IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1220 of 2012 (O&M)
Date of Decision.18.09.2015

M/s Hanuman Industries ....Appellant

Versus

Punjab State Warehousing Corporation ......Respondent

Present: Mr. M.K. Singla, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. Notice of motion. Ms. Deepali Puri, Advocate accepts notice on behalf of the respondent. With the consent of both counsel, I have heard the appeal for final disposal and I am of the view that the appeal in RSA No.1220 of 2012 is without merit and I set out the grounds as under.

2. The plaintiff is the Punjab State Warehousing Corporation, Chandigarh which had auctioned for sales of damaged foodgrains in public on 20.02.2002. As per the terms of the auction, 25% of the amount at which the auction bid amount was accepted, was required to be paid on the date of auction and the balance was to be paid within a period of 10 days. 25% of the same was stated to be amount of ₹ 10 lacs and the plaintiff-Warehousing Corporation filed the suit contending that

the defendant who bid at the auction and who was declared as successful purchaser had not tendered the amount which was to be paid on the date of auction nor the balance of amount what was required to be paid within a period of 10 days. The plaintiff had, therefore, perforce to re-auction the same and in re-auction held on 18.06.202, one AB Industry was declared to be the highest bidder at ₹ 271/- per quintal and ₹ 9.5 lacs was paid on the said day as constituting 25%. The auction, however, was cancelled on the ground that in the decision of the Managing Director, the auction was vitiated by “pooling” which I believe is a cartel set up to peg down the rates and consequently, after the cancellation, a fresh auction was held on 25.09.202. The plaintiff was vindiated fully that it secured a relatively higher rate at ₹ 273.69/- per quintal. There had been a loss at the auction all the same on account of lower rate which the re-auction fetched and the suit was, therefore, being filed for recovery of the balance of ₹ 27.31 per quintal which was the loss assessed and the plaintiff-Corporation took also the terms of the auction that provided for collection of interest at 18% per annum and storage charges at 10 paise per bag per day subject to minimum 40 paise per bag.

3. The suit was contested by the defedant-appellant on a plea that he had been actually ready to pay the amount of ₹ 10 lacs and he even prepared a draft and produced the same at the trial Court to show his bona fide that he was actually prepared the draft but the plaintiff-Corporation did not receive the same. The contention was that there was no justification at all for not accepting the plaintiff's offer and there had been no fault on his part. The re-auction was, therefore,

unjustified. The second contention was that if claim to damages could be sustained, it could be only upto the date when the re-auction was held on 18.6.2002 and the damage cannot be calculated upto later date when a further re-auction was made on 25.09.2002. The claim of interest and damages ought to have been, therefore, sought with reference only to the date of the second re-auction and could not be arbitrarily done to a later date as the plaintiffs have done. Yet another contention is that rate of interest as claimed was not justified and that further the claim to storage charges was also unacceptable. The trial Court granted the decree for damages but declined relief of storage charges and allowed for interest @12%. In appeals filed by the Corporation and the plaintiff, the Appellate Court affirmed the trial Court decision with reference to damages and further affirmed also the decision declining the relief of storage charges and sustained also the interest as already awarded by the trial Court. The appeal by the defendant is with reference to the assessment of damages made by the Courts below.

4. Learned counsel appearing on behalf of the appellant would reiterate the argument made before the Court below and would point out to me the fact that he had actually prepared the draft standing in the name of the plaintiff for establishing that he had even prepared to pay the money but only the Corporation was declining to receive the same. It was the further contention that the plaintiff had no locus standi to make the claim, for, the Warehousing Corporation was merely an intermediary body for causing sale and it was not itself the owner. It was only FCI which was the owner and the claim could have been made only

on behalf of the FCI.

5. I reject the contention of the defendant that he had been ready to perform his part of the conract and that readiness would be shown by the fact that he had prepared a draft standing in the name of the Corporation and that document was also filed in Court. It is no good for the defendant to contend that he had made the draft ready in his hand and that it was not accepted by the plaintiff-Corporation. If there had been a denial of acceptance, the obvious action that a sensible person would take, is to issue a notice demanding the acceptance of the offer and allowing for the payment of balance and claim the goods which had been put up in auction on that day. The counsel admits that there is no ostensible action for tender of the draft to the plaintiff nor was any proof of payment of the balance at any time within 10 days as the contract stipulated. Therefore, the contention that he had made the draft as a proof that he was willing to pay but the plaintiff-Corporation did not receive the same cannot be accepted by this Court.

6. The contention that the claim to damags could be done only upto the stage when a re-auction was held on 18.6.2002 is also without merit. The fundamental principle in law is that a person who claims damages must mitigate the claim to the maximum. If the re-auction held on the second auction on 18.06.2002 was for ₹ 271/- and if further re-auction had brought an amount even lesser than that, it could be stated that the plaintiff cannot succeed that there had been no mitigation of damages to accelleration of damages. In this case, a re-auction was held on the ground mentioned in the pleadings that there had been pooling of bids and it was, therefore, essential to cancel the same and go for 3rd

auction which literally vindiated the plaintiff's contention that there had been a pooling of bidders by the fact that the 3rd re-auction fetched higher amount than what the 2nd re-auction did. That benefit of ₹ 3.69/- had literally passed by the plaintiff to the defendant in the manner in which the damages had been worked out, namely, the damage claimed was the difference between ₹ 301/- to ₹ 273.69 which had been difference. I must, therefore, observe that there was a mitigation of damages. As far as the defendant was concerned, he cannot complain that the 3rd re-auction was not justified. The claim for damages was, therefore, perfectly competent.

7. The further question is whether the Corporation was competent to claim the amount when it was not itself the owner. The rights of purchaser will have to be governed by the terms of the auction. If the terms of the auction put up by the Punjab State Warehousing Corporation provided that the person who brought the property for auction namely the Managing Director was entitled to claim damages, it shall be the Corporation who will be competent to sue as purchaser and not the FCI. It is wholly an internal arrangement between Warehousing Corporation and FCI to settle the accounts between themselves and the defendant who was the purchaser at the auction through the conditions that allowed the Corporation to re-auction in the event of the failure to perform the part of the contract, then it can be only the plaintiff Corporation who could lawfully institute the action and the issue of ownership of the goods which were sold is irrelevant. To a limited extent of considering the person competent, it will be the party from whom the defendant bid at the auction will be entitled to collect the money and

the defendant canot have argument that the plaintiff-Corporation did not have the locus standi.

8. I find nothing substantial for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 18, 2015
Pankaj*