IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.2955 of 2010 (O&M)
Date of decision: 6.4.2015

Food Corporation of India

... Appellant

Versus

Vijay Pal Maggu

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Santokh Singh, Advocate,
for the appellant.

Mr.Kulbhushan Sharma, Advocate,
for the respondent.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The plaintiff brought a suit for recovery of ₹ 1,30,000/- against the defendant Food Corporation of India for refund of the amount of security deposit as performance guarantee together with interest as claimed till realization. The plaintiff and the Corporation were bound by an award of labour contract executable at Rail Head, Faridabad for loading and unloading of wagons carrying food grains. The contract was executed in the years 1995 and 1997. It was claimed in the suit that the security deposit was refundable after completion of contract and issuance of NOC by the defendant. The period of contract expired on 1st November, 1997. Plaintiff demanded refund of security deposit which was denied by the Corporation. The suit for recovery of money was instituted on 31st October, 2000.

2. In defence, the Corporation pleaded that the work was not completed according to the contract. As a matter of fact, the Corporation is owed money by the plaintiff. The dispute between the parties arose out of shortage of food grains delivered at destination in South India in the process of loading and unloading at the Rail Head in the distant State. The trouble began when there was short delivery of goods at the point of destination.

3. The trial Court dismissed the suit on 21st April, 2009. The learned trial Court found a serious flaw on the part of the plaintiff in failure to furnish Clearance Certificate of the goods loaded for transport at departure point. The evidence in the case is mostly documentary.

4. The appeal before the learned Additional District Judge, Faridabad has succeeded and the decision of the learned trial Judge has been reversed. Learned lower Appellate Court has held that the plaintiff was not responsible as per contract Ex.D2 to ensure safety of goods in transportation. Under the labour contract, the plaintiff was required only to load the food grains at Railway Head, Faridabad and not be accountable for loss caused during transportation of goods which were to be unloaded by another contractor at the destination point. Thus the loss of 23 bags of food grains during carriage could not be attributed to the plaintiff and that too without conducting any enquiry or fixing liability on the party at fault. Therefore, the action of the Corporation in deducting the price of 23 bags from the amount of security deposit by the plaintiff was not genuine but was to the contrary illegal and arbitrary. The trial Court, thus, committed error

on the question of impact of Clearance Certificate and non-production of which would inevitably fasten liability on the plaintiff. The Clearance Certificates were with respect to the contributions towards the Employees Provident Fund under the Employees' Provisions Funds & Misc. Provisions, Act, 1952. Hence, the Corporation had itself deducted the EPF contributions towards labourers engaged to perform the work of loading from the amounts paid to the plaintiff. Then the first appellate Court was correct in holding that by no stretch of imagination, it can be held that the plaintiff had defaulted in payment of EPF contributions or anything depended on furnishing the Clearance Certificate which became the reason for withholding the security deposit. Therefore, defendants action was unlawful and based on irrelevant considerations.

5. The defence of the Corporation as per Clause XII-A of the contract Ex.D2 was not correct as the Corporation was entitled to any set off amount due from the plaintiff. This clause provided that any sum of money due and payable to the contractors (including security deposit returnable to them) under the clause, the contract may be appropriated by the Corporation and set off any claim against the Corporation for payment of any sum of money arising out of or under any contract made by the contractors with the Corporation.

6. The appeal has been allowed against which the Corporation is before this Court in second appeal.

7. Having heard the learned counsel for the parties, I have no doubt that the value of shortage of 23 bags cannot be fastened on the plaintiff, in case some of the goods were lost in transit. The Labour contract

did not guard against loss after dispatch or if it were to happen, it would be fastened on the contractor. The loading was done by the plaintiff under supervision of FCI staff and unloading at the destination point was done by another contractor under a different contract. If 23 bags were lost in the way, the plaintiff could not be blamed and his security deposit was eminently refundable, and if delayed, would earn reasonable interest which remained unpaid till the filing of the suit. No factual or legal issue has arisen much less a question of law or a substantial question of law against the money decree. No ground warranting interference is made out.

8. The appeal to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

April 6, 2015
Paritosh Kumar