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

RSA-2144-1989

Date of decision : 13.01.2016

State of Haryana and another

...Appellants

Versus

Kartar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Garg, Addl. A.G., Haryana
for the appellants.

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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are in regular second appeal against the judgment and decree of lower Appellate Court, whereby the suit of the respondent-plaintiff has been decreed and the appellants-State has been restrained from not imposing the penalty to the tune of ₹ 73,300/-. The case set up by the respondent-plaintiff that on 14.01.1982, he had submitted a tender for providing sewage scheme, Sonapat "construction of

36" I/D Brick Circular Sewar Manwhole etc., to the concerned officers for an approximate costs of ₹ 73,300/-. As per the tender Form F-1, the respondent-plaintiff was neither bound to withdraw or modify the underwork for 3 calendar months from the date of opening the tenders, otherwise, the earnest money stood forfeited. The tender was opened on 14.01.1982 and the appellants-defendants were bound to inform the respondent-plaintiff about its acceptance latest by 13.04.1982. However, no intimation of the acceptance was ever sent to the respondent-plaintiff till 13.04.1982 and thereafter, the respondent-plaintiff was not bound to do the work on the terms and conditions given in the tender. It has been alleged that the appellants-defendants have accepted the tender on 14.04.1982, though it was a holiday and vide letter dated 15.03.1984 sought to recover ₹ 73,300/- being 10% of the Bid amount. The appellants-State contested the suit by raising the plea that the letter of acceptance was received by the daughter of the respondent-plaintiff, thus, contractor was bound to undertake the work, having failed to do so, the respondent-plaintiff had rightly been imposed the penalty. The trial Court on the basis of oral and documentary evidence, dismissed the suit, however, the lower Appellate Court reversed the findings.

Mr. Vishal Garg, Addl. A.G., Haryana, State counsel
appearing on behalf of the appellants-defendants, in support of

his grounds of appeal, submits that once the letter of acceptance of tender was received by the daughter of the respondent-plaintiff and her signatures on comparison from the signatures available on the letter were found of her, the Court formed an opinion that the tender was validly accepted and the respondent-plaintiff was bound to perform his part of the work and rightly so, the penalty had been imposed. Thus, there is illegality and perversity in the impugned judgment and decree passed by the lower Appellate Court decreeing the suit.

The notice of the appeal was sent to the respondent-plaintiff and received back with the report that he has died.

I have heard the learned counsel for the appellants-defendants and appraised the paper book.

The fact remains that after the acceptance of the tender, a contract was required to be entered into between the parties. No such contract had been entered into. In the absence of the contract which envisaged the imposition of the penalty, the State could not impose the penalty as noticed above. Even otherwise, no explanation has come forth in not sending the letter prior to 13.04.1982 or on such day, what was the necessity of sending the letter on 14.04.1982 being holiday as it was not that urgent work that the letter was required to be sent on holiday. There is a serious doubt upon the receipt of the letter of acceptance by the daughter of the deceased respondent-

plaintiff. I am of the view that the State could not invoke Clause 25-A of the Agreement which has not been signed and nor be executed.

Keeping in view the aforementioned observations, I do not find any illegality and perversity in the findings rendered by the lower Appellate Court by injuncting the appellants-State not to impose the penalty, much less, no substantial questions of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

13.01.2016
yogesh

(AMIT RAWAL)
JUDGE