly, judgment and decree is passed against the appellants and in favour of the respondent No.1 as under:

i) The appeal is dismissed with cost.

II) Appellants to bear the cost of the litigation through out.

iii) Pleaders' fee, if certified be calculated as per schedule or as per certificate whichever is less.

iv) A decree be drawn up accordingly.