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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 08.01.2018

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RFA 638/2005

M/S MATREJA FOODS

..... Appellant

Through: Mr. K. K. Bhuchar and Mr. Atul Bhuchar,
Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Additional
Standing Counsel and Mr. Rizwan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This first appeal seeks setting aside of the impugned order dated 06.05.2005 insofar as the appellant's suit bearing No. 105-95-04 has been partly decreed.
2. For the sake of convenience, the appellant and the respondent are referred to as the plaintiff and the defendant respectively, as mentioned in the suit.
3. The plaintiff, a partnership firm, had upon a successful tender bid, been asked by the defendant to supply Bhuna Chana (roasted gram) and Murmura (roasted rice) at the rate of Rs.14 per Kg. and Rs.11 per Kg. respectively. The conditions were mentioned in the Hand Bill supplied by

the defendant to the plaintiff. Upon individual orders being placed, the supply was to be made from 13th June to 31st October, 1991 to various Integrated Child Development Schemes (ICDS) Projects being run by the defendant. The plaintiff had deposited a security amount of Rs. 4 lacs. The arrangement went into dispute and the plaintiff stopped taking supplies on the basis of a decision taken by the government. The plaintiff sought payment of arrears for supplies of goods received by the defendant/government. It also sought return of the security amount alongwith interest @ 18% *per annum*. However, in the impugned order, the claim for payment for the supplies was dismissed but decreed only the said security amount to be returned to the plaintiff alongwith interest @ of 6% *per annum* from 01.01.1995 till realization.

4. Mr. K. K. Bhuchar, the learned counsel for the plaintiff, submits that the learned Trial Court had erred in granting a rather low rate of interest i.e. 6% on the security amount; as a result an amount of Rs.7,04,763/- with an interest @ 6% was deposited in this Court sometime after December 2006; the interest has accrued thereon, as per prevailing rates would enure to the benefit of the plaintiff.

5. The history of the bank interest rates published by the Reserve Bank of India in September, 2010 is available on its website, as accessed in Court today. It lists the structure apropos depositing and lending interest rates. For a deposit upto one to three years, the interest payable for the Financial Year (FY) 1991-92 was 12%, for FY 1992-93 was 11%, for FY 1993-94 was 10%, for FY 1994-95 was 11%, for FY 1995-96 was 12%, for FY 1996-97 was 11 to 12%, for FY 1997-98 was 10.50 to 11%, for FY 1998-99 was 9 to 11%, for FY 1999-00 was 8.50 to 9.50%, for FY 2000-01 was 8.50 to

9.50%, for FY 2001-02 was 7.50 to 8.50%, for FY 2002-03 was 4.25 to 6%, for FY 2003-04 was 4 to 5.25%, for FY 2004-05 was 5.25 to 5.50% and for FY 2005-06 was 6 to 6.50%.

6. From the said interest rate Schedule, the Court would note that for a decade i.e. from 1991 till 2002, the interest rates were way above 6% and it is only for a period of two years, that is, from 2003 to 2005 that the interest rates went below 6% i.e. to 5.25 % - 5.50 %. In the circumstances, the Court is of the view that the interest awarded at the rate of 6% on the decretal amount by the learned Trial Court is inadequate. Had the security amount been kept in a fixed deposit by the plaintiff, it would have fetched simple interest rates ranging from 9% to 12% *per annum*, at least for a decade. The compounded quantum per year would fetch far more. Therefore, the plaintiff should be fairly compensated by at least the minimum that he would have earned, had the monies been so invested. For this reason, the 6% *per annum* interest awarded is insufficient. A just rate would be the median between 6% and 12% i.e. 9% *per annum*. Hence, the interest is granted @ of 9% *per annum* from the date of the decree till the date of deposit. The impugned order is modified accordingly.

7. In terms of the aforesaid tender bid and orders placed, the plaintiff supplied food items till 31.10.1991. The plaintiff has sought payment of Rs.78,960/- alongwith interest thereon for the supplies made to ICDS, Nabi Karim Project, which had placed an order for supply of the food items and received them on 31.10.1991. The plaintiff refers to Ex. P-9 (page 343 of the LCR), a document admitted by the defendant showing that ICDS, Nabi Karim had placed an order for and had indeed received Bhuna Chana (roasted gram) worth Rs.78,960/- on 31.10.1991.

8. The defendant, however, had refuted the said claim on the ground that:

- (i) a number of complaints had been made to the government apropos the quality of the food items supplied to the various ICDS centres by the plaintiff;
- (ii) that the plaintiff had been duly cautioned in a meeting held on 23.08.1991 about the poor quality of the goods supplied;
- (iii) that since the plaintiff did not improve the quality of the food items, a show cause notice was issued to the plaintiff on 17.09.1991, to which the plaintiff had replied;
- (iv) that the minutes of the meetings dated 13.09.1991 and 07.10.1991 apropos the review of supply of the food items, showed that the supplies were unfit for human consumption, as per the report of the Public Analyst; and
- (v) that a communication dated 30.10.1991 was issued from the Directorate of Social Welfare, Delhi Administration, Delhi, with copies addressed to all i) CDPOs, ii) Programme Officer, iii) all Pay & Accounts Officers and iv) P.A. to D.S.W., conveying a decision that food items from the plaintiff and two other entities would not be taken. However, the learned counsel for the defendant is unable to show from the records as to whether this letter was sent to the plaintiff. Indeed, it could not have been so because the said letter was neither addressed to the plaintiff nor to the other two supplier entities mentioned therein. It was a document only for internal circulation by the defendant/government.

9. A letter dated 31.10.1991 from CDPO, ICDS Alipur Project, addressed to the plaintiff states:-

“ Kindly refer on the subject cited above and DSH Letter No. F 76(10) 86/Dsh/icds/39019-044 dated 30.10.91. You are requested to stop the further supply of Bhuna Chana and Murmurah. The order for the month 11/91 may please be treated as cancelled.”

10. Similarly a letter dated 31.10.1991 was issued from the CDPO, ICDS Narela Project:-

“ Kindly refer on the subject cited above and DSH Letter No. F 76(10) 86/Dsh/icds/39019-044 dated 30.10.91. You are requested to stop the further supply of Bhuna Chana and Murmurah. The order for the month 11/91 may please be treated as cancelled.”

11. On similar lines, so does the letter dated 31.10.1991 issued by the ICDS Bagh Kale Khan, Delhi.

12. By a letter dated 06.11.1991 issued by ICDS, Nizamuddin, the plaintiff was informed that all orders for the supply of Bhuna Chana/Murmura stood cancelled.

13. Interestingly though, on 30.10.1991 itself, an order had been placed with the plaintiff by ICDS Narela requesting for supply of 5580 Kg. and 2790 Kg. of Bhuna Chana and Murmura respectively.

14. It appears from the above varied communications that various ICDS Projects/Offices had written letters to the plaintiff regarding stoppage of supply of the food items, upon receiving the order dated 30.10.1991. However, it is an admitted position that supply of food items worth Rs.78,960/- had been received by the Nabi Karim ICDS Project on

31.10.1991 which had till then not sent any such communication for stoppage of supply. The plaintiff's *lis* is limited to this claim only. The receipt of the goods of the said value is not disputed by the defendant hence it is liable to pay Rs.78,960/-.

15. The learned counsel for the defendant submits that the plaintiff was required to deposit a security amount of Rs.10 lacs in the form of FDR as per the terms and conditions of the tender for supply of the food items, however, the plaintiff had deposited a security amount of Rs. 4 lacs only and the Government was well within its rights to forfeit the aforesaid security amount as the plaintiff had not taken any steps to improve either the quality or the quantity of the goods supplied. The said argument is untenable because the defendant/government by its own conduct had waived the requirement of the security deposit of Rs. 10 lacs. If it was a strict requirement, then the defendant/government should have insisted upon it before it placed orders with and received supplies from the plaintiff. Besides, the non-compliance of a waived condition of security deposit cannot be any reason to withhold the lesser security deposit made by the plaintiff. This amount is to be returned on the conclusion or termination of the contract, if there are no legitimate reasons to withhold it. The defendants have made out no reasonable ground for withholding it.

16. The learned counsel for the plaintiff submits that there was no complaint made against the plaintiff regarding the quality of the food items supplied by the him. Indeed, it has been so admitted by DW1- Mr. Ashok Kumar Kardam, Assistant Professor in the Department of Social Welfare. The said witness had also deposed that there was no record as to when the

order dated 30.10.1991 was communicated to the plaintiff. His deposition reads as under:-

“I am working as Assistant Director in the department of social welfare. I tender my affidavit Ex. DW-I/ I in support of the defence taken by the deft.....It is correct that the copy of the meetings dated 13/9/91 is Ex. P5. (Since the first page of the minutes of the meeting dated 23/9/91 is not on the judicial record therefore, the witness is directed to file copy of the first page of the Minutes of the meetings. The record has been seen and returned. The first page shall be read as Ex. P-5A. Copy of the Minutes of the meeting, dated 7.10.91 is Ex. P-6. I have no idea as to whether any specific complaint in writing against the Plaintiff had been received during the period from 15/9/91 to 7/10/91 (the witness has been asked to go through their record to clarify the position). After going through the records he has stated that no specific complaint had been received. Vol. however, the complaints which had been received by the department had been discussed during the meetings and were incorporated in the Minutes of the meeting. This is evident from Ex. P3, P5 and P6. It is correct that a show cause notice dated 17.9.91 (Ex. P4) had been sent to the Plaintiff, and its reply dt. 19/9/91 was received. The reply is Ex. D2. I do not know as to whether even after the reply of 19/9/91(Ex. D2) the department had placed orders, for supply of the goods, Vol. the supply order is placed by CDPO.

Q. Kindly go through the record and let this court know as to on which particular date the directorate had asked CDPO not to place orders to the Plaintiff for supply of the goods.

A. (The witness has gone through the record). (Vide letter dated 3011 091 the Directorate had directed the CDPO not to place the orders to the Plaintiff to supply the goods.

Q. Please let this court know as to whether till today the Directorate had informed the Plaintiff that its contract has been cancelled?

A. The Directorate had written to the CDPO and the CDPO. in term had informed the Plain tiff. The CDPOs had sent letters to the Plaintiff from 31.10.91 onwards. Different CDPOs had written different letters to the Plaintiff. However, the Directorate had itself not written any letter to the Plaintiff that its contract had been cancelled.

Q. Whether the Directorate had written any letter to the Plaintiff during the period between 13/9/91 to 31110/91 that the quality and quantity of goods of the plaintiff were not proper?

A. No letter in this regard had been sent to the Plaintiff, by the Directorate. However, the Plaintiff, had been informed in the course of the meeting, a reference of which finds mention in the exhibited documents.

It is correct that only one meeting i.e. on 7/10/91 had been held in between 13/9/91 to 31/10/191 (Ld. Counsel for the Plaintiff submits that in x. P-6 there is no reference of any complaint against the Plaintiff and there is no reference of the Plaintiff having been told/warned).

The documents shall be read and the submission shall be appreciated at the time of final argument.”

17. In view of the said deposition, it is evident that:- (i) no complaint had been received by the defendant/government that the eatables supplied by the plaintiff were of an inferior or poor quality; (ii) the defendant's order dated 30.10.1991 for stoppage of receipt of the eatables from the plaintiff was circulated/notified only to the various ICDS Projects/Offices in the city and not to the plaintiff; (iii) after receipt of the said order dated 30.10.1991 from the defendant/government, the various ICDS Projects/Offices individually informed the plaintiff on various dates apropos their respective orders as well as supply positions, and that they would not receive any further supplies from the plaintiff; and (iv) the plaintiff had not been informed or directed to desist from making supplies to all the ICDS Projects/Offices; v) ICDS Nabi Karim had placed an order for and had accepted a supply of Bhuna Chana (roasted gram) worth Rs.78,960/- on 31.10.1991. This supply of the food items was never returned to the plaintiff. Therefore, the defendant/government would be liable to pay the value of the goods received by them.

18. In view of the preceding discussion, the impugned order is modified and the suit is decreed for the payment of Rs.78,960/- with an interest @ 9% *per annum* from the date of the institution of the suit till its realization.

19. A decree be drawn up in terms of paras 6, 17 and 18 *supra*.

NAJMI WAZIRI, J.

JANUARY 08, 2018

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