

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

RSA No.163 of 2000

Date of decision:27.07.2018

The Food Corporation of India

... Appellant

Vs.

Ashok Kumar Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

None for the respondent.

AMIT RAWAL J.

The present appeal is at the instance of appellant-defendant/Food Corporation of India against the judgment and decree dated 26.10.1999 passed by the Additional District Judge, whereby, suit of respondent-plaintiff for recovery of ₹59,697.69 paise dismissed by the trial Court, has been decreed, in essence, judgment and decree of the trial Court has been reversed.

The short point involved in the present appeal is whether Food Corporation of India can retain the amount of the Contractor out of the completed work *vis-a-vis* other pending contract or not.

The facts in brief are that respondent-plaintiff instituted the suit for recovery of ₹59,697.69 paise towards the principal amount and interest

on the premise that in pursuance to the agreement dated 23.6.1988 executed between the parties, plaintiff completed the job and extra job under the contract/agreement but the defendant withheld the amount sought to be recovered after clearing other dues.

The appellant-defendant contested the suit on the premise that as per Clause 17 of the Terms and Conditions of the Agreement , it could retain the amount in respect of another contract.

On the basis of aforementioned pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for the recovery of ₹59,697.69 paise towards the principal amount and interest?OPP*
- 2. Whether this Court has no jurisdiction to try the present suit?OPD*
- 3. Whether the plaintiff has not properly sued the defendant/Corporation?OPD*
- 4. Relief.”*

The trial Court dismissed the suit holding that the appellant-defendant did not deny the completion of contract at the hands of the respondent-plaintiff but by referring to the provisions of Clause 17 of the Contract/Agreement that defendant was empowered to retain the amount with regard to other pending contractual work. The appeal laid before the Lower Appellate Court had been allowed on the basis of the judgment

rendered by Hon'ble the Supreme Court in **Union of India Vs. Raman Iron Foundry AIR 1974 SC 1265.**

Mr. H.S.Dhandi, learned counsel appearing on behalf of the appellant-defendant submitted that judgment relied upon by the Lower Appellate Court had been over-ruled by Hon'ble the Supreme Court in **M/s H.M.Kamaluddin Ansari & Co. Vs. Union of India and others AIR 1984 Supreme Court 29.** It was submitted that Clause 17 and 18 of the Contract Act, were signed by the parties to the lis without any pressure or coercion. The respondent-plaintiff/contractor knew about withholding of the amount in respect of other pending contract and it is on account of that fact amount ₹59,697.69 paise sought to be recovered, had been retained, in essence, there was no other dispute.

The Hon'ble Supreme Court in **Raman Iron Foundry's** case (supra) on similar provisions held that UOI can retain the amount even if clause of the agreement empowered the department to withhold the amount, in essence, it was held that claim referred to in the agreement was only for a sum due and payable which is admitted and in case of other disputes, are required to be established in law. The aforementioned findings are incongruous in paragraph 26 of M/s H.M.Kamaluddin Ansari & Co.'s case (supra). For the sake of brevity, paragraphs 26 and 27 read as under;-

“26 The headings prefixed to a section or a group of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statutes

but they may explain ambiguous words. The view is now well settled that the headings or titles prefixed to a section or a group of sections can be referred to in determining the meaning of doubtful expressions. It is true that the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words. The law is clear that those headings cannot be used to give a different effect to clear words in the section where there cannot be any doubt as to the ordinary meaning of the words. The golden rule is that when the words of a statute are clear, plain and unambiguous, that is, they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences. The duty of a Judge is to expound and not to legislate, is a fundamental rule. If we apply the same principle to the interpretation of cl. 18 of the standard form of contract, it would be clear that the clause unequivocally contemplates a claim for the payment and it is open to the Union of India to appropriate any amount due to the contractor under other pending bills. It does not contemplate the amount due and, therefore, the heading of this clause which talks of only 'Recovery of sum due' will not control cl. 18. The clause in our opinion gives wide powers to the Union of India to recover the amount claimed by

appropriating any sum then due or which at any time thereafter may become due to the contractor under other contracts.

27. *Clause 18 of the standard form of contract earlier was slightly differently worded and it read 'whenever under this contract any sum of money is recoverable from and payable by the contractor'. But this formula was deliberately and advisedly altered when the present standard form was introduced and instead the words 'whenever any claim for payment of a sum of money arises' were substituted and this change in phraseology indicated that in order to attract the applicability of the present cl. 18, it was not necessary that there should be a sum of money due and payable by the contractor to the purchaser, but it was enough if there was a mere claim on the part of the purchaser for payment of a sum of money 't by the contractor irrespective of the fact whether such sum of money was presently due and payable or not. This Court, however, did not attach importance to this aspect of the matter by observing:*

We do not think it is legitimate to construe cl. 18 of the contract between the parties by reference to a corresponding clause which prevailed in an earlier standard form of contract. This is not a statute enacted by the legislature where it can be said that if the

legislature has departed from the language used by it in an earlier enactment, it would be a fair presumption to make that the alteration in the language was deliberate and it was intended to convey a different meaning. It is a clause in a contract which we are construing and there any reference to a similar or dissimilar clause in another contract would be irrelevant.”

On going through the aforementioned observations of Hon'ble the Supreme Court, judgment came to be passed only by interpreting the provisions of Clause 18 of the Contract which was found to be different in the contract pertaining to **Raman Iron Foundr's case (supra)** vis-a-vis M/s H.M.Kamaluddin Ansari & Co.'s case (supra). In the present case, grounds raised in the memorandum of appeal and as well as the judgments of the Courts below have not been referred to the provisions of Clause 18 and kept mystery to be interpreted.

For the sake of brevity, Clause 17 of the Contract on which Food Corporation of India relied upon in not paying the security amount reads as under:-

“Clause 17 If the contractor or his working people or servants shall break, deface, injure or destroy any part of building in which they may be working, or any building, road, road curb, fence, enclosure, water pipe, cable drains, elector or telephone post or wires, trees, grass or grassland or cultivated ground

contiguous to the premises on which the work or any part of it is being executed, or if any damage shall happen to the work while in progress, from any cause whatever or in any defect, shrinkage or other faults appear in the work within six months after a certificate final or otherwise of its completion shall have been given by the Engineer-in-Charge as aforesaid arising out of defective or improvement materials or workmanship the contractor shall upon a receipt of a notice in writing in that behalf make the same to be made good at his own expense, or in default the Engineer-in-Charge may cause the same to be made good by the other workmen and deduct the expense from any sum that may be then, or at any time thereafter may become due to the contractor or from his security deposit, or the proceeds or sale thereof or of sufficient portion thereof. The security deposit of the contractor shall not be refunded before the expiry of six months (three months in the case of any work other than road work costing Rs.20,000/- and below) after the issue of the certificate final or otherwise of completion of work or till the final bill has been prepared and passed whichever is later. Provided that in the case of road work if in the opinion of the Engineer-in-Charge half of the security deposit is sufficient to meet all the liabilities of the contractor under this contract, half of the security deposit will be refundable after three months and the remaining half after

six months of the issue of the said certificate of completion or after the final bill has been prepared and passed whichever is later.”

On plain and simple reading of the aforementioned provisions relied upon by the department in withholding the amount leaves no manner of doubt that clause, *ibid* pertained to withholding of amount, in case, the contractor or servant destroy any part of the building enumerated therein. No evidence of such occurrence has been placed on record to establish the invocation of aforementioned clause. Even the witness of department also heavily relied upon the Clause 17. For the sake of brevity, examination-in-chief of DW1 reads as under:-

“Ashok Kumar Vs. FCI
DW1 Harmit Singh son of S.Bhagwan Singh Assistant
Manager, o/o Deputy Manager Civil Engineering Regional
Office, FCI, Punjab Chandigarh on S.A.

I have brought the tendered documents in respect of work at Adampur and Nawansahar. Both the these works were entrusted to the plaintiff. The terms and conditions of the contract in respect of work at Adampur are contained in Ex.D1. I have brought the original, photocopy of the same is Ex.D1. Ex.D2 is the notice inviting tender in respect of Adampur work. Ex.D3 is the tendered documents in respect of roads at F.S.D, Nawan Shahar-II (containing 70 pages). The plaintiff is a defaulter in respect of contract which was

awarded to him in respect of construction of roads F.S.D. Nawan Shahar-II. The corporation is well within its right to withhold the payment under the terms and conditions of tendered documents in respect of work at Adampur. The contract which was awarded in respect of Nawanshahar-II was resended vide Ex.D4. The final bill in respect of work at Adampur has not been passed so far and as such under Clause 17 of the terms and conditions of the agreement the plaintiff is not entitled to refund of security amount. The plaintiff is also not entitled to any interest on the security amount. The Corporation is not liable to pay any amount to the plaintiff towards the suit amount. The final bill is yet to be filed and the amount is yet to be determined.”

On cumulative reading of the aforementioned provisions of Clause 17 and examination in chief of DW1, I am of the view that judgment relied upon by Mr. Dhandi does not apply to the facts of the case as the appellant miserably failed to prove on record withholding the amount of security under Clause 17. Thus, in my view, even if the finding of the Lower Appellate Court is based upon the evidence, would not come to the rescue of the appellant, in view of the observations made herein above.

For the reasons aforementioned, I do not find any involvement of substantial question of law rendering the findings against the respondent-plaintiff.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 27, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No