

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A. No. 159 of 2003

State of Chhattisgarh, through : the Collector, District Raigarh, (C.G.)

---- Appellant.

Versus

Suresh Chandra Agrawal, S/o. Shri Chaitram, aged about 42 years,
Proprietor : M/s. Kamal Art, Resident of Ramgudi Para, Raigarh, District
Raigarh (C.G.)

---- Respondent

For Appellant/State	:	Mr. S.C. Khakharia, Dy.A.G.
For Respondent	:	Mr. Sourabh Sharma, Advocate & Mr. Tarkeshwar Nande, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07/09/2015

1. Challenge in this appeal is to the judgment and decree dated 13.05.2003, passed in Civil Suit No.12-B/2002, by the Fourth Additional District Judge, (F.T.C.), Raigarh, District Raigarh, whereby a decree of Rs.1,04,625/- alongwith interest @ 6% per annum has been passed against the State/appellant.
2. Briefly stated facts of this case are that the plaintiff used to carry on his business of spray-painting, wall painting, banner etc. under the name and style of Kamal Art at Raigarh. As per the policy of the government, pulse polio programme was to be advertised,

therefore, the Chief Medical Officer, Health Department, Raigarh by its order No.359, dated 09.01.1998, order No.363, dated 09.01.1998, order No.419, dated 12.01.1998, order No.421, dated 12.01.1998, order No.432 dated 13.01.1998, order No.436 dated 13.01.1998, order No.440 dated 13.01.1998, order No.521, dated 15.01.1998, order No.526 dated 15.01.1998, order No.582 dated 15.01.1998, order No.602 dated 15.01.1998 had directed for supply of banners total amounting to Rs.1,45,125/- to the respondent/plaintiff. The said work order placed to plaintiff is not under any dispute. Admittedly after the supply an amount of Rs.40,500/- was paid as part payment and it was contended that Rs.50,625/- could not be paid because of want of sanction of the amount and Rs.54,000/- was withheld and remaining amount was not paid.

3. The defendant in their written statement admitted to have placed the orders for supply of banners and it was stated that Rs.40,500/- was paid and Rs.50,625/- was to be paid and thereby admitted the liability in part. For rest of amount it was contended that the goods were not supplied, therefore, the plaintiff is not entitled to receive the same.
4. After framing of the issues, the Court of learned District Judge has passed the judgment and decree of Rs.1,04,625/- alongwith interest @ 6% per annum from 17.01.1998.

5. Mr. S.C. Khakharia, Deputy Advocate General appearing on behalf of the State/appellant would submit that in the case in hand the Chief Medical Officer was not made a party as defendant as he was necessary party because the order was placed by him. He would further submit that in absence of such necessary party, the suit should have been dismissed at the threshold. He would further submit that the judgment and decree under the facts and circumstances of this case can not be sustained accordingly, it is liable to be set-aside.
6. Per contra Mr. Sourabh Sharma, Advocate appearing on behalf of the respondent/plaintiff would submit that the judgment and decree is well merited, which do not call for any interference. He would further submit that though in this appeal, arguments have been raised that the CMO was not made as a party defendant but this issue was not raised before the Court below and for the first time, the issue has been raised before this Court. He would further submit that perusal of the written statement would show that Chief Medical Officer has filed the written statement on behalf of the State as officer-in-charge, therefore, that part of the contention of State can not be sustained.
7. I have heard the learned counsel for the parties, perused the documents and the evidence on record.
8. Perusal of the judgment and decree would show that by an order dated 09.01.1998, 12.01.1998, 13.01.1998 and 15.01.1998

different supply orders were made by the State for preparation of the banner posters on the simple cloths so as to prepare the banners of water colour poster for pulse polio programme.

9. Perusal of the statement of the plaintiff, Suresh Chandra Agrawal (PW-3) as also the statement of Krishna Kumar Verma (PW-1), who was the employee of CMO office, Raigarh affirm the fact that the plaintiff was given orders for supply of banners prepared on the water colour and the cost amounted to Rs.1,45,125/-. This fact is also affirmed by the witness examined on behalf of the State, D.W.-1, Murlidhar Gautam, who admitted the fact that the document Ex.P/4 to Ex.P/14, which are the work order, were given by the State to the plaintiff and thereafter, the said poster banners were prepared and supplied to the State and the bills were also submitted which are exhibited as Ex.P/16 to Ex.P/26.
10. After raising of bills, the entire amount of bill was not paid but a part of amount of Rs.40,500/- was made to the plaintiff in the month of March, 1998. This fact is admitted by witness who was working with the State government. Subsequently, the rest of amount having not been paid, certain reminders and letters were sent by plaintiff by Ex.P/1, Ex.P/2 & P/3. Subsequently, a notice under Section 80 was also served on the State to made good the payment but eventually no payment was made so the civil suit was filed.

11. Perusal of the statement of PW-1, Krishna Kumar Verma, who is clerk in CMO office would show that he admitted to have given the order to the plaintiff from the office. Further the documents Ex.P/4 to Ex.P/14, the supply order shows that banners were supplied by the plaintiff and it is admitted by witness on behalf of CMO that supply was made and part payment of Rs.40,500/- was released to plaintiff. Consequently, an amount of Rs.1,04,625/- was to be paid as against the supply made. Though the defence has been raised by the State that entire supply of banner was not made by the plaintiff to the extent of Rs.1,45,125/-, but this fact is negated by the documents Ex.P/4 to Ex.P/14 and the receipt of bills placed on record by Ex.P/16 to Ex.P/26. The oral statement made by the DW-1, Murlidhar Ghautam, therefore, can not be sustained that no supply of goods were made in view of the documentary evidence of receipt of goods. The D.W.-1, Murlidhar Gautam had further stated that after the goods are received, the bills are being issued. Consequently, perusal of the documents Ex.P/16 to Ex.P/26, which are the bills it would be presumed to establish the fact that after supply, the bills were issued. The defence though have been raised that certain goods were not received, but perusal of the case file would show that nothing has been placed on record so as to establish that certain goods were not supplied like the receipt register of receipt of goods . On the contrary the documents Ex.P/16 to Ex.P/26 would show that the goods were received by the State.

12. In the written statement, the defendant had stated that an amount of Rs.40,500/- was paid and an amount of Rs.50,625/- was to be further paid. So in view of admission made if the bills are referred i.e. Ex.P/16 to Ex.P/25, it goes to show that total supply of banner was of Rs.1,45,125/- and out of such, Rs.40,500/- was paid to the plaintiff in the month of March, 1998. In a result, the defence, which is raised that the goods were not supplied can not be sustained. Further the argument which is raised at this appellate stage that Chief Medical Officer was not made as party as a defendant in this case do not have any force in view of the fact that perusal of the written statement would go to show that written statement was filed by CMO of the concerned office. The suit was against the State and the State is juristic person and every department of State is not required to be made as a necessary party to be adjudicated the issue.
13. In a result, after perusal of the entire documents on record I am of the opinion that the finding arrived at by the learned Court below can not be faulted with. Accordingly, the appeal has no merit and it is dismissed.
14. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge