

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

**RSA No.4810 of 2016 (O&M)
Date of decision:23.02.2018**

Food Corporation of India

... Appellant

Vs.

Gurdial Kaur (now deceased) through LRs
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Atul Gaur, Advocate, for
Mr. Sumeet Goel, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 02.01.2016 passed by the Lower Appellate Court, whereby, judgment and decree dated 24.01.2012 of the trial Court, has been set aside, in essence, suit was dismissed.

Before adverting to the arguments of learned counsel for the appellant, it would be apt to give factual matrix.

The appellant-plaintiff instituted a suit on the premise that Gurjant Singh (since deceased) was appointed as Handling and Transport Contractor at Food Storage Depot Khanna. He had died leaving behind defendant no.1 (mother), defendant no.2 (widow) and defendant No.3 (son). The defendants being class I heirs of Gurjant Singh have inherited his estate and therefore, arrayed as defendants. In pursuance to the notice inviting tenders, Gurjant Singh submitted tender for doing the aforementioned work

on 21.08.1990. In view of the aforesaid advertisement, Gurjant Singh gave bid @ 46% above the fixed rate which was accepted and he was appointed as Labour and Transport Contractor for the work under reference. A sum of ₹30,000/- vide draft dated 27.10.1990 towards part payment of security was deposited, but failed to work in question allotted to him. In this regard, he was served with registered notice and telegram to start the work but ultimately, vide letter dated 22.12.1990, his contract was terminated by the Regional Office. The aforesaid work was allotted to other party at the risk and costs of Gurjant Singh and amount arrived at the forfeiture of over and above the wagon security, charges for unloading of gunny bags and non providing of Zonal PV Squad.

The suit was contested by the defendants by raising preliminary objections that suit was not maintainable as the defendants did not inherit any property from late Gurjant Singh. On merits, it was stated that Gurjant Singh, who was murdered by the terrorists, never acted as Handling and Transport Contractor of FCI, much less submission of the tender was also denied. It was also stated that the documents were forged and fabricated.

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

- “1) Whether the plaintiff is entitled for the suit amount of Rs.72,05,735.93 P as prayed for the heading of the plaint?OPP*
- 2) Whether the suit is not maintainable in the present form?OPD*
- 3) Whether the plaintiff has got no locus standi to file the present suit?OPD*

4) *Whether the civil Courts at Ludhiana, has got no jurisdiction to entertain and try the present suit?OPD*

5) *Relief.”*

The appellant-plaintiff in support of case examined PW1-Ashwani Kumar, Manager, PW2 - Narinder Kumar Gupta and PW-3 Ram Parshad and PW4-Rajinder Singh. In defence, Gurdial Kaur appeared into witness box as DW1 and Baljit Kaur as DW2 and closed the evidence.

The trial Court on the basis of the evidence, decreed the suit by granting 9% interest and the appeal laid before the Lower Appellate Court as stated above, was allowed by setting aside the judgment and decree of the trial Court.

Mr. Atul Gaur, learned counsel appearing on behalf of the appellant-plaintiff, in support of memorandum of appeal, submitted that judgment and decree of the Lower Appellate Court suffers from illegality and perversity, for, having not appreciated the evidence brought on record particularly, when the trial Court had noticed that the plaintiff had proved on record that deceased Gurjant Singh submitted tender (Ex.P2) with the appellant-Corporation which bore his signatures. The said tender was accepted, vide telegram Ex.P3. In fact, Gurjant Singh expressed his inability to perform the work allotted to him in a communication. The Lower Appellate Court has gone into surmises and conjectures by holding that the contract was not signed by Gurjant Singh. The documents itself proved the execution of the contract, dehor of the fact that PW1 and PW2 in the evidence stated that they did not know Gurjant Singh nor the fact that he had signed in their presence. Non-proving of the receipt, vide which

telegram Ex.P3 was sent, could not be fatal to the decision of the case as no objection was raised for execution of the aforesaid document. The entire evidence has to be read in conjunction, not in isolation. No doubt, tender of Gurjant Singh was cancelled after the contract had been awarded in favour of Ashwani Kumar and Surinder Kumar but that did not make any difference as the entire evidence had been brought on record to claim the damages as aforementioned.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Atul Gaur.

Concededly, the documents, Ex.P2 to Ex.P18 brought on record could not be proved through the testimony of PW1 and PW2 as it has to be proved either through the author or a person conversant to the writing. It is settled law that mere exhibition of the document does not dispense with its proof, in view of the law laid down by the Hon'ble Supreme Court in **Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others 1971 AIR (SC) 1865** and subsequent law. Both the witnesses, PW1 and PW2 specifically admitted that they had not brought the receipt vide which the telegram Ex.P3 was sent. The matter did not end here. It has been proved on record that the contract did not bear the signatures of Gurjant Singh. Even letter dated 22.12.1990, Ex.P8, vide which contract was terminated had not been proved on record in the absence of postal receipt. PW4 Rajinder Singh admitted in cross-examination that he had not mentioned any fact that the documents Ex.P23/1 to Ex.P23/7, Ex.P24/1 to Ex.P24/21 and Ex.P25/1 to

Ex.P25/34 as to whether they were actually got photostat by him from the original record or not.

In my view, the plaintiff miserably failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. The Lower Appellate Court being the last Court of facts and law by noticing the aforementioned facts and provisions of law has rightly reversed the judgment and decree of the trial Court which had abdicated in not referring to the aforesaid provisions of law.

In view of what has been observed above, there is no illegality and perversity in the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 23, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No