

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

**R.S.A No.1559 of 2012 (O&M)
Date of decision :09.08.2016**

Balwinder Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gurminder Singh, Sr. Advocate
with Mr. R.P.S. Bara, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred by appellant-plaintiff against the judgment and decree dated 21.11.2011 passed by learned Additional District Judge (Adhoc) Fast Track Court, Amritsar, vide which the appeal filed by him against the judgment and decree dated 22.07.2008 passed by the learned Civil Judge (Jr. Division), Amritsar has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-appellant has filed the suit for declaration that the contract date 18.04.2002 granted by the respondents-defendants for carrying out the mining operation (Excavating sand) out of the area of villages Chaharpur, Bhagupur Bet, Daryamusa, Malikpur, Chak Fateh

Khan, Bhindi Saida, Ponga, Mudferpur and Bhindi Aulakh Khurd has become impossible and impracticable due to illegal mining being carried out by mafia and is hit by Doctrine of frustration. As such, the defendants-respondents are not entitled to recover Rs. 27 lacs with interest from the plaintiff. The plaintiff-appellant has also sought the relief of mandatory injunction directing the defendants to return the amount of Rs. 23,05,000/- deposited by him with the defendants. In the consequential relief, the decree for permanent injunction has also been sought restraining the defendants from recovering the amount of Rs. 27 lacs on the basis of letter dated 06.08.2003.

4. As per the averments in the plaint, the respondents-defendants conducted open auction for quarrying rights of the villages as mentioned in the head note of the plaint on 09.04.2002. The plaintiff was the highest bidder and was granted the contract for excavating the sand out of the quarries situated in those villages w.e.f. 18.04.2002 to 31.03.2005. The total auction money was fixed as Rs. 32 lacs per year. The plaintiff deposited a sum of Rs. 8 lacs at the time of bid as security and Rs. 8 lacs were further deposited as first installment i.e. total Rs. 16 lacs with the defendants. The plaintiff started the job of extracting the sand out of the quarries w.e.f. 18.04.2002. The sand mafia was operating in this area which did not allow the plaintiff to work, as a result of which he submitted various representations to the authorities. He has not been able to do the mining work because of interference of the local mining mafia who was engaged in illegal mining. On 03.06.2002, Sh. Vinod Kumar, Incharge, Mining Check Post Uggar Aulakh, Ajnala, reported the

Mining Officer that he had detained 54 trucks and trolleys which were engaged in illegal mining and one Harpartap Singh, Congress leader came to the spot and created a scene. Plaintiffs also filed the writ petition in this Court wherein liberty was given to the plaintiffs to approach the Deputy Commissioner, Amritsar. But, the illegal mining could not be stopped. In-fact, the Punjab Government had no intention to stop the illegal mining which is patronized by highly placed politicians. Thus, the plaintiff was not at fault. Defendants could not stop the illegal mining as such the contract stood frustrated. Hence the suit.

5. Defendants-respondents contested the suit on the grounds *inter alia* that the General Manager-cum-Mining Officer vide order dated 05.09.2002 created the check post in village Uggar Aulakh and two other check posts in order to stop the illegal extractions. On the further representation made by the plaintiff to the Director of Industries and Commerce, Punjab more check posts were created with police help. Defaulters were challaned and warned by the staff. After that action, the plaintiff did not make any complaint to the Mining Officer. The weighment slips were issued to the plaintiff on demand by the answering defendants, which shows that he was extracting the sand of all the 9 quarries. He had further issued the weighment slips to the trucks and trolleys and the counter foil of the same was collected and checked at Uggar Aulakh Check Post. The plaintiff was informed vide letter dated 25.11.2002 to deposit the outstanding amount. The representatives of the plaintiff met the defendants in person and requested to give some time to deposit the installment and taking into consideration their request, the

contract was not cancelled and thereafter, plaintiff deposited Rs. 5 lacs on 07.07.2003. All other averments raised in the plaint were controverted.

6. Plaintiff also filed replication to the aforesaid written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 08.08.2005:-

1. Whether illegal mining is being carried out by mafia in the area of village Chaharpur? If so, its effect upon agreement dated 18.04.2002?OPP
2. Whether the suit is hit by principle of res-judicata?OPD
3. Whether the jurisdiction of the Civil Court is barred by the orders of Hon'ble Punjab and Haryana High Court?OPD
4. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the suit filed by the appellant-plaintiff was dismissed by the learned trial Court vide impugned judgment and decree dated 22.07.2008.

8. Aggrieved with the aforesaid judgment and decree passed by the learned trial Court, the appellant-plaintiff preferred the appeal. The same was also dismissed by the learned First Appellate Court vide impugned judgment and decree dated 21.11.2011. Hence this Regular Second Appeal.

9. I have heard Mr. Gurminder Singh, Sr. Advocate, with Mr. B.S.Bara, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that the contract between the parties were rendered void by the Doctrine of frustration as provided under Section 56 of the Indian Contract Act, 1872 (for short 'Act'). He contended that the sand mafia

was operating in the area which indulged in illegal mining. Appellant-plaintiff made number of representations to the authorities to check and stop the illegal mining. But, the respondents-defendants had no intention to stop the illegal mining as the persons indulged in illegal mining were patronized by the politicians. He contended that the illegal mining could not be stopped. They used to interfere in working of the plaintiff. Due to that reason, mining operation by the plaintiff had become impossible. Hence the contract stands frustrated.

11. He further contended that the learned Courts below have non-suited the plaintiff simply on the statement of PW-5 Sadhu Singh, who has stated in the cross-examination that the illegal mining was successfully stopped. But, it is borne out from the documents available on record that illegal mining could not be checked and stopped by the respondents-defendants.

12. He further contended that in the cross-examination of the plaintiff and his brother, the defendants have suggested that there was dispute between the partners and due to that reason they could not carry on the mining operation. He contended that this plea is beyond pleadings as no such plea has been raised in the written statement. Said plea being beyond pleadings cannot be taken into consideration.

13. He further contended that as the contract stood frustrated, so the defendants are not entitled to recover the amount of Rs. 27 lacs from the plaintiff-appellant. Rather, the plaintiff is entitled for the refund of Rs. 23,05,000/-, the amount already deposited by the plaintiff with the defendants.

14. I have duly considered the aforesaid contentions.

15. It is an admitted fact that the defendants have put the quarries situated in 9 villages mentioned above for extraction of sand to the open auction. The appellant-plaintiff was the highest bidder and he was given the contract for the period w.e.f. 18.04.2002 to 31.03.2005 for extracting the sand from the above said quarries. The plaintiff-appellant has started mining operation w.e.f. 18.04.2002. He is trying to avoid the contract and liability arising out of the contract on the ground that the contract has become impossible due to illegal mining in the area and Doctrine of frustration shall be applicable which rendered the contract void.

16. The Doctrine of frustration is governed by the provisions of Section 56 of the Act, which reads as under:-

“56. Agreement to do impossible act.

An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful: Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

Section 56 of the Act defines two ways of impossibility of performance of the contract i.e. the initial impossibilities meaning thereby that an agreement to do an act impossible in itself is void. It also provides for the subsequent impossibility as sometime the performance of the

contract is quite possible when it is made, but the subsequent circumstances make it impossible or unlawful.

17. In the instant case, obviously, the appellant-plaintiff is taking the shelter of the subsequent impossibility. The Doctrine of frustration comes into play when the performance of the contract is physically cut off and object of the contract had failed. The ground for frustrating the contract can be destruction of the subject matter that is where the actual and specific subject matter of the contract has ceased to exist. It can also be due to change of circumstances that is where the circumstances arising which makes the performance of the contract impossible in the manner and at the time contemplated. The Doctrine of frustration can also apply due to non occurrence of the contemplated event, death or incapacity of the party and due to the government, administrative or legislative intervention which directly affects the fulfillment of the contract at the time where such intervention is of temporary nature that will not affect the performance of the contract and Doctrine of frustration will not be applicable. The Doctrine of frustration can apply where the impossibility is intervention by war. The Doctrine of frustration shall not apply where the impossibility is self induced by the party. A party to the contract is not entitled to rely on his own act in not fulfilling the terms of contract.

18. The Hon'ble Supreme Court in case **Satyabrata Ghose Vs. Mugneeram Bangur and Co. and another AIR 1954 SC 44** has laid down that the Court has to form its conclusion by examining the contract and the circumstance whether the changed circumstances had destroyed altogether the basis of adventure and its underlying object. In the instant

case, the plaintiff-appellant wants to invoke the Doctrine of frustration on the ground that the illegal mining was going in the area which could not be stopped by the respondents-defendants despite his repeated representations to the authorities. The illegal mining is a known phenomena. The persons carrying on the profession of mining are fully aware about the possibility of the illegal mining. The parties have entered into a statutory contract in Form 'L' governed by the provisions of **The Punjab Minor Mineral Concession Rules, 1964**. The Hon'ble Supreme Court in case **Mary Vs. State of Kerela and others 2014 (1) R.C.R (Civil) 288** has laid down that Doctrine of frustration of contract will not apply where the contract is governed by the Act and the statutory rules. In the contract Ex.D-1, there is no condition that the illegal mining in the area will render the contract void. As already mentioned even at the time of entering into the contract, the plaintiff might be aware that there can be illegal mining in the area.

19. From the statement of PW-5 Sadhu Singh, it comes out that every effort was made by the Government to stop the illegal mining. The check posts were installed. He has also stated that the illegal mining was successfully stopped by the Government. It is also established from the evidence on record that the plaintiff had started the operation of the quarries. He was issued 109 weighment books for lifting the sand as per the contract. The weighment slips were also issued by the plaintiff to the trucks and trolleys to lift the sand. The counter foils of the same were collected at the check posts which indicates that the plaintiff had started excavating sand of all the 9 quarries by collecting money from trucks and

trolleys as per the agreement.

20. Clause 24 of the contract Ex.D-1 specifically provides that the State Government will not be responsible for any kind of loss to the contractor. So, if some loss is caused to the plaintiff due to illegal mining, the defendants cannot be held responsible and it cannot be a circumstance to render the contract impossible to invite the application for Doctrine of frustration. In order to attract the principle of Doctrine, the circumstances should be of such a catastrophic character as can be said to have struck at the very root of the whole of the object and purpose for which the parties have entered into contract. In the instant case, the plaintiff has very much started operating the mines. The alleged illegal mining has not obstructed the plaintiff to carry out the objects of the contract. So, the Doctrine of frustration is not applicable. The contract between the parties cannot be held void and the defendants are entitled to recover the outstanding amount.

21. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

22. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

23. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 09, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No