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

RSA No.4656 of 2015
Date of Decision.16.05.2018

Dharam Pal Maddar (now deceased) through LRs ...Appellant

Vs

Union of India and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dheeraj Mahajan, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.11233-C of 2015

The application for impleading the legal representatives of deceased Dharam Pal Maddar is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.4656 of 2015

The appellant-plaintiff is aggrieved of the dismissal of the suit claiming declaration by challenging the impugned letter dated 20.06.2008 whereby the defendants-respondents called upon the plaintiff to furnish 5% bank guarantee and perform the contract in pursuance of the letter dated 15.10.2007 as the same had become inexecutable as per the provisions of Section 56 of the Contract Act and for refund of earnest money deposited in the FDR bearing No.434541 dated 26.04.2007 drawn at Oriental Bank of Commerce, Putlighar, Amristar by both the Courts below.

Mr. Dheeraj Mahajan, learned counsel appearing on behalf of the appellant submitted that suit at the instance of the plaintiff was filed on the premise that in pursuance to the bid submitted by the plaintiff for by depositing invited as per the advertisement made by the Railway Department, the plaintiff was found successful as per the letter dated 04.10.2007. On 15.10.2007, letter of intent was issued containing the terms and conditions with regard to the work to the plaintiff. The letter dated 04.10.2007 called upon the plaintiff to deposit 5% of the bank guarantee but terms and conditions of the letter of intent did not provide conditions precedent of execution of the contract without deposit of bank guarantee, in essence, the bank guarantee could have been deposited even after execution of the contract. The plaintiff had been insisting the defendants to provide the lay out plan to carry out the work but the same has not been supplied. This fact had been admitted by the defendant in cross-examination, for, the tenure of the work was to expire in the month of April 2008, however, vide impugned letter dated 20.06.2008, the plaintiff was called upon to furnish bank guarantee. It is in that background, the suit aforementioned was filed.

The defendants contested the suit by taking plea that no written contract was entered into and the remedy had been through arbitration.

He submitted that the trial Court committed illegality and perversity in not accepting the contention of the plaintiff for the purpose of setting aside the impugned letter and also the lower Appellate Court where the judgment and decree of the trial Court dismissing the suit was assailed. It was incumbent upon the lower Appellate Court to examine each and every document threadbare particularly the cross-examination of the defendants as there was no of obligation on behalf of the plaintiff, in essence, the plaintiff had been able to prove the breach on the part of the department, therefore, they could not insist upon bank guarantee of 5% of the total amount of contract, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel of the appellant-appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Mahajan. Concededly, the facts as noticed above with regard to acceptance of the bid, issuance of letter of intent and impugned order are not in dispute. The question posed before this Court is whether the suit of the plaintiff challenging the impugned letter in calling upon the plaintiff to execute the work by furnishing bank guarantee was maintainable with alternative relief of mandatory injunction for refund of earnest money of ₹49,000/- and odd amount was maintainable or not and the answer is ‘no’, for, the plaintiff has not been able to prove on record that he had employed labour and collected material at the spot for undertaking the work but owing to non-supply of the drawings could not undertake the work. Had it been so, the remedy for the appellant-plaintiff shall be to claim liquidated damages under Section 73 of the Contract Act. But since there was no contract, it should have been ordinary suit for damages. No explanation has come forth by the plaintiff for not furnishing the bank guarantee to the tune of 5%.

During the course of hearing, Mr. Mahajan submitted hat the department was insisting for carrying on work at a different place than the one agreed for. In that circumstance, the plaintiff would have unambiguously written a letter that the defendants are not honouring the terms of contract, therefore, there was breach of obligation and should have asked for refund of earnest money. Having failed to avail the aforementioned remedy, the suit has rightly been dismissed. It is also conceded position on record that the department in the absence of contract had not allotted the work to third party at the risk and cost of the plaintiff.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees under challenge, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No