

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

RSA No. 2211 of 2017 (O&M)

Date of Decision: 01.11.2017

STATE OF HARYANA & ORS

-APPELLANTS

VS

FOOD GRAIN DEALER ASSOCIATION NEW GRAIN MARKET,
GOHANA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Kumar Saini, D.A.G., Haryana.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Defendants-appellants are in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for recovery filed by the plaintiff-Food Grain Dealer Association.

[2]. Plaintiff-Association purchased and supplied wheat as per the bilateral obligation between the parties. Plaintiff-Association was entitled to certain amount towards defendants on account of supply of wheat along with interest as settled between them. The amount was not paid and the same resulted in filing of the suit.

[3]. The defendants contested the suit on the ground that

in the year 2007-08, wheat procurement agreement was executed on 05.04.2007 between Food Supply Department and Food Grain Association, Gohana for purchase of wheat by the State Government. The amount was withheld on account of the shortage of wheat.

[4]. Both the Courts below have recorded a firm finding of fact that the quantity of wheat was not weighed at the time of delivery despite the fact that defendants were having opportunity to get the same weighed at the time of making delivery by the plaintiff. Weighment of the wheat was *sine qua non* before alleging shortage of any type. The Courts have commented on the alleged shortage of wheat without there being any compliance of Rules 24, 25 of the Punjab Agricultural Produce Markets (General) Rules, 1962 wherein according to sub-rule 9 of rule 24, a buyer is responsible to get the agricultural produce weighed immediately after the auction on the same day the produce is purchased by him and the seller or buyer shall be liable for any loss or damage thereof on deterioration in the produce.

[5]. At the time of purchase of the wheat, the weighment was done by the plaintiff and the produce was stored for ongoing delivery to the defendants. Wheat is a hygroscopic grain item which absorbs moisture in a given condition and also

looses weight on account of dryers in summer season.

[6]. According to the Government Instructions, 12 to 14% moisture contents are permitted in the purchase of such hydroscopic grain item.

[7]. In the instant case, both the Courts below have found that at the time of delivery of wheat to the defendants, no compliance of Rule 25 of the aforesaid Rules of 1962 was made inasmuch as that defendants could have opted for test weighment in the presence of the parties or in the presence of representative of the Board.

[8]. The testimonies of DW1 and DW2 have brought about a fact that the wheat supplied by the plaintiff was alleged to be less to the extent of 285-67-000 quintals but the quantity was never weighed in the presence of the parties or in the presence of representative of the Board. The witnesses have admitted in their cross-examinations that the wheat was of specific standard and quantity.

[9]. Both the Courts below have deliberated upon factual matrix of the case.

[10]. No law point worth cognizance is involved in the present appeal and the same, is accordingly, dismissed.

CM No.5374-C-2017

Since the main appeal has been dismissed on merits, therefore, there is no necessity of passing any order in the application for condonation of delay.

01.11.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No