

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ CCCA No.207 of 1999

% Dated 18.01.2018

The Food Corporation of India, rep. by its
Senior Regional Manager, Hyderabad.

... Appellant

VERSUS

\$ M/s.Sri Surya Chandra Raw and Boiled Rice
Mill, Rep. by its Managing Partner,
Ch.Chandrabhagwan Reddy and others.

...RESPONDENTS

! Counsel for the Appellant: Mr. M.Ratna Reddy

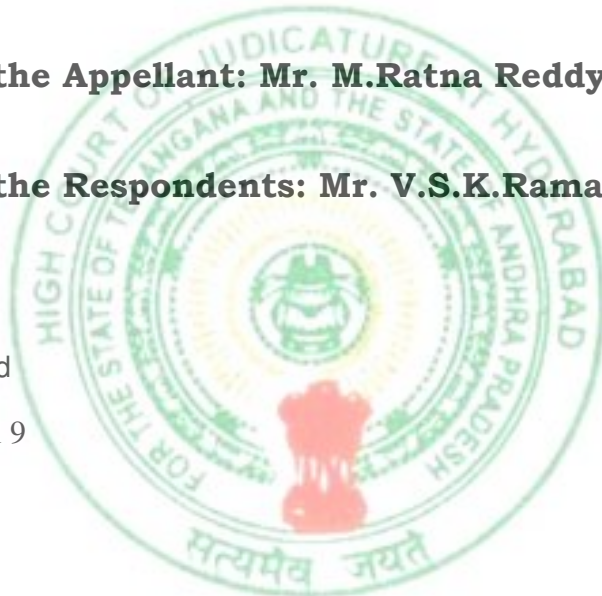
^ Counsel for the Respondents: Mr. V.S.K.Rama Rao

> HEAD NOTE:

? Cases referred

¹ AIR 1988 Delhi 224

² AIR 1991 Gauhati 9



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**CITY CIVIL COURT APPEAL No.207 OF 1999****JUDGMENT:**

This City Civil Court Appeal is preferred against judgment and decree dated 28.12.1998 in O.S.No.2137 of 1989, wherein the trial Court dismissed the suit filed by the appellant for recovery of Rs.23,72,660.99 ps with future interest @ 18% per annum and costs from the date of suit till realization, towards loss and damages sustained by the appellant.

2. For the sake of convenience, the parties hereinafter will be referred to as they arrayed in the suit before the Court below. Brief facts which are necessary for disposal of the appeal are as follows:

Plaintiff filed the suit for recovery of Rs.23,72,660.99 ps with future interest @ 18% per annum and costs against the defendants 1 to 3. The 1st defendant is the firm and the defendants 2 and 3 are its partners; that the plaintiff's Corporation in the course of its business, floated tender No.S&S/12(10)/86, dated 03.12.1986 for the sale of sub-standard rice lying in various depots. The last date for receipt of tenders was fixed up to 3.00 p.m on 22.12.1986. In pursuant to the same, Managing Partner of 1st defendant firm submitted tender on behalf of 1st defendant

in respect of lots of sub standard rice in Vizag, Tadepalligudem, Khammam, Ongole, Kurnool, Nizamabad, Vijayawada and Nellore depots of the plaintiff's Corporation. All the tenders were opened on 22.12.1986 at 3.30 p.m at the Regional Office of plaintiff at Hyderabad. The plaintiff afforded an opportunity to the tenders to inspect the rice stock before submitting tenders. The rates offered by the 1st defendant ranged from Rs.140/- to Rs.259/- per quintal for different lots. The plaintiff has accepted the rates offered by the 1st defendant and communicated its acceptance vide letters dated 07.01.1987 and 16.01.1987 to the 1st defendant and the postal acknowledgment was received from 1st defendant on 10.01.1987 and 19.01.1989 respectively. As per the terms and conditions of tender, the 1st defendant sent demand draft dated 20.12.1986 for Rs.5,000/-. After acceptance of the rates quoted by the 1st defendant firm, the plaintiff Corporation directed the 1st defendant firm to deposit the amount towards the security deposit at 7 ½ of the value of the stocks agreed to be purchased by it. The 1st defendant firm quoted its rates having accepted the terms and conditions of the tender floated by the plaintiff, as such, there is a concluded contract between the plaintiff and defendants. The total amount due by the defendants for different lots of rice stocks agreed to be purchased by them

calculated at the rates offered by them came to Rs.93,63,952/- and the defendants have to pay the remaining cost of the rice stocks after remitting the security deposit amount and lift the stocks. The defendants after receiving the acceptance letters dated 07.01.1987 from the plaintiff, resciled from the contract through their letters, which were received in the plaintiff office on 19.01.1987 and on 24.01.1987 withdrawing their offer for the purchase of the sub-standard rice and requested the plaintiff to treat their offer as cancelled. Thus the defendants committed breach of the contract. After examining the letters of withdrawal of the defendants, the plaintiff's Corporation by its letter dated 01.04.1987 intimated the defendants that their E.M.D amount of Rs.5,000/- was forfeited as per clause D(i) of terms and conditions governing the sale of sub-standard rice. As the defendants failed to remit the amount towards the security deposit at 7 ½ of the value of the total quantity of rice stocks agreed to be purchased by them, as per the terms and conditions of the tender, after the issuance of letter of acceptance, the plaintiff's Corporation had no option but to re-sell the stocks at the risk and cost of defendants as per clause 'F' of the terms and conditions of sale of rice and floated fresh tender for the re-sale of the rice stocks agreed to be purchased by the defendants at the risk and cost of

the defendants and the tender was opened on 10.06.1987 at 3.30 p.m. As a result of resale of the rice stocks, plaintiff's Corporation suffered loss of Rs.23,72,660-99 PS due to the low rates quoted by the new buyers. As such, the plaintiff's Corporation addressed letter dated 5.11.1989 calling upon the defendants to pay the amount of Rs.26,12,607-46 by 25.11.1989. As the defendants failed to pay the same, the plaintiff filed the suit for recovery of the said amount.

3. Written statement is filed by the first defendant stating that since no cause of action took place at Hyderabad, suit is not maintainable and the Courts at Hyderabad has no jurisdiction to try the suit; that the tender offer of the defendants was not immediately accepted by the plaintiff's Corporation and the tender offer was kept open for acceptance upto 22.01.1987 by the plaintiff. When the defendant understood that this tender offer was not workable, immediately withdrew its tender offer under its letter dated 02.01.1987, which was dispatched to the plaintiff's Corporation under certificate of posting. Till dispatch of the said letter, there is no acceptance or communication of acceptance by the plaintiff. Thus, under the defendant's letter dated 02.01.1987, the offer was withdrawn even before it was accepted. Subsequently, this defendant received a letter of

the plaintiff dated 07.01.1987 communicating that the tender offer was accepted by the Corporation, by which date, the offer was already withdrawn by the defendants. Subsequently, on 17.01.1987, the defendant received a telegram from the plaintiff's Corporation stating that the tender offer of the 1st defendant was accepted and required to remit 7 ½ as security deposit. Neither in the plaintiff's letter dated 07.01.1987 nor in its telegram dated 17.01.1987 no prescribed date for payment of the security deposit or the schedule of the installments to be paid was informed. As such, the 1st defendant was constrained to send registered letter dated 22.01.1987 to the plaintiff stating that the tender offer was long back withdrawn under its letter dated 02.01.1987 and the 1st defendant has also given the reference of the said letter specifically and sought for the refund of EMD. Subsequently, plaintiff wrote a letter to the defendants referring to the defendant's letters dated 02.01.1987 and 22.01.1987 and intimating that the EMD of Rs.5,000/- was forfeited as per clause D(1) of the terms and conditions of tender, since the defendant withdrew its offer. The plaintiff's Corporation never informed about the clause F was invoked and that the defendant is liable to the differential cost in the re-tender and sought for dismissal of the suit.

4. Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether this Court has no jurisdiction to try the suit?
- 2) Whether there is a valid and binding contract between the plaintiff and the defendant? If so, whether the defendants committed breach of contractual obligations?
- 3) Whether the defendant is liable to pay differential costs and interests thereon?
- 4) Whether the plaintiff is entitled to recover the suit claims?
- 5) Whether the suit is barred by limitation?
- 6) To what relief?

5. On behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A21 marked. On behalf of the defendants, D.W.1 was examined and marked Exs.B1 to B5.

6. The trial Court after considering the oral and documentary evidence adduced on either side dismissed the suit. Challenging the same, plaintiff Corporation preferred the present appeal.

7. Heard learned counsel for the plaintiff and learned counsel for the defendants.

8. Learned counsel for the plaintiff submits that the tender submitted by the 1st defendant was accepted and letter of acceptance was sent on 07.01.1987, which was received by the 1st defendant on 10.01.1987, as such, the Court below erroneously dismissed the suit holding that there is no concluded contract between the plaintiff and the defendant

No.1. He submits that the 1st defendant has sent his withdrawal of offer, which was received by the plaintiff on 19.01.1987, after the tender of the 1st defendant was accepted on 07.01.1987. He further submits that when once the tender of the 1st defendant was accepted on 07.01.1987, by which date, plaintiff's Corporation has not received withdrawal of the offer sent by the 1st defendant, the defendants cannot withdraw from the said contract.

9. On the other hand, learned counsel appearing for the defendants submits that withdrawal of tender letter dated 02.01.1987 withdrawing the offer by the 1st defendant was sent to the plaintiff's Corporation under certificate of posting on 03.01.1987. After sending the withdrawal of offer letter, the defendants received the letter of acceptance dated 07.01.1987 sent by the plaintiff's Corporation on 10.1.1987, much after withdrawal of their offer, as such, there is no concluded contract between the plaintiff's Corporation and defendants. He also submits that unless 7 ½ security deposit as requested by the plaintiff's Corporation is deposited, there is no concluded contract between the parties, as such, Court below rightly dismissed the suit of the plaintiff's corporation. Moreover, after receipt of withdrawal of offer, the plaintiff's Corporation has also forfeited the EMD amount of Rs.5,000/- and that when once the amount of EMD is forfeited, the plaintiff's Corporation cannot canvass

before this Court that they suffered loss by the action of the defendants.

10. In view of above rival contentions, points that arise for consideration are:

1. Whether the defendants have sent the letter of withdrawal of offer dated 02.01.1987 before the acceptance letter sent by plaintiff's Corporation on 07.01.1987 and received by 1st defendant on 10.01.1987?
2. Whether there is any concluded contract between the plaintiff's Corporation and defendants?

11. Point Nos.1 & 2:

In order to appreciate the rival contentions of learned counsel for both parties, it is necessary to extract relevant provisions of the Indian Contract Act, 1872.

“Section 4. Communication when complete.-The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ; as against the acceptor, when it comes to knowledge of the proposer. The communication of a revocation is complete,- as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ; as against the person to whom it is made, when it comes to his knowledge.

Section 5- Revocation of proposals and acceptances-

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Acceptance must be absolute-In order to convert a proposal into a promise, the acceptance must-

- (1) be absolute and unqualified ;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance."

Admittedly, the plaintiff's Corporation has floated tender dated 03.12.1986 for sale of substandard rice in various depots of Tadepalligudem, Khammam, Ongole and Nizamabad. Since the 1st defendant quoted lowest rates, his tender was accepted by the plaintiff's Corporation vide its letter dated 07.01.1987 and 16.01.1987, which were received by the defendants on 10.01.1987 and 19.01.1987 respectively. It is the case of the plaintiff's Corporation that they have requested the defendants to remit 7 ½ % of the value of stocks as per the terms and conditions of tender, but they did not comply with the same and resiled from the contract. Due to the action of the defendants, the plaintiff's corporation sustained loss of Rs.23,72,660.99 ps, as such, invoked clause F of the contract for recovery of the said amount. On the other hand, defendants opposed the claim of the plaintiff on the ground that there was no concluded contract between the parties, since the 1st defendant has withdrawn the tender by their letter dated 02.01.1987.

12. In order to prove the case of the plaintiff's corporation, its Assistant Manager was examined as P.W.1. He deposed that the 2nd defendant representing the 1st defendant submitted tender quoting different rates for different lots of substandard rice at Vizag, Tadepalligudem, Ongole, Kurnool, Vijayawada and Nellore and they accepted the tender by their letters dated 07.01.1987 and 17.01.1987, which were

received by the defendant on 10.01.1987 and 19.01.1987 respectively. As per the terms of the tender, 1st defendant sent demand draft for Rs.5,000/- towards the Earnest Money Deposit. After accepting the tender, the defendant have to deposit 7 ½ % of the total cost within 7 days from the date of receipt of acceptance letter. He deposed that the defendants have not deposited the security amount as required and that on the other hand, they have intimated that they are resiling from the contract. As per the terms and conditions of the contract, the defendants are not entitled to resile the contract and they intimated to the defendant and forfeited the EMD of Rs.5,000/- in case of resiling the defendants have to pay the differential amount.

13. On the other hand, on behalf of the defendants, 3rd defendant, who is one of the partners of 1st defendant firm deposed as D.W.1, admitting about the quoting of tender with the plaintiff Corporation. He deposed that due to disputes among partners and financial problems, they have withdrawn the offer and sent Ex.A5 letter dated 02.01.1987 withdrawing their offer. He deposed that they received Ex.A3 acceptance letter of plaintiff on 10.01.1987 to deposit 7 ½ % of the cost of stocks, after withdrawing the offer. He further deposed that they received letter from the plaintiff forfeiting the EMD amount and that the plaintiff accepted their withdrawal under Ex.A7. He categorically deposed that they

have not received any communication demanding them to bear losses and expenses suffered by the plaintiff by way of resale and moreover, the plaintiff has refunded the sums payable to them towards security deposit, differential amount of interest charges and interest for other transactions, relating to other tenders.

14. Admittedly, the tender of the 1st defendant was accepted by the plaintiff's corporation and they have also issued letters dated 07.01.1987 and 16.01.1987 to the 1st defendant, which were received by the 1st defendant on 10.01.1987 and 19.01.1987. But it is elicited from the evidence of D.W.1, who is 3rd defendant in the suit that they have issued Ex.A5, letter withdrawing the offer through certificate of posting dated 03.01.1987 to prove that they have sent Ex.A3 on 03.01.1987. The 1st defendant received letter of acceptance of the plaintiff on 10.01.1987, which is marked as Ex.A3 to deposit 7 ½ % of the cost of stocks, after withdrawing the offer. The 1st defendant also received letter under Ex.A7 from the plaintiff accepting the withdrawal and also forfeiting the EMD amount. It is the specific contention of the defendants in their written statement as well as in the evidence that they have received Ex.A.3 only after they withdrew the offer under Ex.A5. Ex.A6 is the letter addressed by the defendants dated 22.01.1987 to the plaintiff wherein they have referred their earlier letter dated

02.01.1987 i.e., Ex.A5 and informed to the plaintiff that their offer to purchase the substandard rice had been withdrawn, as such, letter issued by the plaintiff under Ex.A3 not binding on them. Ex.A7 is letter from plaintiff dated 01.04.1987, wherein the plaintiff while referring the correspondence with the defendants, stated that they had forfeited the EMD Deposit of the defendants. It is the specific contention of the defendants in the written statement as well as in the deposition of D.W.1 that they received ExA3 only after withdrawal of offer under Ex.A5. According to plaintiff, they received Ex.A5 on 20.01.1987, after sending their acceptance letter. Initially, the burden lies on the defendants to prove that before receiving acceptance letter dated 07.01.1987, they have withdrawn the offer. In his examination, P.W.1 admitted that Ex.A5 letter bears the signature of their clerk on 20.01.1987 and date stamp shows the date as 19.01.1987, which shows that the plaintiff received letter of withdrawal of offer of the defendant either 19.01.1987 or 20.01.1987 and the said fact is not specifically denied by the plaintiff in their subsequent correspondence, except stating that the EMD is liable to be forfeited. Therefore, it can be presumed that the defendant has withdrawn its offer on 02.01.1987 by certificate of posting issued on 03.01.1987 much before the letter of acceptance sent by the plaintiff on 07.01.1987. That apart, to conclude

the contract between the parties, apart from payment of EMD, the defendants have to pay 7 ½ of the total value of the stock and that unless the said amount is paid, there cannot be any concluded contract between the plaintiff and the 1st defendant, as such, it can be safely concluded that there is no valid and concluded contract between the plaintiff and the 1st defendant. On appreciation of both oral and documentary evidence on both sides, the Court below also came to the conclusion that there is no concluded contract between the plaintiff and the defendants. In **M/s.Suraj Besan v. Rice Mills v. Food Corporation of India**¹, while referring to other judgments it has been held:

(9) Rajendra Kumar Verma v. State of Madhya Pradesh and others '(Supra) it has been held that a person who makes an offer is entitled to withdraw his offer or tender before its acceptance is intimated to him. The Government by merely providing a clause to the contrary in the tender notice could not take away the legal rights of a person.

(10) In view of the law laid down by the Division Bench of this Court in R.F.A. 24-D/1960 **Union of India v. Sh. Rajendra Prasad Jain**, I hold that under law plaintiff was entitled to withdraw or modify their offer before the communication of the acceptance was complete as against the plaintiff. Thus, the letter dated July 8, 1983 amounted to the modification of the offer. I accordingly hold that acceptance issued by telegram dated July 22, 1983 did not result in a concluded agreement between the parties as there was no offer in existence at the time when defendant accepted tender of plaintiff.

In the aforesaid judgment, it was categorically held that a person can withdraw or modify his offer before communication of the acceptance is complete as against him i.e., before its acceptance is intimated to him. Any contrary clause provided in the tender cannot take away the ultimate legal rights of persons who made offer. Coming to the case on hand, it is substantially proved that the defendant has withdrawn from the contract

¹ AIR 1988 Delhi 224

before intimation of acceptance letter is received and did not comply the condition of payment i.e., 7 ½ % of value of the stock, as such, it cannot be said that there exists a concluded contract between the plaintiff and the 1st defendant. In **Abdul Salam Choudhury v. The State of Assam**², it is held as follows:

“8. Unless sale of Mahal or Coupe is complete, the question of cancellation of sale and resale, thereof cannot and does not arise. Here in the instant case, the petitioner admittedly withdrew his offer made in his tender well before acceptance thereof by the settling authorities and as such, there could not be any sale of the Mahal to the petitioner and the question of cancellation of sale and resale thereof at the risk of the petitioner for the remaining part of the settlement period of the mahal could not and did not arise.....

10. Under the provisions of S.5 of Indian Contract Act, a proposal may be revoked at any time before communication of its acceptance is complete as against the proposer, but not afterwards. Admittedly, the petitioner withdrew his offer made in his tender by the application dated 21.03.1977 well before acceptance thereof. In other words, the petitioner revoked his proposal/offer well before acceptance thereof. Under the provision of the Indian Contract Act, the petitioner has the statutory right to withdraw/revoke his offer for getting settlement of the Mahal or coupe before acceptance thereof by the settling authorities. It being a statutory right of the petitioner under the provisions of the Indian Contract Act entitling him to withdraw/revoke his offer/proposal made in his tender before acceptance thereof by the authorities and the petitioner having done so in the instant case, the contract of sale of the Mahal in question for the settlement period could not be enforced on the petitioner and he cannot be saddled with the liability to make good the deficiency. The settling authorities were in no way prejudiced or inconvenienced by the withdrawal of the offer made by the petitioner in his application dated 21.3.77 before consideration of tenders.”

In view of aforesaid decision, Section 5 of the Act provides that a proposal may be revoked at any time before communication of its acceptance is complete as against the proposer, but not afterwards. In the instant case, admittedly, the 1st defendant withdrew the offer made by it in his tender by the application dated 02.01.1987 well before acceptance thereof. In other words, the 1st defendant revoked proposal/offer well before acceptance thereof. Under

² AIR 1991 Gauhati 9

the provision of the Indian Contract Act, the 1st defendant has the statutory right to withdraw/revoke offer for the purchase of substandard rice in the subject tender before acceptance thereof by the plaintiff's Corporation. It being a statutory right of the 1st defendant under the provisions of the Indian Contract Act entitling it to withdraw/revoke its offer/proposal made in the subject tender before acceptance thereof by the plaintiff's Corporation and the 1st defendant having done so in the instant case, the contract for purchase of substandard rice in question could not be enforced on the 1st defendant and he cannot be saddled with the liability to make good the deficiency by the plaintiff. The plaintiff had miserably failed to prove that they received the letter of cancellation only after acceptance letter sent by them is received by the defendants.

15. Learned counsel for the plaintiff submits that they have received letter of withdrawal of the defendants dated 02.01.1987 only on 20.01.1987. Learned counsel for the defendants submits that the plaintiff's Corporation being a statutory body and dealing with business, ought to have maintained the registers relating to its transactions. P.W.1, being an Assistant Manager of the plaintiff's Corporation, ought to have produced relevant records maintained in the office to prove that they have received Ex.A3 only on 20.01.1987, but he failed to produce the registers pertaining

to the same. In view of above, a presumption can be drawn in favour of the defendants that they have send Ex.A3 under Certificate of Posting on 03.01.1987 only. As rightly contended by the learned counsel for the defendants that plaintiff cannot rely on the weakness of the defendants' evidence and that it has to prove its own case on the strength of its evidence.

16. It is next contended by the learned counsel for the plaintiff that the defendants, having participated in the tender process and having entered into agreement, cannot resile from the same on untenable grounds, cannot be accepted for the reason that admittedly, defendants' withdrew the offer on 02.01.1987 and they have also failed to pay 7 ½ % of security deposit in pursuant to the letter addressed by the plaintiff's Corporation, as per the terms of the contract, as such there is no concluded contract between the plaintiff's Corporation and the defendants. That apart, as rightly contended by the learned counsel for the defendants, which was also observed by the Court below that the plaintiff's Corporation never protested about withdrawal of offer by the defendants from 1987 till 1989, in subsequent correspondence between them.

17. Be it as it may, the plaintiff's Corporation also failed to file a comparative statement or other records pertaining to

the auction conducted subsequently in respect of sale of subject rice to show that they sustained loss to a tune of Rs. 23,72,660.99 ps. As already discussed above, when once the plaintiff has forfeited the EMD on the ground that the defendants failed to comply the terms and conditions of the tender, it cannot be said that there is valid and subsisting contract between the parties, to enable the plaintiff's Corporation to invoke clause (f) of the terms to claim differential costs at the risk of the defendants. Since there is no concluded contract between the parties i.e., plaintiff's Corporation and defendants, the defendants are not liable to pay the suit amount, towards loss sustained by the plaintiff.

In view of above facts and circumstances, this Court is of the opinion that there is no error or illegality committed by the trial Court in dismissing the suit filed by the plaintiff, warranting interference under Section 96 of CPC by this Court.

Accordingly, this Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

18.01.2018

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CCCA No.207 of 1999



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