IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4709 of 2012 (O&M)
Date of Decision : 20.10.2015

M/s Sant Gopal Vijay Pal ....Appellant

Versus

Food Corporation of India and another ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rohit Ahuja, Advocate
for the appellant (s).

Surinder Gupta, J.

This is appeal by M/s Sant Gopal Vijay Pal Transporter against the judgment and decree passed by the Court below dismissing the suit for recovery of ₹1,55,935.75 ps. to the plaintiff (appellant).

2. In later part of judgment parties to suit will be referred as plaintiff and defendant as per the civil suit.

3. Plaintiff was awarded a contract of transportation of food grains by Food Corporation of India (defendant) for the year 1999-2000. The contention of plaintiff, in brief, is that a suit amount was outstanding on following accounts:-

Security deposit illegally retained after completion of work on 31.03.2000	₹40,000
Illegal deduction by the defendants on account of demurrage	₹69,810
Interest on the illegally retained security for the period from 18.06.1999 to 26.07.2000 of ₹1,22,525/-	₹24,417
Total interest on Security 01.07.2000 to 17.03.2003	₹19,500
Total	**₹1,53,727**
Payment of Bill No. Vth	₹2,208.75 ps
Grand Total	**₹1,55,935.75**

4. As per plaintiff, he submitted quotation for contract of transportation of food grains from *Mandi* Punhana to Faridabad and Palwal, which was for the year 1999-2000, approved vide letter dated 17.04.1999. Thereafter, the plaintiff carried out the work in terms of approved rates and his period of contract ended on 31.03.2000. As per terms of contract, the defendants were entitled to recover ₹40,000/- by way of security but they deducted a sum of ₹1,62,535/- from various bills of plaintiff. A sum of ₹1,22,525/- was released to plaintiff on 26.07.2000 and the security amount of ₹40,000/- was withheld. Another amount of ₹69,810/- was deducted from the bills of plaintiff towards demurrage imposed by the railways on the defendants. The plaintiff in no manner was liable to pay the same as he was entrusted the contract of transportation of food grains from *Mandi* to godown only. He had nothing to do with loading and unloading of the railway wagons. Another bill submitted by the plaintiff worth ₹2,208.75 ps. also remained unpaid. The plaintiff also claimed interest @ 18% per annum on the due amount.

5. The defendants contested the claim of the plaintiff *inter alia* pleading that the security amount (₹40,000/-) cannot be released till the plaintiff submits 'No Demand Certificate' as he was awarded the contract for transportation of food grains for the period 1999-2000 from Punhana *Mandi* to Faridabad and Palwal vide letter dated 01.06.1999 subject to certain terms and conditions mentioned in M.T.F. duly signed by the plaintiff. It was denied that the defendants had ever agreed to rate mentioned in the letter dated 17.04.1999. The plea of plaintiff

that the defendants had to recover only a sum of ₹40,000/- towards security amount was contested, controverted and denied *inter alia* pleading that the plaintiff himself deposited earnest money in the shape of four demand drafts all dated 05.04.1999, totaling ₹62,000/- and also agreed to get the balance security amount deducted from his bills. He had full notice and knowledge that he had to deposit ₹1,62,525/- towards security. Out of security amount of ₹1,62,525/- a sum of ₹1,22,525/- has since been refunded and remaining security amount is yet to be refunded on submission of 'No Demand Certificate' by the plaintiff. This amount is also liable to be adjusted towards recoveries which may be outstanding and recoverable from the plaintiff. The demurrage imposed by the railways due to lapse on the part of plaintiff in performance of his obligation under the contract was ₹54,810/- and not ₹69,810/-. Under the contract, the plaintiff was required to carry the food grains from *Mandi* to godown and also to carry the same from *Mandi* to railhead directly for loading purposes whenever railway wagons were placed for loading at railhead. Regarding the bill of ₹2,208.75 ps., it was alleged that the same was never submitted by the plaintiff. The demurrage was imposed by the railways for not loading the wagons within stipulated period as the plaintiff failed to supply sufficient number of trucks as well as adequate labour for loading and unloading and transportation. The plaintiff is not entitled to recover any amount as claimed in the suit.

6. Pleadings of parties led to the framing of issues, as follows:-

(i) Whether the plaintiff is entitled for the recovery of ₹1,55,935.75 ps. with the rate of interest @ 18% per annum? OPP.

(ii) Whether the plaintiff has no cause of action to file the present suit? OPD

(iii) Whether the plaintiff has no *locus standi*? OPD

(iv) Whether the suit is not within limitation? OPD

(v) Relief.

7. The suit was dismissed by the Civil Judge (Junior Division), Faridabad with the observations that the terms and conditions mentioned in letter dated 17.04.1999, were not settled between the parties regarding the rate of transportation and other terms of the contract. The terms mentioned in M.T.F. governed the contract of the parties which were not produced or proved on record. It was observed that onus was on the plaintiff to prove terms and conditions of the contract, which is very basis of his case and he had failed to do so. Regarding the security amount of ₹40,000/-, the trial Court noticed that the plaintiff had not submitted 'No Demand Certificate', as such, the security amount has been rightly withheld by the defendant-department. On the recovery of ₹54,810/- towards demurrage charges, learned Civil Judge (Junior Division) observed that in the absence of terms and conditions of the contract placed and proved on record, legality and validity of recovery could not be ascertained, as such, the plaintiff is not entitled to recover this amount. For the recovery of ₹2,208.75 ps., it was observed that the plaintiff had failed to prove that this bill was submitted to the

defendants.

8. Ist Appellate Court upheld the findings of learned Civil Judge (Junior Division) with observations in paras 14 to 17 as follows:-

> *"14. It is well established principle of law that the plaintiff is to stand on his own legs and he is not to take the benefit of the weakness of the defendant's case. Coming to the case in hand, I find that though appellant-plaintiff has examined himself as PW-2 and has further produced and examined Sh. Shyam Sunder, Assistant, FCI, Faridabad, as PW-1 but he has failed to discharge his burden of the issues the onus of which was upon him, through cogent and convincing evidence. On perusal of the document Ex. P-20 addressed to the appellant-plaintiff by respondents-defendants, it is clear that the terms and conditions regarding period and security were subjected to the approval of the Senior Regional Manager, FCI, HRO Chandigarh. On perusal of the letter dated 17.04.1999 Ex. P-1, it is crystal clear that it is an offer on behalf of the appellant-plaintiff to the respondent-defendant. The last words of this letter are "We hope our rates, terms and conditions are suitable to you". So it emanates from this that this letter was in the form of an offer. It is rightly held by learned lower Court that it emanates from the letter dated 17.04.1999 that it was only an offer by the respondents-defendants and was subject to approval of Senior Regional Manager, Chandigarh as per the terms and conditions mentioned in the letter Ex. P-20 dated 01.06.1999. The appellant-plaintiff has failed to place on record any*

approval letter of Senior Manager. So, it does not lie in the mouth of appellant-plaintiff to say that the terms of letter dated 17.04.1999 were accepted by the respondents-defendants. Since the letter dated 17.04.1999 was only an offer and there was no term in Ex. P-20 regarding payment of interest, so the appellant-plaintiff is not entitled to any interest on the delayed payment of security.

15. *So far as the security amount of ₹40,000/- alleged to be withheld by respondents-defendants is concerned, the case of the respondents-defendants is that the same was to be refunded upon the production of No Demand Certificate by the appellant-plaintiff and as the same was not submitted, therefore, respondents-defendants has not refunded the amount of ₹40,000/- to the appellant-plaintiff.*

16. *Further, the appellant-plaintiff has claimed the recovery of ₹69,810/- as demurrage while according to respondents-defendants, ₹54,810/- were deducted as demurrage. There is substance in the arguments advanced on behalf of respondents-defendants that the amount of ₹54,810/- was ordered to be deducted vide document Ex. P-3 and this contention of the respondents-defendants seems to be more reliable as in Ex. P-4 alongwith demurrage charges in respect of MTC, an arrow has been marked which points to ₹54,810/-.*

17. *So far as the bill of ₹2208.75 is concerned, the perusal of bills Ex. P-22 and Ex. P-23 reveal that there is nothing on those bills to show that these were deposited with the respondents-defendants and respondents-defendants wrongly withheld*

> *the same. There is no receipt on the file to prove the fact that any official of the respondents-defendants has received the said bills from the appellant-plaintiff. The learned lower Court has rightly held that the bill is dated 21.09.1999 while suit has been filed on 27.03.2003 and as such recovery of said bill is barred by limitation. Neither oral nor the documentary evidence placed on file by the appellant-plaintiff help him to prove his case. On the other hand, respondents-defendants have successfully rebutted the evidence placed on file by the appellant-plaintiff."*

9. I have heard learned counsel for the appellant, perused the paper-book and the lower Court record with his assistance.

10. The recovery of ₹1,55,935.75 ps. was sought by the plaintiff on four counts, which are as follows:-

- (i) The security deposited of ₹40,000/- retained by the defendants.
- (ii) The demurrage of ₹69,810/- wrongly deducted from the bills of plaintiff.
- (iii) Non-payment of bill of ₹2,208.75 ps.
- (iv) Interest amount on the wrong deductions/retention of payments due to the plaintiff.

11. Learned counsel for the plaintiff has argued that both the Courts below have wrongly repelled the plea of plaintiff that terms and conditions of the contract awarded to the plaintiff were as per letter dated 17.04.1999 (Ex. P-1). It was this letter of plaintiff which was accepted by the Food Corporation of India

while awarding the contract, meaning thereby, that by implication terms mentioned in this letter were accepted. There was no term of contract that the plaintiff will carry food grains and arrange labour for loading the same in wagons provided by the railways. The defendants had not led any evidence to prove that any demurrage was levied and paid to the railways and that demurrage was due to lapse on the part of plaintiff. The contention of the defendant is that the terms and conditions of the contract were governed by M.T.F. executed by the plaintiff but the same was not produced on record. It was in the possession of defendants and the Courts below have wrongly drawn inference against the plaintiff for non-production of the same.

12. Substantial question of law which arise for determination in this case as follows:-

> Whether in the absence of terms and conditions of contract proved on record the defendant could withhold the money due to the plaintiff under the contract?

13. On perusal of the lower Court record, it transpires that the plaintiff had alleged that his security amount of ₹40,000/- was illegally withheld after 26.07.2000 without any justification. The plea of defendants is that this amount was not released as he had not submitted 'No Demand Certificate'. The plaintiff while appearing as PW-1 had admitted that he had not submitted 'No Demand Certificate' till date.

14. It is pertinent to take note of the fact that plaintiff had submitted tender dated 05.04.1999 for taking contract of

transportation of food grains for the year 1999-2000. The letter (Ex. P-1) was written by the plaintiff to District Manager, Food Corporation of India, Gurgaon giving his terms for the contract as per tender held on 05.04.1999. Vide letter dated 01.06.1999 (Ex. P-20), the plaintiff was allotted the contract subject to the term that he will deposit ₹1,45,000/- as security and ₹10,500/- shall be deducted from his first bill and the balance @ 5% of each bill. The other terms and conditions of the contract were also mentioned in this letter. It was also mentioned in this letter that terms and conditions mentioned in letter dated 17.04.1999 (Ex. P-1) regarding period of contract and security were subject to approval of Senior Regional Manager, FCI, HRO, Chandigarh. No approval letter issued to the plaintiff was produced or called by him. The terms and conditions of contract are usually mentioned at the time of calling tender. The plaintiff had not proved or called the application submitted by him as per notice of tender or M.T.F.

15. The substantial question of law, which arises for consideration in this appeal, is as to whether in the absence of terms and conditions of the contract, produced and proved on record, the plaintiff is entitled to recover from defendant the security amount and the amount recovered towards demurrage from him?

16. So far as the amount of bill of ₹2,208.75 ps. is concerned, the Courts below have observed that no such bill was produced. However, learned counsel for the plaintiff referred to the bill (Ex. P-23) of this amount and has argued that this bill

was given to the defendants but they did not accept the same. The bill (Ex. P-23) is dated 21.09.1999. The plaintiff had stated that this bill was not accepted by the defendants. However, there is nothing that before filing the suit on 27.03.2003, the plaintiff had ever issued any notice to the defendants about non-acceptance of the bill. The suit seeking recovery of amount of this bill, as such, is time barred as well.

17. Admittedly, the defendants have retained ₹40,000/- towards security amount. The plaintiff admitted that he had never submitted any 'No Demand Certificate' to claim this amount. On the other hand, Shyam Sunder DW-1, Manager, Food Corporation of India stated that the amount of ₹40,000/- has been adjusted against the advance of ₹5,90,265/- for which he did not submit his bills. He had produced vouchers to this effect on file as Ex. D-1 and Ex. D-2. Due to non-submission of 'No Demand Certificate', the plaintiff is not entitled to recover the amount of ₹40,000/- which has since been adjusted against his other outstanding amount.

18. A sum of ₹54,810/- was deducted from the bills of plaintiff towards demurrage charges, though, the plaintiff had alleged that amount recovered was ₹69,810/-. The Courts below on perusal of the record have found that a sum of ₹54,810/- was recovered towards demurrage charges and not ₹69,810/-. The question which arises in this case is, as to whether in the absence of terms and conditions of the contract being produced and proved on file, the Food Corporation of India was entitled to make recovery on a particular head without

explaining the same and proving that the contractor was given opportunity to explain before making this recovery?

19. Except for bald statement of DW-1 Shyam Sunder that a sum of ₹54,810/- was imposed as demurrage by railways and this amount was recovered from plaintiff, the defendants had not produced any evidence to prove that this demurrage was caused due to lapse in performance of his duties by the plaintiff under the terms of contract allotted to him for the period April, 1999 to March, 2000. A sanction order (Ex. D-3) has been placed on record as per which a sum of ₹3,17,525/- was ordered to be recovered on account of demurrage charges from the bills of HTC/MTC, as per details given in that letter. Against the name of plaintiff a sum of ₹54,810/- was shown. Here onus was on the defendants to prove as to which term and condition was violated by the plaintiff and the demurrage of ₹54,810/- was imposed by the railways because of the lapse in performance of his duties under the contract by the plaintiff. No such evidence has come on record. There is nothing that any notice was given to the plaintiff before making recovery of this amount giving him opportunity to explain the lapse, if any, on his part. Apparently, this amount has been recovered by the Food Corporation of India in an arbitrary manner and the plaintiff is entitled to recover the same from defendants. Both the Courts below have not looked into this aspect of the case and have non-suited the plaintiff on the ground that terms and conditions of the agreement have not been produced and proved on record by plaintiff. Non-production of terms and conditions may be detrimental to the claim of

plaintiff while seeking any recovery from the Food Corporation of India for the job performed by him but if some amount has been deducted from the bills of plaintiff, the onus was on the Food Corporation of India to prove as to on what ground that amount was withheld, deducted or recovered. Substantial question of law as framed in this case is answered accordingly.

20. In view of above discussion, this appeal has merit and is partly accepted. Suit of the plaintiff-appellant is partly decreed for recovery of ₹54,810/- with proportionate costs throughout and also with *pendente lite* and future interest @ 9% per annum from the date of filing of the suit till the date of recovery.

October 20, 2015 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No