

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08th April, 2009

+ **(1) FAO(OS) 330/2007**

FOOD CORPORATION OF INDIA Appellant
Through: Mr. Sukumar Pattjoshi, Advocate

versus

ROSHAN KUMAR RANJIT KUMAR Respondent
Through: Mr. M.L. Lahoty & Mr. Paban K.
Sharma, Advocates

AND

(2) FAO(OS) 433/2007

ROSHAN KUMAR RANJIT KUMAR Appellant
Through: Mr. M.L. Lahoty & Mr. Paban K.
Sharma, Advocates

versus

FOOD CORPORATION OF INDIA Respondent
Through: Mr. Sukumar Pattjoshi, Advocate

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (Oral)

MUKUL MUDGAL, J.

1. These two appeals i.e. FAO(OS) 330/2007 & FAO(OS) 433/2007 are directed against the judgment of the learned Single Judge dated 30.04.2007, by which the objections to the majority award

dated 24.01.2003 were dealt with and disposed off. The learned Single Judge by the impugned judgment directed the FCI to refund the earnest money converted into security deposit, and granted interest w.e.f. 05.03.1999 @ 9%. The FCI's appeal is largely confined to the issue of grant of interest on security deposit w.e.f. 05.03.1999. In so far as the appeal of the respondent Roshan Kumar Ranjit Kumar is concerned i.e. FAO(OS) 433/2007, the same challenges the judgment of the learned Single Judge upholding the award on its counter claim for Rs.5,28,790.90, which was rejected by the arbitrators. The learned Single Judge concurred with the finding that this claim was barred by limitation.

2. Insofar as the plea of the FCI is concerned, Clause D(ii) of the contract is relevant and reads as follows:

"ii) The successful tenders shall remit 5% of the value of the total quantity offered for purchase towards security deposit together with the cost of stocks within 7 days of issue of confirmation of acceptance of tender in the form of Demand Draft issued by any of the scheduled Bank in favour of SRM, FCI, Region Chandigarh payable at Chandigarh. The security deposit furnished by the tenderer/buyer would be subject to the terms and conditions laid down for the sale of sub/ std. rice and FCI shall not be liable for payment of any interest on security deposit for or for any depreciation thereof. If the tenderer/buyer fails or neglects to observe or perform any of his obligations under the contract, it shall be lawful for the FCI to forfeit either in whole or in part in its absolute discretion, the security deposit by the tenderers/buyers towards the satisfaction any sum due to be claimed from the tenderer/buyer, for any damages, losses, charges, expenses or costs that may be suffered or incurred by the FCI. The decision of the SRM, FCI, Punjab Region, Chandigarh in this

respect shall be final and binding on the tenderers/buyers. In the event of security deposit being in sufficient or if the security deposit has been (*sic*) fully the case may be, shall be deducted from any sum of due or which any time there after may become due to the tenderer/buyer under this or any other contract with the FCI. Should that sum also not be sufficient to recover the full amount recoverable, the tenderer/buyer shall pay to the FCI, on demand the balance due. **The Earnest Money furnished by the tenderer should be adjusted against or converted into the security deposit and could be released only after the satisfactory completion of contract. The FCI shall not be liable to pay any interest thereon.**" (emphasis supplied)

3. The submission of the counsel for the appellant FCI Sh. Pattjoshi is confined to the plea that the FCI was not liable to pay any interest on the earnest money which stood converted into security deposit, in view of the express prohibition contained in the clause extracted above. He has relied upon ***Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*** 2003(5) SCC 705 to submit that the award is liable to be interfered with, if it is contrary to the contract. He has submitted that the decision of the learned Single Judge, insofar as he granted interest on the refund of security deposit to the respondent w.e.f. 05.03.1999, cannot be sustained, as interest was contractually not payable on this amount. He accordingly prays that interest should not be granted on this amount of security deposit at all.

4. Mr. Lahoty, appearing for the respondent contractor in FAO(OS) 330/2007, has attempted to counter this plea by arguing that while interest was not payable on the earnest money, but upon its

conversion to security deposit, interest was payable.

5. Having considered the rival pleas and examined the contractual terms, we are of the view that the intention of the parties emerging from the contract is clear, that no interest was payable on the refund of earnest money, which stood converted to the security deposit. Earnest money, insofar as clause D(ii) is concerned, is synonymous with security deposit. The learned arbitrators in their majority award held in favour of the appellant FCI, holding that the respondent contractor was not entitled to seek refund of the earnest money/security deposit. Consequently, the stand of the appellant that they were not liable to refund the amount of Rs.11,16,000/- was accepted by the Arbitral Tribunal in their majority award. As a result, the occasion to refund the said amount did not arise till after the decision of the learned Single Judge reversing the aforesaid finding of the Arbitral Tribunal, and holding that the appellant was indeed liable to refund the EMD/security deposit of Rs.11,16,000/- to the respondent contractor, as no loss or damage had been suffered by the appellant on account of the breach of the contract by the respondent contractor. Accordingly, we are of the view that interest on the said sum of Rs.11,16,000/- was not payable till the time the stand of the appellant FCI was rejected by the learned Single Judge and was payable only after the refund of this amount was ordered by the learned Single Judge on April 30, 2007. The judgment of the learned Single Judge is, accordingly, set aside to the extent it grants interest w.e.f. 05.03.1999 @ 9% on Rs.11,16,000/- and it is clarified that the interest on the

aforesaid sum of Rs.11,16,000/- shall be payable only w.e.f. 30.04.2007, till payment to the respondent.

6. Insofar as the plea of the contractor firm Roshan Kumar Ranjit Kumar i.e. the appellant in FAO(OS) 330/2007 is concerned, Mr. Lahoty, learned counsel for the appellant has assailed the judgment of the learned Single Judge on the aspect of limitation in relation to the contractor's claim of Rs.5,28,790.90. Insofar as this plea is concerned, the facts are briefly stated as under.

7. This claim was for refund of excess amount paid by the contractor, as material delivered on 30.10.1996 was of lesser quantity. Though on merits this claim was found to be justified, the arbitrators found this claim to be time barred. The limitation period for this claim was reckoned from 30.10.1996. The award, which was upheld by the learned Single Judge on the issue of limitation held that the release order was given on 04.10.1996 as per which order the stocks were to be lifted by 18.10.1996. The contractor sought extension of time by their letter dated 16.10.1996 and at the contractor's request, FCI extended the time upto 31.10.1996 by the letter dated 24.10.1996. In spite of this communication stocks were not lifted. The Appellant/contractor's claim was, thus, founded on the ground that it had deposited a sum of Rs.65 Lacs with the FCI, against which as on 30.10.1996 the material supplied was worth Rs.58,92,112.80ps. and accordingly, the refund of this excess amount was payable to the contractor.

8. The learned counsel for the appellant-contractor in FAO(OS) 433/2007, has contended that the cause of action arose when the advertisement for sale of stocks of the respondent was given by the FCI in the year 1999 and it further arose upon preparation of balance sheet acknowledging the aforesaid amount of Rs.5,28,790.90.

9. Insofar as the plea of Mr. Lahoty founded upon the issuance of advertisement is concerned, the mere fact that an advertisement was given in 1999 for disposing off the goods at the risk and cost of the appellant-contractor, in our view furnished no ground for extending limitation in the appellant's favour. The claim of the appellant-contractor was founded on the cause of action which arose on 30.10.1996 upon its failure to lift the stocks for the amount already deposited for whatever reason. It had no correlation to the issuance of an advertisement by the FCI for disposing off the stocks at the risk and cost of the contractor. The majority award and the learned Single Judge, in our view, rightly held that the period of limitation began from 31.10.1996. The second plea of Mr. Lahoty that the balance sheet acknowledged this amount in 1999 cannot be accepted for the reason that the date of preparation of the balance sheet has not been disclosed. It is not clear whether the same was prepared before or after the expiry of the initial period of limitation on 30.10.1999. If the Contractor desired to rely upon the balance sheet to claim extension of limitation by resort to Section 18 of Limitation Act, it was for the Contractor to have established the date of the so-called acknowledgement. This apart, even if this plea is to be looked into on

merits, the entire balance sheet is to be considered and no entry can be culled out and seen in isolation.

10. For the aforesaid reasons we find no merit in the appeal i.e. FAO(OS) 433/2007 preferred by the firm Roshan Kumar Ranjit Kumar. The same is, accordingly, dismissed. The appeal preferred by the FCI bearing FAO(OS) 330/2007 is allowed to the limited extent, i.e. the interest liability changing shall arise from 03.04.2007 and not from 09.03.1999 on the amount of Rs.11,16,000/- @ 9% per annum.

11. Both the appeals stand disposed off in the above terms.

MUKUL MUDGAL, J.

VIPIN SANGHI, J.

APRIL 08, 2009
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