

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

R.S.A No. 2171 of 2015 (O&M)

Date of decision:- 19.05.2015

State of Haryana through Collector, Jind & ors ...Appellants

Versus

Firm M/s Khurania Agro India Kaitha through ...Respondent
its proprietor Ram Niwas

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Siddharth Sanwaria, DAG Haryana

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

RITU BAHRI J.

C.M. No. 5687-C of 2015

For the reasons mentioned in the application, delay of 78 days in filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 2171 of 2015

The present regular second appeal is directed against the judgment and decree dated 27.11.2014 passed by Addl. District Judge, Jind whereby the judgment and decree dated 13.11.2013 passed by the Civil Judge (Jr Divn.) Narwana was upheld whereby the suit of the

plaintiff/respondent (herein after to be referred as 'the respondent') was partly decreed.

Brief facts of the case put forth by the respondent is that the respondent-firm is a registered firm and Ram Niwas is its sole proprietor. Appellant Nos. 2 and 3 on the directions of appellant No. 1 made an advertisement for the auction of rice and paddy. The auction was duly conducted on 10.10.2008. On 10.10.2008, respondent firm participated in the auction lot No. 9,13,14 and 15 of rice measuring 5585 quintals and respondent deposited Rs.16,78,500/- to appellant @ Rs.100+200 per quintal whereas rest of the money was to be deposited after confirmation of auction by the appellants but appellant Nos. 2 and 3 did not confirm the auction of respondent as they wanted to supply to their favourite customers by causing loss to Mahabir Rice Mill, Narwana. Subsequently, the rice was sold at half of its price by appellant Nos. 2 and 3 causing loss to the State. The respondent had deposited Rs.50,00,000/- and requested to release the rice but appellants refused to release the rice saying that vide letter dated 14.11.2008, the matter relating to auction is under the consideration of the Government and till date auction has not been confirmed. The security deposited by the respondent was also not returned to him.

On notice, the appellants appeared and filed their joint written statement admitting that pursuant to the advertisement dated 10.10.2008, lot No. 9,13,14 and 15 of rice measuring 5585 quintals was allotted to the respondent firm by the committee. Vide letter dated 23.10.2008, successful bidders were informed to deposit the requisite amount within the required period to get released the rice and it was warned that otherwise security amount shall be forfeited. Another notice dated 21.10.2008 was issued to the respondent but he did not deposit the required amount by 30.10.2008 despite the instructions and therefore, order was passed to forfeit the security amount deposited by the respondent, vide letter dated 31.10.2008 and 06.11.2008. The respondent-firm was issued several notices to get released the rice.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the decree for mandatory injunction as prayed in the plaint? OPP*
- 2. Relief.”*

After going through the evidence led by the parties, the trial Court partly decreed the suit of the respondent on the ground that after the auction was held on 10.10.2008, lot No. 9,13,14 and 15

of rice measuring 5585 quintals was allotted to the respondent firm by the committee. He deposited Rs.16,78,500/- with the appellants @ Rs.100+200 per quintal. The balance money was to be deposited after confirmation of auction by the appellants. Reference was made to para 9 of Ex D3 which provides condition as under:-

“Subject to the acceptance of highest bidder by the competent authority, the successful bidder will deposit full payment with District Food and Supply Controller, Jind. The release order can be obtained by the Successful Bidder in a phase manner but he will have to life the total stocks as per schedule shown at Sr. No. 3 from the date of acceptance of his bid.”

The appellants neither signified his approval or rejection of the bid, the respondent served notice dated 09.08.2010 on appellants revoking and withdrawing his bid and calling upon them to refund the amount representing the initial payment made by him. The appellants issued a letter Ex D4 wherein respondent was directed to deposit full payment by 14.11.2008 pertaining to lot No. 12,13 and 14 otherwise a penalty @ 0.15 paisa per quintal per day will be charged from him and in case of default, security amount of Rs.300/- per quintal would be forfeited. Even if the auction was confirmed by the appellants, then the respondent was required to deposit the

remaining balance amount with penalty with regard to lot No. 12,13 and 14 by 14.11.2008 which is a grace period and he fulfilled this condition. There was no reason to forfeit the security amount of respondent regarding lot No. 12,13 and 14. Regarding lot No. 9, the respondent was required to deposit full payment by 06.11.2008 and there is evidence on record that Rs.1,14,000/- on this account was forfeited by the appellants as per the terms and conditions of the auction and there is no illegality in doing so. Moreover, the respondent has placed on record letter dated 14.11.2008 Ex P11 to prove that auction dated 10.10.2008 was rejected by the Finance Department as reserve price was not fixed and the case was stated to be under consideration with the Government, thus the respondent was not liable to deposit the full payment regarding lot No. 12,13 and 14 as per condition No. 9 of Ex D3.

Once the auction was not confirmed as per letter dated 14.11.2008 Ex P11, the respondent was not liable to deposit the full payment regarding Lot No. 12,13 and 14 as per condition No. 9 of Ex D3, vide order dated 21.10.2008 Ex D5 auction was confirmed and respondent was required to deposit the full payment by 14.11.2008 but deposited the amount by 14.11.2008. Subsequently security was forfeited of lot No. 9.

Thus, no fault can be found with the findings rendered by the Courts below, which are based on fact and law. There is no illegality much less perversity in the findings of the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

May 19, 2015

G Arora

(***RITU BAHRI***)
JUDGE