IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CM No.8039-C-2017 in/and
RSA No.3297 of 2017 (O&M)
Date of Decision : 31.08.2018

Food Corporation of India and others
...... Appellants

Versus

Kaka Ram and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
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Present : Mr. J.S.Puri, Advocate
for the appellants.

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AJAY TEWARI, J. (Oral)

CM No.8039-C-2017

For the reasons recorded, the application is allowed. Delay of 65 days in re-filing the appeal is condoned.

RSA No.3297 of 2017

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit for mandatory injunction filed by the respondent No.1-Kaka Ram.

The admitted facts are that respondent No.1 was a contractor of the Food Corporation of India (FCI) and after the contract was entered into the appellant had informed him that it had forfeited his earnest money because his father (who had also been a contractor with the FCI) owed money to the FCI. The appellants filed an application under Order 7 Rule 11 CPC claiming that respondent No.1 was liable to pay *ad-valorem* Court fee. The respondent No.1 affixed *ad-valorem* Court fee. In the written statement the defense of the appellants was that since the father of respondent No.1 owed them money and since in that contract it had been stipulated that the heirs of the father would also be liable to return any money, the appellants had the right to forfeit the earnest money of the respondent No.1.

Both the Courts below held that even if the father of the respondent No.1 owed money to the appellants yet the appellants could not unilaterally forfeit the amount which had been deposited by respondent No.1 and decreed the suit.

Learned counsel has not been able to show how the appellants could forfeit the money of respondent No.1 unilaterally for a debt which was owed by the father. Even if the father owed the money, the appellants would have to sue respondent No.1 for the same and to prove that respondent No.1 had inherited something from the father, before respondent No.1 would be held liable to discharge his father's debts. The appellants could only take legal remedies which may have been available to it and could not unilaterally forfeit the earnest money.

The second argument raised by the learned counsel is that a suit for mandatory injunction could not have filed but only a suit for recovery could have been filed. This argument may have been important if the respondent No.1 had not affixed *ad-valorem* Court fee. Once the *ad-valorem* Court fee was affixed by respondent No.1 the mere technical difference in form in the suit would not defeat his rights.

Appeal stands dismissed.

Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

31.08.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No