IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3584 of 2016
Date of decision : November 09, 2017

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Director General, Food & Supplies Department,
Chandigarh and others ....Appellants

Versus

Food Grains Dealer Association Kaithal and others
...........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.K Mittal, DAG, Haryana.

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RITU BAHRI, J.

C.M No. 9361-C of 2016

Allowed as prayed for.

C.M No. 9362-C of 2016

Prayer made in the application is for condonation of delay 513 days in filing the present appeal.

For the reasons mentioned in the application, delay of 513 days in filing the present appeal is condoned. C.M is allowed.

RSA No. 3584 of 2016

Present appeal has been filed against the judgment dated 12.8.2013 passed by the Civil Judge (Sr. Div.) Kaithal, and the judgment dated 11.11.2014 passed by the Additional District Judge, Kaithal, whereby appeal against the judgment of the trial Court was dismissed. Vide the judgment of the trial Court, suit filed by the respondents-plaintiffs for recovery of Rs.4,04,000/- along with interest against appellants no. 1 & 3/defendants was decreed.

Briefly stated, the facts of the case are that respondent no.1-plaintiff no.1 was a registered association of all Food Grains Dealers doing the business of sale and purchase of food grains in New Grain Market, Kaithal. The respondents-plaintiffs have done the work of billing cum payment agent (BCPA) for defendants-department for procurement of food grains for the year 2007-08. The respective members of respondent no.1-plaintiff no.1 duly issued bills in respect of food grains procured, which were duly received by the concerned office of defendants. As per the plaint, after the expiry of procurement period 2007-08, the defendants withheld the amount of Rs.3,20,711/- i.e Rs.30,819/- for alleged moisture cut and Rs.2,89,892/- for alleged shortage. The grievance of the respondents-plaintiffs was that the amount has been wrongly withheld by the defendants under the false pretext of moisture cut and shortage cut.

After framing of necessary issues, the trial Court examined Rules 24 and 25 of the **Punjab Agricultural Produce Market General Rules, 1962 (hereinafter referred to as `the Rules)**. These Rules deal with the manner in which agricultural produce is sold and purchased and weighment thereof is carried out. As per the above said rules, the buyer shall be responsible to get the agricultural produce weighed immediately after the auction or on the same day the produce is purchased by him. At that time, if any deficiency is found, that has to be made good by the seller. Rule 25 provides for test weighment if after the completion of weighment of the agricultural produce, either party wants that test weighment should be carried out. These Rules also provide that if either of the party refuses or avoids his presence, then matter can be brought to the notice of the Secretary of the Committee who thereupon has a duty to cause test weighment carried out. These Rules also provide that result of such test weighment shall be final, conclusive and binding on the parties. There is no provision in the Rules that re-weighment can be carried out at storage point. Reliance was placed on the judgment in the case of ***M/s Prem Chand Chiman Lal vs. Food Corporation of India through Divisional Manager, Delhi Road, Hisar, 2010 (3) RCR (Civil) 363***, wherein it has been held that agricultural produce has to be weighed in consonance with Rules 24 and 25 of the Rules and if same is not done, then the buyer would have no grievance to be addressed to and to be adjudicated by the Court of law.

After hearing counsel for the parties and going through the evidence placed on record, trial Court decreed the suit of the respondents-plaintiffs and held them entitled to recover sum of Rs.4,05,000/- along with pendente lite and future interest.

Aggrieved with the order of the trial Court, defendants filed appeal before the lower appellate Court which was also dismissed and the judgment passed by the trial Court was upheld.

In the present case, since the procurement of food grains was made by the plaintiffs in the year 2007-08 and the suit had been instituted in the year 2010, the defendants could not be allowed to raise the plea of reweighment since as per the judgment passed by the Court in the case of ***M/s Prem Chand Chiman Lal (supra)*** no deduction can be made on grounds of less weighment. DW-1 Rajinder Kaur Section Officer admitted in his cross-examination that he has no record regarding the weighment which may reveal that on which date, the wheat was weighed and how much weight after the purchase of the wheat, if any, is not properly proved in the present matter.

After hearing counsel for the parties and going through the evidence on record, this Court is of the view that suit has been rightly decreed by the trial Court as the amount withheld by the defendants on account of shortage was not permissible and was beyond the scope of Rules 24 & 25. In paragraphs 12 & 13 of the judgment in the case of ***M/s Prem Chand Chiman Lal (supra)***, it has been observed as under:

> *12.According to the learned counsel for the appellant if the paddy has not been weighed in accordance with Rule 25(5) of the Rules, even for the sake of arguments, it is presumed that the appellant was evading his presence, respondent was required to report the matter in writing to the Secretary of the Committee who would, after satisfying himself about the correctness of the report by the plaintiff, cause the test weighment in his presence or in the presence of any other official of the Committee authorized by him. It is submitted that this is a case of internal check and balance so that weighment may not be done by the buyer alone in the absence of the seller. Buyer can always*

made a complaint that the weight of the produce is less. In order to avoid such a situation to happen, the legislature has framed Rule 25(5) of the Rules where in the absence of the seller for any reason, the matter has to be reported to the Secretary of the Committee in whose presence or in presence of the other member of the Committee deputed by him, the foodgrain is to be weighed so that it may not be said by the seller later on that he has been cheated at the hands of the buyer.

13. In the present case, the plaintiff has been held liable to make the payment of Rs.39014/- on the ground that other commission agents have made the deficiency good, therefore, he is also liable to make the deficiency good. In my opinion, this finding is totally perverse and unwarranted in the eyes of law in view of the provisions of Rule 25(5) of the Rules. Thus, the substantial question of law raised in these appeals that whether the weighment in violation of Rule 24 and 25 of the Rules is a valid weighment is answered in favour of the plaintiff/appellant and it is held that it the agricultural produce is not weighed in consonance with Rules 24 and 25 of the Rules, the buyer would have no

> *grievance to be addressed to and to be adjudicated by the Court of law.*

This case is squarely covered by the judgment in the case of ***Prem Chand Chiman Lal's case (supra).*** In view of all that has been discussed above, no ground is made out to interfere in the impugned judgments passed by the Courts below. Present regular second appeal is dismissed.

November 09, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No