IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 5079 of 2013 (O&M)
Date of decision: 16.7.2015

Food Corporation of India and others

.. Appellants

v.

M/s Churhia Mal Rati Ram

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for the appellants.

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Rajesh Bindal J.

The defendants are before this court impugning the judgment and decree of the learned lower appellate court, whereby that of the trial court was reversed and the suit filed by the respondent-plaintiff for recovery, was decreed.

Briefly, the facts, available on record, are that the respondent-plaintiff carries on his business of commission agent. During the period from 10.4.2008 to 12.5.2008, Food Corporation of India purchased wheat through him. The payment was made. However, a sum of ₹ 97,240/- was withheld. The suit was filed for recovery of ₹ 1,05,000/- including interest therein of ₹ 7,760/-.

The contention sought to be raised by learned counsel for the appellants was that when the wheat purchased through the respondent-plaintiff was lifted and weighed at Dharamkanta, there was shortage of weight. The recovery was made from the bills of the appellants on that account. It was the responsibility of the respondent to have ensured correct weight.

After hearing learned counsel for the appellants, I do not find any reason to interfere in the judgment and decree of the learned lower appellate court. It has been observed in the impugned judgment that 30,629 bags of wheat weighing 50 kilograms each were purchased by the appellants. ₹ 97,240/- were deducted from the bills of the appellants on account of alleged shortage of wheat. To opine that if there was any shortage of wheat on the basis of weighment got done by the appellants after lifting the same from Grain Market at a Dharamkanta, outside the mandi area, the responsibility was not of the commission agent, reference was made to Rule 25(4) of the Punjab Agricultural Produce Markets General (Rules), 1962. This Rule provides test weighment upto 10% of the bags at the site of weighment and if no weighment is held at the site, the produce shall be deemed to have been correctly weighed. Rule 25(5) of the aforesaid Rules provides that test weighment has to be conducted in the presence of both the parties. In the case in hand, undisputedly, the weighment was not got done by the appellants in Grain Market, rather, outside at Anoop Dharamkanta. It was not in the presence of representatives of the respondent. Though, as per the list, the weighment was done on different dates and in case the appellants had found initially that there was some shortage in the weight of the bag, they could very well carry out weighment in Grain Market on the next occasion and in the presence of representatives of the respondent in compliance of the provisions of the Rules. They could not be permitted to deduct the amount from the bills of the respondent later on preparing their own statement showing shortage in terms of the weighment got conducted by them at a Dharamkanta outside the Grain Market. The findings recorded by the learned lower appellate court cannot be said to be perverse.

No substantial question of law arises. The appeal is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

16.7.2015
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