

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 372 of 2015 (O&M)

DATE OF DECISION : 31.03.2015

Punjab State Power Corporation Limited and others

.... APPELLANTS

Versus

M/s Guru Kirpa Trading Company

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Amit Aggarwal and Mr. Gursimranjit Singh, Advocates,
for the appellants.

Mr. Vipin Mahajan, Advocate,
for the caveator-respondent.

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SATISH KUMAR MITTAL, J. (Oral)

This intra-court appeal under Clause X of the Letters Patent has been filed challenging the order dated 16.01.2015 passed by the learned Single Judge, whereby the writ petition (CWP No.3243 of 2014) filed by M/s Guru Kirpa Trading Company (respondent herein) seeking direction to appellants No.2 and 3 herein to refund an amount of ₹ 26,29,283/- deposited by the respondent Company being highest bidder in auction for sale of scrap material, has been disposed of while making the following observations :

“The petitioner has purchased some scrap material from the respondents at Rs. 24,11,100/- and paid the entire amount to the respondent Corporation by 26/27.9.2013. The Corporation

complained of theft of 37.4 MT which meant that the petitioner had lifted the scrap material more than what was sold to him, which was 27 MT and earned a case registered under two FIRs. The criminal prosecution is said to be still pending. The theft ought to relate only to the excess over what was purchased, for, a person cannot be said to have stolen his own goods. Consequently, if the petitioner shall not have the benefit of purchase, it ought to relate only to the excess of goods in respect of which there is an imputation of theft. Considering the fact that out of the total alleged theft, 4 MT was said to have been recovered, the financial equivalent of 6.4 MT alone shall be the amount for which the petitioner would still be answerable, besides rendering him criminally liable, if the imputation of theft is proved. Since the contract has failed, it will be only appropriate that the petitioner is given back the benefit of the return of the money. As far as the Corporation is concerned, they have the benefit of only 4 MT of scrap and rest is lost. Having regard to the fact that the contract stands rescinded and there being no statutory lien available, under Section 30 of the Sales of Goods Act, which is all that a seller can enforce against a purchaser, I would allow for the return of the money to the petitioner by furnishing bank security to a portion of the goods, namely 50% of the value which is paid. I make no assessment for interest and if there is any claim for the same, the entitlement will be assessed on whether allegations of theft is established or not. If the petitioner furnishes security for 50% of the amount, either through a bank guarantee or immovable property security within a period of four weeks from the date of receipt of a copy of this order, the respondent Corporation is bound to return the whole amount. Any further rights of the parties will be worked

out subsequent to the conclusion of the criminal proceedings before the trial court.”

Though there is delay of 13 days in filing the instant appeal and the appellant has filed an application (CM No. 723-LPA of 2015) for condoning the delay, yet we have heard learned counsel for the appellants on merits and have gone through the order passed by the learned Single Judge.

After hearing learned counsel for the parties and going through the impugned order, we do not find any illegality in the order passed by the learned Single Judge. The said order is not only perfectly legal, but it is also an equitable order. Undisputedly, the respondent Company, who had given the highest bid for the scrap and also deposited the bid amount, was not allowed to lift the auctioned scrap on the pretext that a criminal case has been registered against the respondent Company. Even otherwise, out of the total alleged stolen scrap material, 4 MT was said to have been recovered and vide the impugned order, the respondent Company has been asked to furnish security for 50% of the value of the auctioned scrap material, either through a bank guarantee or immovable property security. In our view, when the appellants have not permitted the highest bidder to lift the scrap material, which was sold in auction, they have no right to retain the amount deposited by the bidder on that account. In these circumstances, the learned Single Judge has rightly ordered to refund the whole amount and interest of the appellants has been secured by directing the respondent Company to

furnish security for 50% of the value of the auctioned scrap material. Thus, we do not find any ground to interfere with the order passed by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

March 31, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE