

**(2012) 11 P&H CK 0128**

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

**Case No:** Regular Second Appeal No. 4708 of 2012 (O and M)

Food Corporation of India

APPELLANT

Vs

M/s. Mittal Trading Company

RESPONDENT

**Date of Decision:** Nov. 6, 2012

**Citation:** (2013) 169 PLR 239

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** K.K. Gupta, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

L.N. Mittal, J.

C.M. No. 13112.C of 2012

Allowed as prayed for.

R.S.A. No. 4708 of 2012

1. Defendant No. 1 Food Corporation of India (FCI) is in second appeal. Suit was filed by respondent-plaintiff M/s Mittal Trading Company against FCI and its authorities for recovery of earnest money deposited by the plaintiff with FCI for lifting of wheat as per scheme of FCI. Vide acceptance letter dated 9.1.2003, wheat was allotted to the plaintiff, the plaintiff had deposited earnest money with application for purchasing the wheat stock. After acceptance letter dated 9.1.2003, the plaintiff deposited Rs. 1,39,60,128/- on 29.1.2003 as price of the wheat stock and accordingly release order dated 29.1.2003 was issued. The wheat was to be lifted within 30 days from the acceptance letter dated 9.1.2003 i.e. upto 8.2.2003.

2. Plaintiffs case is that the wheat had to be loaded by labour engaged by FCI in the trucks of the plaintiff. The plaintiff alleged that the defendants had not engaged sufficient labour for loading of wheat of different buyers. The plaintiff, therefore, sent letter dated 2.2.2003 to defendant No. 3 for change of depot for lifting of wheat stock but to no effect. The plaintiff, therefore, could not lift wheat stock upto the

stipulated date. The defendants refunded the price of the wheat stock to the plaintiff but failed to refund the earnest money deposited by the plaintiff amounting to Rs. 13,92,000/-. The plaintiff by filing suit sought refund of the said earnest money.

3. The defendants while admitting acceptance letter dated 9.1.2003 and release order dated 29.1.2003 pleaded that wheat was to be loaded by labour of Markfed and not by labour of FCI. Receipt of letter dated 2.2.2003 from the plaintiff was denied. Lapse of the plaintiff was pleaded because the plaintiff deposited the cost of wheat after 20 days of the acceptance letter. It was, thus, pleaded that earnest money is not liable to be refunded to the plaintiff.

4. Both the courts below have decreed suit of the plaintiff for refund of earnest money along with interest @ 9% per annum from the date of filing of suit till recovery.

5. I have heard counsel for the appellant and perused the case file.

6. Counsel for the appellant vehemently contended that courts below have not noticed the terms and conditions of allotment of the wheat stock to the plaintiff according to which the plaintiff had to arrange the labour for loading of the wheat and FCI was to deliver the wheat ex-godown but the plaintiff failed to arrange the requisite labour and reached the spot to lift the wheat stock on last day although huge quantity of wheat could not be lifted in a single day and therefore, the plaintiff being at fault is not entitled to refund of earnest money.

7. The contention cannot be accepted. As read out by counsel for the appellant from the terms and conditions of allotment, wheat was to be delivered by FCI ex-godown duly loaded in the vehicles of the plaintiff. Consequently, the responsibility of loading wheat in the trucks of plaintiff was of the FCI and not of the plaintiff. Labour for loading the wheat was, therefore, to be arranged by FCI. However, FCI failed to arrange the requisite labour for loading wheat of large number of buyers who had to lift stock from the same godown. It has also been found by the courts below that Markfed labour as pleaded by the defendants had also been engaged by the defendants.

8. From the aforesaid, it emerges that the plaintiff admittedly reached the depot of defendants on 8.2.2003 to lift the wheat stock but there was no proper arrangement for lifting the wheat stock by large number of buyers nor there was sufficient labour force engaged by the defendants to do the needful. Consequently, the plaintiff cannot be said to be at fault. There was, therefore, no justification not to refund the earnest amount of the plaintiff.

9. In the aforesaid circumstances, suit of the plaintiff has been rightly decreed by the courts below for recovery of the earnest money. Concurrent finding in this regard recorded by both the courts below is not shown to be perverse or illegal or based on misreading or mis-appreciation of evidence on record. There is, therefore,

no ground to interfere with the said finding. No question of law much less substantial question of law arises for adjudication in this second appeal.

10. Counsel for the appellant submitted that rate of interest be reduced. However, I find no justification for the same. It was commercial transaction between the parties. Rate of interest awarded by the courts below is 9% per annum which cannot be said to be excessive in any manner keeping in view the prevalent rate of interest in the market. The said rate of interest does not warrant any reduction. Resultantly, I find no merit in this appeal which is, therefore, dismissed in limine.