

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

RFA.No. 455 of 2014 ()

AGAINST THE JUDGMENT IN OS 91/2004 of PRINCIPAL SUB COURT, PALAKKAD
DATED 29-08-2013

APPELLANT/DEFENDANT:

THE FOOD CORPORATION OF INDIA
REPRESENTED BY ITS SENIOR REGIONAL MANAGER
FOOD CORPORATION OF INDIA
THIRUVANANTHAPURAM - 695 004.

BY ADVS.M/S.VARGHESE & JACOB
SRI.P.JACOB VARGHESE (SR.)
RI.VARGHESE M.EASO, SC, FOOD CORPORATION OF INDIA
SRI.VIVEK VARGHESE P.J.

RESPONDENT/PLAINTIFF: :

MR. A.E. ABDUL SALAM, AGED ABOUT 50 YEARS
S/O.HAJI P.A.AHAMED EBRAHIM, DOOR NO.11/175
PAZHAYAKOTTAI, PALAKKAD, PIN: 678 001.

R1 BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
R1 BY ADV. SRI.MEIJO KURIAN PUVATHINGAL
R-R1 BY ADV. SRI.GEEN T.MATHEW
R-R1 BY ADV. SRI.BABU SHANKAR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
06-08-2015, ALONG WITH CO. 84/2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

**R.F.A.No.455 of 2014 &
Cross Objection No.84 of 2014**

Dated this the 6th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is the defendant in O.S.No.91/2004 on the file of the Principal Sub Court, Palakkad and the respondent is the plaintiff who has filed the cross objection. The parties are before this Court for the second time. The suit was once dismissed against which appeal was filed by the plaintiff before this Court as R.F.A.No.767/2010. The above appeal was allowed by judgment dated 16/10/2012. The Division Bench remanded the matter for fresh consideration and the parties were directed to file statements.

2. It is the submission of the learned Senior Counsel for the appellant that for fixing the amount due to the plaintiff, this Court has issued a specific direction in paragraph 6 of the judgment in R.F.A.No.767/2010. But the court below decreed the suit based on the

statement filed by the plaintiff. Therefore, it is submitted that the matter will have to be sent back again for appropriate consideration after allowing opportunity to both sides to file their statements in tune with the formula evolved by this Court on the earlier round of litigation.

3. As far as the cross objection filed by the plaintiff is concerned, it is in respect of a portion of the judgment of the trial court. The learned counsel for the plaintiff submits that actually there were some mistakes in the calculation statement filed by the plaintiff also and therefore it is proper that the matter is considered afresh.

4. For easy reference, we extract herein below paragraph 6 of the judgment in R.F.A.No.767/2010:

“ The “embarkment road” has a distance of 900 metres. The FCI rounded it off at 1 KM for fixing the rate it has provided in the schedule at serial No.2 This is the submission of both sides before us. The total distance traversed through the “industrial estate road” is 2.2 Kms. Taking both these yard sticks into consideration and applying the doctrine of approximation, we are of the view

that ends of justice would be satisfied if the total distance traversed is taken as 2 KM instead of 1 KM, and the rate that would be applied is therefore the rate provided in entry 2 multiplied by '2'. This means that for 100 bags weighing at 30 KG, the rate quoted by the plaintiff should be doubled to fix the amount actually due to the plaintiff per every 100 bags. This formula has to be applied and the total amount due to the plaintiff has to be re-worked in the light of this. There is no dispute between the parties as to the quantity of food grains.”

6. Evidently the calculation will have to be made in tune with the findings therein. The plaintiff filed the suit after he was awarded a contract by the Food Corporation of India to transport food grains, in bags, from Olavakkod Railhead to FCI godown.

7. We therefore allow the appeal and set aside the judgment. We also notice that the Division Bench as per order in I.A.No.102/2013 had issued a clarification by its order dated 31.1.2013. We extract the relevant portion of the clarification.

“ Hence, this I.A. Is allowed clarifying that the direction contained in the judgment dated 16.10.2012 shall be carried out on the basis that the claim of the appellant for

the extra distance traversed with regard to Palakkad Town
Railway Goods Shed is also limited to 1 Km.”

The same will also be borne into mind by the court below while considering the matter afresh. Both the parties will file fresh calculation statement before the court below. It is also submitted by the learned counsel on both sides that no fresh evidence is required. Since the matter is remanded back, the appellant and the cross objector will be entitled for refund of the court fee paid. It is also stated that pursuant to the interim order dated 4.7.2014, the admitted amount to the tune of ₹4,02,000/- has also been paid. The parties will bear their costs in the appeal and the cross objection. The parties will appear before the court below on 15.09.2015.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE