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**(2011) 03 P&H CK 0354**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 1235 of 2009 (O and M)

Food Corporation of India

APPELLANT

Vs

Bansal and Sons and Others

RESPONDENT

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**Date of Decision:** March 4, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120(B), 409, 420, 467, 471

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Sabina, J.

Plaintiff Food Corporation of India (FCI for short) filed a suit for recovery against the rice mill-Defendants-mill.

2. The case of the FCI, in brief, was that a policy had been framed by the Central Government and under the said policy, the FCI used to purchase paddy from the market and give it to the millers for shelling. Defendants-mill-mill had agreed to shell the paddy as per its storage capacity. The paddy stored under the mill was to remain in joint custody of the FCI and the mill. As per the policy of the Central Government, 67 % of superfine rice was required to be delivered out of the paddy supplied to the Defendants-mill. The Defendants-mill had agreed to abide by the terms and conditions of the said agreement. The Defendants-mill had furnished the requisite security in terms of the agreement. The Defendants-mill was also responsible for the safe custody of paddy supplied to it for milling and delivery of rice as per the agreement. Losses, if any, incurred during the transit or storage were to be made good by the Defendants-mill @ 1 ♦ time of economic costs of the variety of paddy/ rice. The Defendants-mill was required to deliver the rice within ten days of issuance of supply of paddy at regular intervals. As per schedule, 20% of rice was to be delivered in the months of October/ November 1994, 26% in December 1994, 26% in the month of January 1995 and 28% in the month of

February 1995. The Defendants-mill had, however, failed to shell the paddy and as such it became liable to pay 1 ♦ time of economic costs of paddy supplied to it. The total paddy stored in the premises of the Defendants-mill was 13937 bags weighing 9053.25 quintals of superfine paddy. Since the Defendants-mill had failed to shell the paddy, the Plaintiff dispatched 5120 bags weighing 3226.60 quintals of paddy before 31.5.1995. Cost of the remaining paddy was assessed at `876.21 per quintal @ 1 ♦ time of the economic cost i.e. Rs. 51,00,369/-on 1.6.1995. Since the Defendants-mill failed to shell the paddy, it was decided to sell it. As such 2882 bags of paddy weighing 1756 quintals were sold at Rs. 395/-per quintal, 1831 bags weighing 1028 quintals were sold at Rs. 240/-per quintal. Accordingly, a total sum of Rs. 9,40,340/-was recovered from the sale of the said paddy. Out of the remaining paddy 4160 bags were retrieved and their value was assessed at `395/-per quintal weighing 2555.80 quintals amounting to Rs. 10,09,541/-. An expenditure of Rs. 24,906/-was incurred by the Plaintiff on retrieving the paddy and as such it entitled to recover Rs. 31,80,448/-plus Rs. 14,78,905/-as interest @ 18% per annum w.e.f. 1.6.1995 to 31.1.1998. Hence, the FCI was entitled to recover a total sum of `46,59,343/-from the Defendants-mill with future interest at the same rate.

3. Defendants-mill, in its written statement, averred that the paddy was stored in the premises of the Defendants-mill on rental basis. The execution of agreement to shell the paddy between the parties was denied. Rest of the contentions made in the plaint have been denied.

4. On the pleadings of the parties, following issues were framed by the trial Court:

1. Whether the District Manager is duly authorised to file the present suit? OPP
2. Whether the Defendants entered into an agreement to sell the paddy from time to time with the Plaintiff as alleged ? OPP
3. Whether the Defendant has not supplied the rice after shelling, as alleged? OPP
4. Whether the Plaintiff is entitled to recovery of Rs. 46,59,343/-as alleged? OPP
5. Whether the Plaintiff is entitled to interest, If so, at what rate and to what extent ? OPP
6. Whether this Court has no jurisdiction ? OPD
7. Whether the Plaintiff is stopped by his act and conduct? OPD
8. Whether the Defendant is entitled to special costs, as alleged? OPD
9. Whether the Defendant is entitled to counter claim, prayed for? OPD
10. Relief.

5. The suit filed by the Plaintiff was decreed by the trial Court for recovery of Rs. 31,50,488/-with interest @ 12% per annum from 1.6.1995 till realisation vide

judgment and decree dated 24.9.2003. Trial Court further directed the Director, Central Bureau of Investigation for lodging an FIR against the officials of the FCI under Sections 467/471/420/409 and 120-B of the Indian Penal Code. Aggrieved by the said judgment and decree, Defendants-mill filed an appeal. Additional District Judge, Faridkot, vide judgment and decree dated 8.10.2008 partly allowed the appeal and held that the Plaintiff was entitled to recover Rs. 14,78,604/-with proportionate costs and interest @ 12% per annum from 1.6.2005 till realisation. Hence, the present appeal by the Plaintiff.

6. Learned Counsel for FCI has submitted that the agreement entered between the parties, vide which the paddy was given to the mill for shelling, had been duly proved on record. As per the said agreement, in case of any loss/ storage, the mill was required to pay 1 ♦ time of economic costs of paddy/ rice. Hence, the suit of the Plaintiff for recovery was liable to be decreed as claimed.

7. Learned Counsel for the Mill, on the other hand, has submitted that the FCI had failed to prove its case. The alleged agreement had not been proved on record. In fact, the paddy had been kept in the Mill for storage purposes on rental basis.

8. After hearing learned Counsel for the parties, I am of the opinion that the present appeal is devoid of any merit and deserves dismissal.

9. Both the Courts below, after appreciating the evidence led by the parties on record, held that the paddy had been stored in the premises of the Mill for the purpose of shelling. The only question that requires consideration is as to whether the FCI was required to claim shortage at the rate of 1 ♦ time of economic cost or at the rate of economic cost.

It is a settled proposition of law that whenever, a penal clause is imposed in a contract then the Court can allow compensation as it deems fit but the same cannot be allowed at a rate more than the one agreed between the parties. In the present case, the first Appellate Court, while exercising its jurisdiction, considered it reasonable to award damages to the Corporation at the rate of economic cost. The said finding of the first Appellate Court calls for no interference.

10. No substantial question of law arises in this regular second appeal, which would warrant interference by this Court. Accordingly, the same is dismissed.