

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 31st, 2017

+ RFA 17/2007

FOOD CORPORATION OF INDIA Appellant

Through Mr.Deepak Dewan, Adv. with
Mr.Samarjeet Singh, Junior Engineer
(Civil) of FCI.

versus

RAGHUBIR CHAND GUPTA Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant against the judgment and decree dated 29.09.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/appellant for recovery of damages/compensation for Rs.2,53,378.26/- against the defendant/respondent was dismissed.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/appellant is a statutory organization established under Food Corporation of India Act, 1964 and the appellant Corporation floated a Tender Enquiry for construction of

2500 M.Ts. Capacity Godown at UNA, H.P. The defendant/respondent submitted his offer alongwith tender documents and the same was accepted being the lowest by the plaintiff Corporation vide Registered Letter no.Civil Engg/HP/UNA-1/88/Vol-II dt. 20/12/1988 as defendant's quoted unconditional offer of 13.82% above the estimated cost of Rs.17,24,160/- put to tender. The tendered amount works out to be Rs.19,62,439.91. Hence the defendant/respondent was called upon to start the work at once and the entire construction was to be completed within a period of 9 months as provided in tender enquiry and a period of 9 months was to be reckoned from 7th day after the date of issue of Zonal Officer (N) Telegram No.CE1(7)/87-HP/NZ/Vol-II/5054 dated 05.12.1988. It is submitted that the amount claimed by the defendant/respondent was regularly paid to him for the work being done by him. However, time was further extended by the plaintiff Corporation on defendant's request but despite further extensions the defendant failed to finish the work and stopped the work on 13/05/90. Thereafter, plaintiff/appellant Corporation served a show cause notice dated 06.06.1990 vide registered letter no.Engg/HP/UNA/90 under sub clause III(A) of the agreement arrived between the parties to the defendant. But the defendant/respondent failed to put forward any satisfactory explanation to the plaintiff corporation and they had no alternative except to terminate the contract vide letter dated 18.07.1991. It was further stated that under the risk and cost of the plaintiff corporation, the work was completed by them. It is stated that the plaintiff/appellant Corporation suffered actual loss of Rs.2,53,378.26 due to non fulfillment of the contractual

obligation by the defendant and therefore the plaintiff is entitled to recover the said amount from the defendant.

3. In the written statement filed on behalf of the appellant/defendant, it was stated that the suit was neither signed, verified nor it was instituted by the duly authorized and competent person. It was also stated that the suit was barred by limitation; there was no cause of action which exists in favor of the plaintiff and the suit was not properly valued for the purpose of court fees and jurisdiction. On merits, the case of the plaintiff/appellant was denied. It was submitted that stipulated period of completion of contract was rendered meaningless in view of acts of omission and commission on the part of the plaintiff. On account of various defaults and lapses by the plaintiff, the work could not be completed. It was denied that the defendant adopted delaying tactics in completion of work. The defendant expressed his inability to proceed with the work in view of mounting finance.

4. Replication to the written statement was filed on behalf of the plaintiff/appellant. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the plaint has been signed, verified and the suit instituted by a competent and authorized person? OPP

(2)Whether the plaintiff is entitled to claim the suit amount? OPP

(3)Whether the plaintiff is entitled to claim the interest? If so, at what rate and for what period? OPP

(4)Whether the suit of the plaintiff is time-barred? OPD

(5)Whether the plaint does not disclose any cause of action? OPD

(6) Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD

(7) Whether the defendant is entitled to the claim made in the counter- claim? OPD

(8) Whether the defendant is entitled to claim interest on the amount of counter claim? If so, at what rate and for what period? OPD

(9) Relief

5. To prove his case, the plaintiff examined, PW1-Mr.S.K Sikand, Deputy Manager (Engineering); PW2-Sh.A.K. Khatri, Asstt. Manager (Civil) FCI Chandigarh; PW3-Sh.Rohtas Kumar Sharma, Junior Engineer; PW4-Sh.V.K Puri, Deputy Manager (Civil Engineering), PW5-Sh.Praveen Kumar, Asstt. Manager (Civil) and PW6-Sh.V.K. Gupta, Manager (Civil Engineering). The Court below decided issue nos.1, 2 and 3 against the appellant/plaintiff and in favour of the respondent/defendant. Based on the findings on issue no.1 to 3, the suit of the appellant/plaintiff was dismissed. Feeling aggrieved by the decision on issue no.1 to 3, the present appeal has been filed.

6. Argument advanced by the counsel for the appellant is that the contract was awarded to the respondent/defendant for completion of work and it was stipulated in the contract that the period of construction was 9 months w.e.f. 12.12.1988 to 11.09.1989 and as the time was of essence of the contract, the work was not completed by the respondent within the time and thus the appellant was well within its right to recover the amount involved in completion of work at its risk and cost. It was further argued that it was due to laxity on the part of the respondent which resulted into delay in completion of work and the appellant cannot be held guilty of any delay. The contract was terminated on account of failure of the respondent to complete the work within the stipulated period and no hindrance was caused by the appellant. It was further argued that the Court below erred in holding that the suit was not filed and instituted by an authorized person. The suit was instituted by Sh.V.K. Puri, Deputy manager (CE) being authorized by the Senior Regional Manager, FCI, Himachal Pradesh as per letter No.Engg/HP/97-88.

7. I have gone through the submissions made by the counsel for the appellant and the evidence available on record.

8. The first issue to be decided in the present case is whether the suit was signed, verified and instituted by a competent and authorized person. Case of the appellant/plaintiff was that the suit was filed by Sh.Vijay Kumar Puri on behalf of Deputy Manager (CE), FCI, Shimla and subsequently the suit was amended and the amended

plaint was filed by Sh.Arun Kumar, Deputy Manager (CE), FCI, Shimla.

9. To prove this issue, the appellant/plaintiff examined Sh.Vijay Kumar Puri as PW4. PW4 had deposed that he was posted at Shimla in the Regional Office of the FCI. He had not stated anywhere in his entire examination in chief by way of affidavit that he was competent and authorized by the Food Corporation of India to file the suit. The contention of the appellant was that Sh.V.K. Puri was authorized by Senior Regional Manager, FCI, Himachal Pradesh vide letter No.Engg/HP/97-88 to file and institute the suit against the defendant, but it is a matter of record that no such letter was ever placed before the Court below at the time of evidence. Neither there was such a contention of the witness PW4 at the time of his deposition. It was merely said by PW4 that he was authorized to file the suit, but he had not brought any document on record to show that he was authorized by Senior Regional Manager, FCI, Himachal Pradesh to file and institute the suit. By way of the present appeal, it has been contended that such a contention was made at the time of addressing the arguments, but at the same time no such document showing authorization in favour of Sh.V.K. Puri was brought on record.

10. In the absence of any contention and documentary evidence, it cannot be said with certainty that Sh.V.K. Puri was duly authorized by Food Corporation of India to file and institute the suit.

The findings recorded by the Court below on issue no.1 are correct and needs no interference.

11. So far issue no.2 and 3 are concerned, these issues were with regard to entitlement of the appellant/plaintiff for the suit amount and interest on it. The onus to prove both these issues was on the appellant/plaintiff.

12. It is an admitted fact that a tender was floated by the appellant/plaintiff for construction of 2500 MTs capacity godown at Una, Himachal Pradesh. The offer submitted by the respondent/defendant was accepted by the appellant vide letter dated 20.12.1988. Admittedly, the time prescribed for completion of work was 9 months. The appellant/plaintiff has claimed the recovery of amount on account of completion of work at its own risk and cost as the work could not be completed by the respondent/defendant within the stipulated period and also within the extended period. Admittedly, the contract was awarded on 05.12.1988 and the site was handed over to the respondent/defendant on 24.01.1989 which shows that the site was not handed over the respondent/defendant at the time of awarding contract.

13. The plea of the respondent/defendant was that the work could not be completed within the time as the appellant/plaintiff had caused delay in handing over the site, got some other work done apart from contract awarded, layout plan was given at a belated stage and those were the reasons for causing delay and the same were due to own latches of the appellant/plaintiff.

14. The plaintiff's witness PW1 has deposed that the concerned drawings were given to the defendant on 13.12.1988. His version has been contradicted by PW2 who has deposed that the drawings were given on 01.07.1990. PW3 during his cross-examination has also stated that the site plan Ex.PW1/7 was supplied to the defendant on 01.07.1990.

15. It has also come in evidence that a show cause notice was given to the defendant on 06.06.1990 and then the contract was terminated by the appellant/plaintiff on 18.07.1991. It is highly improbable that the work was to commence in the absence of design/layout plan of the work awarded. As per own admission of the witnesses of the appellant/plaintiff, the design/layout plan was provided to the respondent/defendant only on 01.07.1990. When it has come in evidence that the layout plan was provided only on 01.07.1990 then how can it be possible for the defendant to complete the work within nine months of the contract awarded. Apart from this, it has also come in the deposition of appellant's witnesses PW2 and PW3 that extra work was done by the respondent/defendant on their instructions.

16. From the evidence led by the appellant/plaintiff itself, it has come on record that it was due to delay and laches of the plaintiff itself which caused the delay in completion of work and the inability of the respondent/defendant to complete the work awarded within the stipulated time or the extended time. The respondent cannot be held liable for the costs and expenses incurred by the plaintiff for

completion of work after the termination of contract by them as it has come on record that it was due to delay and latches of the appellant/plaintiff itself which caused inability to the respondent/defendant to complete the work awarded.

17. In view of the above discussion, this Court is of the considered opinion that appellant/plaintiff has failed to establish on record that Sh.V.K. Puri was authorized to file and institute the suit and that the appellant/plaintiff was entitled to recover any amount as damages/compensation from the respondent/defendant. The issues have been rightly decided by the Court below and the suit has been dismissed accordingly. Consequently, the present appeal is dismissed being devoid of merit.

18. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 31, 2017
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