

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

**RSA No. 2893 of 1994 (O & M)
Date of Decision:-12.2.2018**

The Food Corporation of India

...Appellant

Versus

M/s S.D. Rice Mills, Jallalabad through Sohan Lal (deceased) through LRs
and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S. Dhandi, Advocate
for the appellant.

Mr. Abhay Nanda, Advocate
for respondents No.1 to 3.

AMIT RAWAL J.(Oral)

The appellant-plaintiff is in appeal against the judgment and decree rendered by the lower Appellate Court whereby the appeal of the defendant preferred against the decretal of the suit for recovery of amount of Rs.2,75,984.30/- with a future interest @ 6% has been allowed, in essence the suit has been dismissed.

The appellant instituted the suit for recovery of the

aforementioned amount on the premise that it has floated a tender on 24.8.1994 for sale of sub standard paddy. In response to the aforementioned tender, the defendant firm submitted a tender wherein it had agreed to lift 500 MT PR-106 of the sub standard paddy @ Rs.370/- PM tonne at Makhu. A sum of Rs.18,000/- deposited by the defendant as security. The sale consideration was to be deposited within a week from the acceptance of the tender but having failed to do so there was breach of the terms and conditions of the tender, thereafter the paddy was dumped as per the orders dated 15.5.1986 and 10.3.1986, and in this process, the appellant FCI had incurred a loss of Rs.2,75,984.36/- which was sought to be recovered from the defendant.

The aforementioned suit was contested by the defendant. They did not dispute regarding the submission of the tender but it was stated that they did not deposit the cost of the paddy as there was no stock of the stipulated sub-standard quality of PR-106 at Makhu. In fact it was not of worth therefore there was no obligation to take the delivery of the stock which was not of sub-standard quality.

From the pleadings of the parties, the trial Court framed the following issues :-

- “1. Whether the plaintiff is entitled to recover Rs.2,75,984.36/- paise as prayed for ? OPP
2. Whether the plaintiff is entitled to recover any interest ? If so, to what amount ? OPP
3. Relief.”

To prove its case the plaintiff examined Mr. Harjit Singh,

A.G.I. Depot, Makhu as PW1, Mr. M.S. Sodhi, A.G.I. Regional Depot, Chandigarh as PW2, Mr. G.S. Ravinderanathan, Assistant Manager as PW3 and Mr. Prem Sagar, Assistant Manager as PW4. On the contrary, the defendants examined DW1 and closed the evidence. The documentary evidence brought on record was in the following manner :-

Ex. P1	Letter of defendant.
Ex.P2	Acceptance of the offer.
Ex.P3	Letter of acceptance dated 12/15.9.1984 inter communication written by the Assistant Manager to the District Manager, FCI, Ferozepur.
Ex.P4	Letter of authority.
Ex.P5	copy of the telegram dated 27.9.1984 issued to the defendants.
Ex.P6	Photostat copy of the tender notice dated 15.3.1985.
Ex.P7	Tender for disposal of the damaged Paddy.
Ex.P8	detail of stock of the paddy which was declared as damaged.
Ex.P9	photostat copy of the order of disposal of the paddy by way of dumping.
Ex.P10	details of stock.
Ex.P11	order dated 21.10.1986 regarding dumping of paddy.
Ex.P12	detail of stock which was to be dumped.
Ex.P13	copy of order.
Ex.P14	details of the stock.

Mr. H.S. Dhandi, learned counsel appearing on behalf of the appellant submitted that the trial Court on the preponderance of the evidence decreed the suit but the lower Appellate Court reversed the findings on the grounds that there was no breach of any terms and

conditions of the contract. In support of the memorandum of appeal he has submitted that the lower Appellate Court committed illegality and perversity in not accepting the fact that in view of the tender notice, the respondent deposited Rs.18,000/- as security. The contents of the telegram Ex.P5 had not been interpreted in a correct manner and therefore there is misdirection. In fact the contents of the aforementioned telegram leads to an inference that there was enforceable contract. In this view of the matter the suit aforementioned was filed. In support of his contentions, he has relied upon the judgment rendered by Hon'ble the Supreme Court in **Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd., India 2010 (1) RCR (Civil) 887** wherein for the purpose of appointment of Arbitrator it was held that whether there was a concluded contract or not, it was found that in absence of a signed agreement between the parties containing arbitration clause can be also looked into by the Arbitrator. He further relied upon the judgment **H.G. Krishna Reddy and Co. vs. M.M. Thimmiah and another 1983 AIR (Madras) 169** that the construction of the contract would be enough to express the desire of the parties to enter into a contract. He also relied upon **Union of India vs. M/s Uttam Singh Dugal And Co. (Pvt.) Ltd. 1972 AIR (Delhi) 110** to contend that as per Section 7 of the Contract Act, 1872 acceptance of offer must be absolute.

Per contra, learned counsel appearing on behalf of the defendant submitted that as per the provision of Section 7 of the Indian Contract Act , there was no absolute acceptance therefore there was no concluded contract and in the absence of the same, the suit aforementioned

was not maintainable and no liability could be fastened upon the defendants. He has also relied upon to the provisions of Section 8 and 9 muchless Section 10 of the Indian Contract Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the appellant.

It would be apt to reproduce the contents of telegram Ex.P5 for the facility which reads as under :-

“Your offer for purchase of sub standard paddy Ex.Makhu Five Hundred MT paddy parmal @ Rupees Three Hundred Seventy per MT at gross weight on as is where is basis has been accepted stop attend District Office to complete formalities and deposit amount within seven days stop No replacement of existing gunnies to be done or no additional gunnies will be supplied.”

Letter dated 12/15.9.1984 was preceeded by the telegram (Ex.P3). The cumulative reading of the aforementioned document leads to irresistable conclusion that respondent-defendants were required to attend the office to complete the formalities to finalize offer as prescribed in the tender form so as to bind him as per the terms of the tender. The terms of the tender were yet to be written between the parties. Thus, deposit of the security of Rs.18,000/- was only an offer given by the defendant for the purpose of lifting the damaged paddy at the prescribed rate. Since stock offered was not worth as projected, they did not visit the office for the purpose of formalities. The provision of Section 7 has been interpreted by the Delhi High Court in **Union of India's** case (supra) wherein it has been held that

there has to be an absolute acceptance and in the absense of the same there will be no contract.

In my view there was no absolute contract between the parties enabling any cause of action in favour of the appellant-plaintiff to recover the amount. The lower Appellate Court being the last Court of facts and law in my view appreciated the documentary evidence differing with the findings rendered by the trial Court. There is no dispute with regard to the ratio decidiendi culled in the judgment **Trimax International's** case (supra) wherein the objection was raised as to whether in the absence of unconcluded contract the Arbitration clause could be pressed into service for the purpose of referring the dispute to the Arbitrator. In the present case the controversy is entirely different. In **Union of India's** case (supra) in paragraph 14 which read as under :-

“14. The board features of the case are that the tender itself was vague and the Engineer of the respondent-contractor examined as R.W.1 has deposed to a number of assumptions that had been made regarding well-foundations and other matters in the contract. He has also deposed that material changes had been brought about by the letter of acceptance in dispute dated 11th May, 1961 and now the extension of the diameter of the wells, the change in the designs and the curves of the bridge had led to the increased costs and so neither the contract had in fact or in law been arrived at nor was the respondent willing to forgo the legal rights and the formalities of law and otherwise carry out the work awarded at considerable loss after a long time had elapsed from the submission of the tender, which itself was vague and

contained alternatives and had never been categorically accepted. The counsel for the respondent has selected, to point out at least four items in respect of which the letter of acceptance was silent and the parties had not been *ad idem*, namely, (1) man-hole covers on the bridge for inspection. (2) water-mains, (3) condition No.5 regarding issue of quota certificate and (4) change of design. The counsel for the petitioner admits that the man-hole covers and water mains have not been mentioned in the letter of acceptance, since the Government had dropped their proposal, but I do not find that the dropping of proposal had ever been communicated to the respondent.

With regard to quota certificate, the counsel for the petitioner states that the same had ultimately, after negotiations, been agreed to and so far as designs are concerned, the counsel submits that they had been under active consideration. As a matter of law, when there is variance between the offer and acceptance even in respect of any material term, acceptance cannot be said to be absolute and unqualified and the same will not result in the formation of a legal contract.”

it has been categorically held that the acceptance has to be absolute. When there is variance between the offer and acceptance it cannot be concluded so the aforementioned judgment does not help the plaintiff. In **H.G. Krishna's case** (supra) in paragraphs 9 and 19, the Division Bench of Madras High Court held that the law does not recognise a contract or to enter into contract. In the case in hand there is no occasion to rely upon the ratio *decidendi* culled in the aforementioned judgment

For the reasons aforementioned I do not find any illegality and

perversity in the judgment and decree of the lower Appellate Court dismissing the suit.

Resultantly the appeal stands dismissed.

February 12, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No