

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.4255 of 2012 (O&M)
Date of Decision: May 10, 2016.**

Bhuna Co-operative Marketing-cum-Processing Society Ltd.

.....APPELLANT(s).

VERSUS

Fakir Chand and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sharad Choudhary, Advocate
for the appellant (s).

Mr. C.B. Goel, Advocate
for respondent No.1.

Service of respondent No.2 already dispensed with.

SURINDER GUPTA, J.

This is appeal against the judgment passed by Additional District Judge, Fatehabad decreeing the suit of respondent-plaintiff for recovery of ₹47834/- with pendente lite and future interest @ 12% per annum.

2. Respondent-plaintiff Fakir Chand filed suit for recovery of ₹41,816/-, with interest, from appellant-defendant No.1 with the plea that that plaintiff firm sold wheat worth ₹38,93,544/- to the defendant, out of which payment of ₹38,51,528/- was made and the remaining amount of ₹41,816/- remained due towards appellant-defendant No.1. A notice was given to defendant No.1 through counsel and in reply to the notice, it was

alleged that 44 quintals 72 kilograms 715 grams of wheat was found short on check weighment. Plaintiff alleged that the wheat was weighed loaded in transport vehicle and delivery of the same was handed over to the defendants in the presence of its employees. Any shortage that has occurred during transit or at storage point is not responsibility of the plaintiff.

3. Appellant-defendant contested the claim of plaintiff inter-alia pleading and the sum of ₹41,816/- was deducted from the amount payable to plaintiff on account of shortage. After lifting the wheat from sale point and its weighment at weighing scale (*Dharamkanta*), 44 quintals, 72 kilograms 715 grams of wheat was found short. A letter was circulated to all the commission agents to ensure the supply of quality grain, fully clean with proper standardisation of required wheat upto the point of receipt of procuring agencies, as such plaintiff was liable for shortage in wheat supplied.

4. Learned Additional Civil Judge (Senior Division) Fatehabad dismissed the suit with the observation that as per the weight check memo (Ex.D2) shortage was found in the wheat purchased from the plaintiff. As such, the defendants have rightly made the deduction from the amount payable to plaintiff.

5. On appeal, learned Additional District Judge, Fatehabad reversed the finding of learned Additional Civil Judge, Fatehabad and held as follows:-

“It is held that the plaintiff/appellant had supplied full quantity (sic of) the wheat to the defendants/respondents and if any shortage was found at the storage centre, the plaintiff/appellant is not bound to make the same good. It is further held that deduction of the amount of ₹41,816/-

by the defendants/respondents on account of alleged shortage, is illegal and not sustainable. The plaintiff/appellant is entitled to the same alongwith pendente lite and future interest at the rate of 12% per annum on the decretal amount.”

6. While assailing the findings recorded by the first Appellate Court, learned counsel for the appellant has argued that the wheat from the respondent-plaintiff was purchased from Purchase Centre, Hasinga and Bhuna, where there was no weighing scale (*Dharamkanta*). The check weighment of purchased wheat was conducted at the weighing scale after issuance of gate pass from the Purchase Centre and the wheat was found short as per the weight check memo (Ex. D2). This memo was signed by the concerned officer of HAFED and the officials of the appellant but the plaintiff refused to sign the same.

7. Learned first Appellate Court has taken note of this plea of appellant-defendant and has discussed the same in para 12 of the judgement with reference to Rule 25 of the Punjab Agricultural Produce Markets (General) Rules 1962 and has observed that “in the present case entire quantity of wheat was lifted by the defendants/respondents from the notified market area, loaded in the trucks and taken to the storage centre. There is alleged to be no defective or under weighment at the time of lifting of wheat from the notified market area”. Rule 25 (4) authorises either party to the contract to cause a test weighment immediately after completion of weighment of lot of agricultural produce within a notified market area and if no test weighment is held, the produce shall be deemed to have been correctly weighed. Rule 25(4) prescribes as follows:-

“25(4) Immediately on the completion of weighment of lot of agricultural produce within a notified market area, either party to the contract may cause a test weighment of then percent of the units of packing in a lot or two packing units whichever is more. The test weighment shall be carried out at the site of weighment and if no test weighment is held at the site, the produce shall be deemed to have been correctly weighed.”

8. Rule 25 (5) of above Rules prescribe mode of test weighment as follows:-

“25(5) Test weighment under sub-rule (4) shall be carried out in the presence of both the parties to the contract. In case any of the parties refused or otherwise evades presence, the other party may report in writing to the Secretary of the Committee or any employee of the Board not lower in rank than that of an Inspector, who, after satisfying himself as to the correctness of the report, shall cause the test weighment to be made in his presence or in the presence of any other official of the Committee authorized by him in this behalf and the result of such test weighment shall be final, conclusive and binding on both the parties.”

9. Admittedly, it was never reported in writing to the Secretary of the Society or any employee of the Market Committee that plaintiff has refused or evaded his presence at the time of check weighment. Even after the check weighment, no notice was given to the appellant. It is rather the appellant, who had given the notice. The responsibility of the plaintiff was only upto the handing over the wheat purchased to the appellant and if any shortage was caused during the transit, the same is not his responsibility, as after leaving the site of purchase, wheat was under the care and control of

appellant-defendant and not the respondent-plaintiff. Learned first Appellate Court has committed no error of law or fact while reaching the conclusion as mentioned in para 5 above.

10. The finding recorded by the first Appellate Court is a finding of fact and call for no interference in this appeal.

11. No substantial question of law requiring determination arises in this appeal, which has no merits.

12. Dismissed.

May 10, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE