

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

**Regular Second Appeal No.792 of 2010 (O&M)
Date of Decision: August 03, 2016.**

Badri Ram @ Badri Dass @ Badri Nath

.....APPELLANT(s).

VERSUS

Food Corporation of India, Jalandhar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sarju Puri, Advocate
for the appellant.

Mr. Punita Sethi, Advocate
for the respondent.

SURINDER GUPTA, J.

This is appeal by defendant Badri Ram alias Badri Dass alias Badri Nath against whom the claim filed by Food Corporation of India for recovery of ₹11,78,672.68p, was decreed by the first Appellate Court with interest @ 4% per annum from the date of filing of the suit till its realisation.

2. The case of plaintiff Food Corporation of India, in brief, is that in response to the tender enquiry, defendant Badri Ram alias Badri Dass submitted tender agreement to work as contractor for loading, transportation of foodgrains and allied materials of Corporation in and around Banga, District Jalandhar. He offered to work as contractor @ 9% below the schedule of rates. The tender was opened in the presence of defendant on

12.08.1986 at 03.00 p.m. and accepted by the plaintiff. As per the terms of the tender, the contractor had to work for one year with right of extension, for a further period of three months at the approved rate. Acceptance was conveyed to the defendant on 12.08.1986. Vide telegram No. S&C/2/7/10/86 dated 06.09.1986, the defendant was asked to join duty within 7 days and also to complete other formalities. The defendant had deposited ₹10,000/- as security at the time of submitting tender and also deposited ₹15000/- on 10.09.1986 in response to the acceptance of his tender and submitted joining report on 12.09.1986 in the forenoon. He started working at the Food Storage Depot, Banga as per the terms of the agreement by lifting the goods from Food Storage Depot and submitted bills from time to time, out of which 5% was deducted towards 50% of the balance security. In this manner, defendant had deposited total security amount of ₹28,134/-. He carried out the work upto 21.10.1986 and then stopped working on the ground that truck owners had formed a union and increased the transportation rates, thereby committed breach of contract. On 21.10.1986, he gave in writing that he was not going to work and other arrangement be made by the plaintiff. He was asked to resume the work but he did not turn up and under exigencies, the Corporation (plaintiff) was compelled to make alternate arrangement at the costs of the defendant as per the terms and conditions of the agreement. Services of Contractor Gian Chand were taken to get the unfinished work completed @ 85% to 97% above the scheduled rate. Gian Chand completed the unfinished work from 22.10.1986 to 11.09.1987 i.e. for the unexpired period of contract and had to pay ₹12,04,599.82p in excess, over and above the rate settled with the

defendant. After adjusting the security amount, the plaintiff claimed the recovery of ₹11,78,672.68p.

3. The defendant filed written statement thereby denying all the facts including the submitting of any tender, signing of agreement, depositing of tender amount and security amount, giving of joining report and starting work of loading. He alleged that he never worked with the plaintiff and he has been unnecessarily dragged in this litigation. He alleged a racket by the officials of the plaintiff and Gian Chand contractor of Banga at the behest of whom, the entire drama was played. The lowest tender was submitted with the active connivance of Gian Chand in the name of defendant by some imposter. It was not feasible to complete the work of transportation at such a low rate. The defendant alleged that he is earning his livelihood by selling sweet lime water and cold drinks on a cart before the office of Food Corporation of India, Banga. The entire work of loading and unloading was being done by Gian Chand. Under a plan, Gian Chand got a contract at high rate after doing the work for few days on behalf of imposter. The defendant had got no shop, no house, no bank balance but he has been shown having property worth lacs. The suit has been filed by the officials of Food Corporation of India to save their skin.

4. The plaintiff re-asserted its case in the replication and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether F.C.I. is a statutory corporation and District Manager is the Principal Officer of the corporation and he has got a right to file the suit on behalf of plaintiff? OPP
- (2) Whether the defendant in response to tender enquiry submitted tender for loading and un-loading of foodgrains? OPP
- (3) If issue No.2 is proved, whether the defendant fulfilled all the

conditions of the tender? If not, to what effect? OPP

- (4) Whether the defendant deposited Rs.25,000/- as earnest money and submitted a joining report? If so, to what effect as alleged in para No.4 of the plaint? OPP
- (5) Whether the defendant started work on the basis of accepted tender and received payment? OPP
- (6) Whether the payment of Rs.18899.86P were paid (sic was made) to the defendant in excess and whether the plaintiff is entitled to recover that from the defendant? OPP
- (7) Whether the plaintiff is entitled to damages as claimed in the plaint? OPP
- (8) Whether the defendant is entitled to special costs under Section 35-A CPC? OPD
- (9) Relief.

5. The suit was dismissed by learned Additional Civil Judge (Senior Division), Nawanshahr with the observation that the identity of the defendant as a person, who got the contract, could not be established. The plaintiff's officials have never made verification of the property of the defendant before giving him the tender. The payment of the work done amounting to ₹1,61,843/- was made in the account of defendant in Oriental Bank of Commerce, Banga in which Gian Chand had deposited ₹5,000/- on 05.08.1986 and ₹1,61,843/- was also withdrawn by Gian Chand. Learned Additional Civil Judge was of the view that there was some foul play with the defendant at the behest of Gian Chand.

6. In appeal, the first Appellate Court set aside the judgment of learned Addl. Civil Judge and decreed the suit of the plaintiff.

7. Against the judgment of the first Appellate Court, the defendant has come up with this appeal.

Learned counsel for the appellant has argued that the onus was

on the plaintiff to prove that the tender was submitted by the defendant; he entered into agreement with the plaintiff for transportation of foodgrains and allied material; gave the joining report; deposited tender money and security amount, but no evidence identifying the appellant-defendant has come on record. So far as the payment in the account of defendant at Oriental Bank of Commerce is concerned, it is argued that the account was opened by Gian Chand and he was depositing and withdrawing the payment made to the appellant.

9. Admittedly, Food Corporation of India had called the tenders and one tender was received at lowest rate on behalf of appellant-defendant. It is not required that the officials of FCI should know the persons, who had filed the tenders, personally as they deal with them in the discharge of their official business. PW4 R.P. Aggarwal, has stated that he knew Badri Ram personally and he (defendant) had signed the agreement in his presence. His statement is unrebutted.

10. Though the appellant has denied everything but the most important and clinching evidence relied by first Appellate Court that has come on record is sufficient to seal the fate of all the pleas raised by him. There is evidence regarding the payment made to him through demand draft of ₹1,63,843/-. It is nowhere case of the defendant that the bank account in Oriental Bank of Commerce is not his bank account. He had summoned the concerned official of Oriental Bank of Commerce with the record of account No.CA/345 in his name. The concerned official appeared as DW4 and stated that the account opening form has been misplaced but the specimen signatures card is available with the bank which he had brought with him.

No case was set up by the appellant-defendant that the account was not opened by him and the specimen signatures card does not bear his signatures. Appellant-defendant has never raised the issue with the bank that some imposter has opened the account in his name. The payment of ₹5,000/- was deposited in his account by Gian Chand vide voucher Ex.DW3/A on 16.10.1986. A sum of ₹1,61,843/- was deposited in his account and was withdrawn on the same day. The payment of this amount was made to Gian Chand on cheque issued by the appellant. Here also, the appellant had never raised the issue that the cheque of ₹1,61,843/- was not issued under his signature. Balbir Chand Bhatia, Officer of Oriental Bank of Commerce appeared as DW4 and stated that a cheque book was issued to Badri Ram appellant. The demand draft/cheque of ₹1,61,843/- was issued by FCI in the name of Badri Ram and was deposited in his account. The cheque of the aforesaid amount was issued by the appellant from the cheque book issued to him and the payment was made after comparing his signatures with signatures on the specimen signatures card. The appellant has never denied that he was never issued cheque book by the Oriental Bank of Commerce.

11. Here a very vital question which arise for consideration is that payment to appellant by F.C.I. was deposited in the account of appellant-defendant and withdrawal of the same was also made on the cheque issued by the appellant, a fact which is not disputed. Learned trial Court has committed error in appreciating above fact by ignoring the vital evidence on record which prove the identity of the appellant-defendant as the person whose tender was accepted and who worked for the plaintiff under the

agreement.

12. Learned counsel for the appellant has raised the plea that there was a racket at the instance of Gian Chand to defraud the defendant, which was played in connivance with the officials of the plaintiff.

13. The evidence discussed above, rather points to the contrary. The racket, if any, could be due to collusion of plaintiff with Gian Chand. In case, a fraud has been played with the plaintiff, he would not have remained silent but would have reported the matter to the police, raised a plea with the bank authorities, challenging the account opened in his name by some imposter and issuing of cheque under his forged signatures. Keeping in view all these facts and circumstances, learned first Appellate Court has rightly observed that the deposit of amount of ₹1,61,843/- in the account of defendant on the basis of demand draft issued by the plaintiff is a very vital and clinching evidence in this case and proves that the appellant had accepted the tender and also received the amount paid to him. In these facts and circumstances, learned first Appellate Court observed in para 11 of the judgment as follows:-

“11. Perusal of the trial Court order shows that the plaintiff was non-suited on the ground that no witness had stated that the witness was personally known to Badri Ram. However, in the considered opinion of this Court on this ground alone, the plaintiff could not have been non-suited as the officials are not required to know the person personally who is given the tender. Sh. R.P. Aggarwal PW4 deposed that he knew Badri Ram personally and he signed in his presence. Moreover the amount was paid to Badri Ram has been even withdrawn from the account of Badri Ram. In these circumstances, the onus shifted upon the defendant to prove that in fact he was not Badri Ram who was given the contract

and that he should have proved by leading evidence in fact that he had not opened the account and in fact Gian Chand in connivance of (sic with) the officials have managed to take the tender in his name. The mere fact that account was also opened in the bank in the name of Badri Ram defendant and the payments were also received by the defendant and deposited in the same account shows that in fact defendant had taken the tender. The argument of Ld. Counsel that the name of the defendant has been used is totally devoid of any merit. Had Gian Chand been operating the account by impersonating as defendant, their (sic there) was no need to take payment of cheque by Gian Chand as issued by the defendant Badri Ram as he could have signed the cheque as Badri Ram and got the payment.”

14. On perusal of the judgment of the first Appellate Court and record of the trial Court, I find no legal or factual infirmity therein, calling for any interference.

15. Learned counsel for the appellant has not been able to point out that the findings of fact recorded by learned First Appellate Court are based on misreading of evidence or wrong interpretation of the evidence on record.

16. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

August 03, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No