

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

1. RSA No.1782 of 2014 (O&M)
Date of decision : 21.08.2017

M/s IDCOL Kalinga Iron Works Ltd. and another

...Appellants

Versus

Vinod Kumar Singal and others

...Respondents

2. RSA No.5048 of 2014 (O&M)
Date of decision : 21.08.2017

Vinod Kumar Singal and others

...Appellants

Versus

M/s IDCOL Kalinga Iron Works Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.S. Walia, Advocate for the appellants.
(In RSA No.1782 of 2014)
for the respondents (In RSA No.5048 of 2014)

Mr. Alok Mittal, Advocate for the respondents
(In RSA No.1782 of 2014)
for the appellants (In RSA No.5048 of 2014)

ANIL KSHETARPAL, J.

By this common judgment, two Regular Second Appeals i.e.
RSA No.1782 of 2014 filed by the defendants and RSA No.5048 of 2014
filed by the plaintiffs arising out of a Civil Suit No.507 of 15.06.2015 are

being decided.

The plaintiffs had filed a suit for mandatory injunction directing the defendants to supply two rake loads of Grade-II PIG Iron at the rate offered by the defendants vide their letter of acceptance dated 22.05.2002 or in the alternative suit for recovery of ₹1 Crore as also damages to be assessed by the Courts being difference of price, as offered by the defendants vide letter dated 22.05.2002 and date of communication of cancellation of order communicated by the defendants vide their letter dated 11.08.2004 and damages for causing mental tension, torture, harassment etc. alongwith interest at the rate of 18% p.a.

The plaintiffs had submitted that the defendants had appointed M/s Punjab Agro Implements Works as their agents and have been supplying pig iron to the plaintiffs through it. It was further pleaded that the defendants through their letter dated 22.05.2002 offered for supply of two rake loads of Grade-II PIG Iron at ₹8905/- per MT. It was offered that the party will have to deposit ₹1 crore in advance in Delhi Office by 23.05.2002 and the first rake load would be dispatched on 10.06.2002 whereas second rake load shall be dispatched in the last week of June, 2002.

The plaintiffs deposited the amount of ₹1 crore. However, the defendants after writing 2-3 letters acknowledging the receipt of payment did not supply the contracted pig irons. The plaintiffs had further pleaded that vide letter dated 11.08.2004 for the first time, defendants communicated that since ₹1 crore was not deposited in the Delhi Office within the schedule date, therefore, offer letter stood cancelled. The defendants further intimated to its agent M/s Punjab Agro Implements Works vide letter dated

19.10.2004 that conditional offer dated 23.05.2002 stood cancelled.

However, the pig irons can be purchased at prevailing market rate.

The plaintiffs further pleaded that after writing letters and service of notice, since defendants failed to supply the material, therefore, the suit was filed.

The defendants in their written statement accepted the receipt of ₹1 crore. However, defendants took a stand that the amount had not been received by 23.05.2005 in Delhi Office. It was pleaded that the amount was received in two installments i.e. on 24.05.2002 and 03.06.2002. The defendants further took a plea that there is agreement for reference of the dispute to the arbitration under the Arbitration Act, 1940 as amended by Orissa Act No.3 of 1983.

The learned trial Court after appreciating the evidence available on the file found that the relief of mandatory injunction cannot be granted in view of the provisions of Section 10 and 21 of the Specific Relief Act. However, the learned trial Court found that the defendants had wrongly retained ₹1 crore which has admittedly been received and, therefore they are liable to refund the amount. It was further held that it is proved from invoices Ex.P57 and Ex.P107 issued by the defendants that rate of pig irons was ₹16017/- per MT ton in 2004 whereas the pig irons offered to the plaintiffs in 2002 was at the rate of ₹8905/- per MT, therefore, the trial Court ordered the payment of difference in the price @ ₹7112/- per MT ton for two rakes.

The defendants filed appeal. The First Appellate Court upheld the findings of learned trial Court with respect to refund of ₹1 crore

received and illegally retained by the defendants. However, the learned First Appellate Court reduced the quantum of damages awarded on account of rate difference on the ground that invoice Ex.P107 relied upon by the trial Court has not been put to official who appeared on behalf of the defendants as DW1. The learned First Appellate Court further noticed that the rate of pig irons kept on fluctuating and, therefore, the Court assessed the damages at the rate of ₹2000/- per MT ton.

These two appeals have been filed. One by the defendants and second by the plaintiffs. The defendants are challenging the judgment of both the Courts below whereas plaintiffs are challenging the reduction of damages awarded to the plaintiffs by the First Appellate Court.

Learned counsel for the defendants-appellants has submitted that there was no concluded contract between the parties and, therefore, no damages could be awarded. He has further submitted that the judgment passed by the First Appellate Court is vague and uncertain. He has further submitted that the plaintiffs have not proved the damages as defendants have not led any evidence to prove that they had purchased pig irons at higher rate, therefore, the damages as assessed by the First Appellate Court are not payable.

On the other hand, learned counsel for the plaintiffs-appellants has submitted that the finding of the First Appellate Court that Ex.P107, the invoice issued by defendants was not been put to DW1, the witness examined on behalf of defendants in cross-examination, is factually incorrect and result of non-reading of evidence. He has further submitted that once it is established on the file that the plaintiffs were made offer at

the rate of ₹8905/- per MT ton and the defendants refused to supply the material, for the first time vide letter dated 11.08.2004 when the rate of pig iron supplied by the defendants was ₹16,017/- per MT ton, therefore, the trial Court had rightly assessed the damages to the tune of ₹7,112/- per MT ton .

The following substantial questions of law arises for the determination of the present appeal by this Court:-

- i) Whether the judgment passed by the First Appellate Court is result of mis-reading of evidence of DW1?
- ii) Whether there was concluded contract between the parties and hence, the Court is competent to award the damages in accordance with Section 73 of the Indian Contract Act?

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below as also the photocopies of the records produced by the counsel for the parties.

There is no dispute about the fact that the amount of ₹1 crore was deposited by the plaintiffs with defendants in 2002. There is further no dispute that after deposit of the amount, the defendants had been writing letters acknowledging the receipt of the amount. Only details of names of the plaintiffs were asked for, as would be clear from Ex.P10, Ex.P11 and Ex.P12. The defendants never intimated to the plaintiffs that offers sent as per letter dated 22.05.2002 stands withdrawn because the payment has not been received by 23.05.2002. The defendants for the first time took a stand after a period of two years and two months that since the payment has not

been received in time, therefore, the offer stands withdrawn. In this view of the matter, there is no difficulty to arrive at a conclusion that ₹1 crore duly received by the defendants has not been returned and decree to that effect is required to be passed.

The second issue which arises in the present case is the quantum of damages to which the plaintiffs are entitled to on account of non-supply of the Grade-II PIG Iron. There is no dispute that two rake loads of pig irons were offered by the defendants to the plaintiffs at the rate of ₹8905/- per mt. ton. The plaintiff did deposit ₹1 crore as per the offer. The defendants for the first time refused to supply the material vide letter dated 11.08.2004 Ex.P14 on the file. The defendants further offered to supply the Grade-II PIG Iron at prevailing market rate vide letter dated 19.10.2004. Therefore, the Court is required to assess the damages suffered by the plaintiffs on account of non-supply of Grade-II PIG Iron. The invoice issued by the defendants selling the Grade-II PIG Iron is Ex.P107 dated 19.08.2004 at the rate of ₹16,017/- per MT ton. The other invoices Ex.P99, Ex.P101 and Ex.P9 are with respect to the year 2002. Therefore, the invoice to determine the difference of rate is Ex.P107 dated 20.08.2004. The learned First Appellate Court has ignored the invoice Ex.P107 on the ground that it has not been put to the only witness examined by defendants. There is mis-reading of evidence on the part of First Appellate Court. Ex.P107 has been put to DW1 who is the only witness examined on behalf of defendants. The relevant portion of the cross-examination of DW1 is extracted as under:-

“xxxx xxxx

It appears that Ex.P107 has been issued by our plant.

Xxxxxxx xxxxxx”

“xxxx xxxxx

I can not say if the rate of the pig iron was about to Rs.19,906/- per metric tone as per bill Ex.P107.

Xxxxx xxxxxx”

In view of the above, the reason assigned by the First Appellate Court to ignore one Ex.P107 is found to be erroneous. The plaintiffs had deposited the amount for purchase of pig irons. The offer made by defendants was accepted. Amount remained deposited with the defendants for more than two years. Supply was not made. Therefore, the plaintiffs are entitled to difference of price of the Grade-II PIG Iron. The plaintiffs had agreed to purchase the pig iron at the rate of ₹8,905/- per metric ton. As per Ex.P107, defendants had supplied pig irons at the rate of ₹16,017/- per metric ton in 2004. The difference in the rate comes to ₹7,112/- per mt. ton. The plaintiffs are entitled to recovery of damages at the rate of ₹7,112/- per metric ton as assessed by the trial Court. The finding of the learned First Appellate Court to the contrary is set aside. Learned First Appellate Court has chosen to use the thumb rule, without any basis, to assess the damages at the rate of ₹2,000/- per mt. ton.

Learned counsel for the appellants has submitted that there is no concluded contract between the parties, therefore, the suit is not maintainable.

I have considered the submission. However, I am unable to agree. There is no dispute that vide letter Ex.P9, defendants had made an offer through their agent for supply of two rake loads of Grade-II PIG Iron at the rate of ₹8,905/- per mt. ton. The plaintiffs acting on that offer

deposited ₹1 crore as directed. It is the case of the defendants that deposit was beyond the date fixed in the offer. However, the defendants encashed the demand draft. The defendants never withdrew their offer for more than two years. The defendants utilized the money. Therefore, it is not possible to conclude that there was no concluded contract.

Learned counsel for the appellants has submitted that the judgment passed by the first Appellate Court is vague as the quantum of damages has not been worked out.

I have considered the arguments. However, I am unable to agree. The learned Court has assessed the damages by directing that the Executing Court would determine the actual rate of two rake loads to determine the actual damages/compensation payable. There is no vagueness in the direction issued. I have seen Ex.P46, the letter issued by the Punjab Agro Implements Works to the Chairman of the defendants. It is clear from the aforesaid letter that rake load varies from 2,266.460 mt. ton to 2,335.850 mt. ton. The rake load is common word used in the trade of iron. One rake load means one complete goods train carrying the requisite supply. The learned Executing Court would take minimum rake load i.e. ₹2,266.460 metric ton for assessing the damages.

Defendants shall be liable to pay the amount of ₹1 crore alongwith simple interest at the rate of 12% p.a. w.e.f. 12.05.2002 till realisation. Defendants shall also be liable to pay damages at the rate of ₹7,112/- per mt. ton alongwith simple interest on this amount of damages at the rate of 6% p.a. w.e.f. 11.08.2004 till its realisation as ordered by the trial Court.

Hence, appeal filed by the defendants-appellants i.e. RSA No.1782 of 2014 is dismissed whereas other appeal filed by the plaintiffs i.e. RSA No.5048 of 2014 is allowed.

Accordingly, questions posed are answered in the manner indicated above.

21.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No