

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

**RSA No.1790 of 1990 (O&M)
Date of Decision.26.10.2018**

Food Corporation of India

...Appellant

Vs

Ajit Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.K. Gupta, Advocate
for the appellant.

None for the respondent.

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AMIT RAWAL J.

The appellant-plaintiff instituted the suit for recovery of ₹2,60,050/- through its District Manager, Kapurthala on the premise that in pursuance to the tender floated, defendant's bid being the lowest was accepted by the Senior Regional Manager on 19.03.1984 and in this regard, telegram of acceptance Ex.PW2/B was sent but the defendant did not execute the work nor deposited the security and the contract vide letter dated 21.12.1984, Ex.PW2/C, as per the provisions of Clause X(B) was cancelled by the Senior Regional Manager. The plaintiff got the work done from another contractor at the risk and cost of the defendant and in this process, suffered loss of the amount sought to be recovered.

Upon entering defence, despite objection that suit was filed by unauthorized person, it was stated to be time barred, much less, without any cause of action. The plaintiff did not accept the tender unconditionally and in this process, security of ₹30,000/- was not deposited by the defendant.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the suit has not been filed by a competent person. If so its effect?*
- 2. Whether the plaintiff has got no right to file the present suit according to the terms and conditions of the agreement?*
- 3. Whether the suit is within time?*
- 4. Whether there was complete contract between the parties and as such the plaintiff has no cause of action to file the present suit?*
- 5. Whether there is breach of contract on the part of the defendant. If so its effect?*
- 6. Whether the plaintiff is entitled to the amount of damages claimed. If so, to what amount?*
- 7. Relief.”*

The plaintiff examined Bhupinder Singh, Assistant Manager as PW1, Davinder Mohan Sharma as PW2 and Hardip Singh, Assistant Manager FCI, Jalandhar as PW3.

On the other hand, defendant himself appeared as PW1 and examined DW2 Bachan Singh.

On the basis of evidence brought on record, the trial Court rendered finding on issue No.1 on the premise that suit was filed by duly authorized person and rejected contention of the defendant by holding that the Senior Regional Manager, who was authorized to sign and verify the pleadings had authorized the District

Manager to contest the same by executing an authority Ex.PW2/D, thus, decreed the suit.

However, the lower Appellate Court reversed the finding in appeal preferred by the defendant by holding that the suit was not filed by authorized person as there was no documentary evidence brought on record authorizing the Senior Regional Manager to delegate powers of the Board of Directors in favour of District Manager. Resultantly, the suit was dismissed.

Mr. K.K. Gupta, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable as Bikramjit Singh, Senior Regional Manager vide Ex.PW2/D on the basis of powers derived under the Rules, Instructions and delegation of powers authorized the District Manager, Kapurthala to institute the suit and sign as well as verify the pleadings. In support of the aforementioned contentions, relied upon judgment rendered by Delhi High Court in **Prabhu Steel Industries Ltd. Vs. Union of India and another 2005(121) DLT 663** to contend that deposit of the security is condition antecedent and not a condition precedent, therefore, when the offer was unconditionally accepted, it was a concluded contract. As the suit was also dismissed on the premise that there was no contract between the parties, he drew attention of this Court to the agreement which had been signed under the powers of the Senior Regional Manager, Ex.PW2/A but the lower Appellate Court abdicated in not noticing the contents thereof.

There is no representation on behalf of the respondent despite service.

The appeal is the of the year 1990 and therefore, I proceeded to dispose of the appeal.

I have heard learned counsel for the appellant, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Gupta. Ex.PW2/A bears the signature of the defendant and not that of any officer on behalf of the Food Corporation of India. In the absence of the same, the finding of the lower Appellate Court of incomplete contract cannot be said to be faulted with. For appreciating the controversy, the record was looked into and on perusal the original document revealed that there was no signature on behalf of Food Corporation of India. No other document was pointed out to bring the case within the realm of perversity for forming different opinion.

Since furnishing of security was a condition antecedent and not precedent, the authority of District Manager will not come to the aid of appellant that the contract was concluded even if the security required to be deposited by the respondent-defendant had not been deposited. Therefore, finding of the lower Appellate Court on issue No.4 is accordingly upheld.

Now coming to issue No.1 with regard to authority of the District Manager to institute the suit, the contents of the same are extracted as under:-

*“Food Corporation of India
Regional Office:Punjab
Chandigarh.*

AUTHORIZATION IN LEGAL MATTERS

*Subject: Recovery suit FCI V/s Sh. Ajit Singh, Ex-HTC
FSD Dhillwan.*

*I, Bikramjit Singh, IAS, Senior Regional Manager,
Food Corporation of India, Regional Office, Punjab,
Chandigarh under powers vested in me under the rules,
instructions/delegation of powers, statement of FCI do
hereby authorise District Manager, FCI, Jalandhar to
act on my behalf and on behalf of the Corporation in
above mentioned case to be filed/contested by the FCI
and to execute 'Vakalatnama' in favour of FCI counsel
sign & verify pleadings, affidavits, memoranda statement
etc. to instruct advocate and to give evidence wherever
required on behalf of FCI and to do all such other acts
and deeds as may be necessary so pursuing the above
case on behalf of FCI which acts and deeds, I as
competent authority hereby agree to ratify.”*

*sd/-
(BIKRAMJIT SINGH)
I.A.S.
SR. REGIONAL MANAGER”*

The Senior Regional Manager had authorized the District Manager to institute the suit under power vested in him through rules, instructions/delegation of powers or by the board of directors but said powers had not seen light of the day, enabling this Court to give a different finding. It was incumbent upon the appellant-plaintiff to discharge onus, particularly, when a serious objection with regard to maintainability of the suit had been taken. The District Manager could not institute the suit on the basis of power given to him by

Senior Regional Manager.

The argument of Mr. Gupta that the authority was signed by Senior Regional Manager, therefore, the objection qua maintainability was insignificant, is not sustainable. Though the agreement was in the name of Senior Regional Manager but the same did not bear his signatures.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 26, 2018
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No