

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3113-2016 (O&M)

Date of decision: 02.05.2019.

Confed District Officer, Gurgaon(henceforth called Gurugram)

...Appellant

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pankaj Jain, Advocate, and
Mr. Karan Rana, Advocate,
for the appellant.

Mr. Dhiraj Chawla, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

CM-8377-C-2016

This is an application that has been filed under Section 5 of the
Limitation Act seeking condonation of delay of 66 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 66 days in filing the appeal is condoned.

RSA-3113-2016

1. This regular second appeal has been preferred by defendant No.1-
appellant against the judgment and decree dated 31.01.2014, passed by Civil Judge
(Jr. Divn.), Gurgaon whereby the suit filed by the plaintiff was partly decreed as
also the judgment and decree dated 24.12.2015 of the Lower Appellate Court
whereby the appeal filed by the appellant has been dismissed.

2. In order to avoid confusion, the parties hereinafter are being referred by their original position in the suit i.e. the respondent as plaintiff and the appellant as defendant.

3. Brief facts of the case are that; plaintiff Mukesh Kumar Saini (respondent No.1 herein) was engaged in the business of transport under the name and style of M/s Shiv Transport Company at Bahadurgarh, District Jahjjar. The plaintiff being the highest bidder was allotted the contract of transportation of APL/BPL/AAY/MDM schemes of wheat and rice for the financial years 2008-09, 2009-10 and 2010-11 by the defendants for the Sub Divisions, Gurgaon, Sohna and Pataudi. Release Order No. 46-47 dated 7.10.2010 was received by the plaintiff from defendant No.3 for loading wheat and rice and, therefore, the plaintiff sent his vehicles to Sohna Mandi for loading the grains, however, the storekeeper of defendant No.1 told the plaintiff that the stock will be loaded after inspection and there was time in the R.O. upto 13.10.2010 to do so. As the plaintiff was not allowed to load wheat/rice, he addressed a letter on 7.10.2010 itself to defendant No.1 in this regard, but to no avail. On 19.10.2010, defendant No.1 intimated the plaintiff to load 13165 quintals of wheat and rice, so the plaintiff sent 10 of his vehicles but again no grain was loaded on his vehicles. On 25.10.2010, the storekeeper of defendant No.1 told the plaintiff that he has been telephonically directed by defendant No.1 not to load the vehicles of the plaintiff and writing in this regard was issued by the storekeeper to the plaintiff. Defendant No.1 issued three letters dated 23.10.2010, which were received by the plaintiff on 25.10.2010, levelling allegations against the plaintiff. Fearing that defendant No.1 was seeking to cancel his contract, a suit was filed seeking mandatory and permanent injunction *inter alia* restraining the defendants from cancelling his contract, to make the payment of the security amount as well as the transportation charges for the year 2009-10, pay transportation charges to the plaintiff for the financial year 2009-10

along with interest thereon from the due date till payment.

4. On notice, defendants No. 1 to 4 appeared and filed their written statement taking preliminary objections regarding maintainability, cause of action, locus standi, estoppel, concealment of material facts and on merits denied the averments made in the plaint. It was pleaded that defendant No.1 under the guidelines of the Haryana Government to supply food grains to fair price shops, depot holders in Gurgaon District at their doorsteps, had invited tenders for transportation of the food grains and tender of the plaintiff was accepted for a period of 01.08.2010 to 31.03.2011. An agreement was executed between the plaintiff and District Confed Office, Gurgaon. It has been further submitted that on 01.10.2010, the plaintiff was given 70 quintals of wheat and 13 quintals of rice by defendant No.2 for delivery to the agencies Centre. During transportation of those grains, 3 quintals (6 kattas) loaded in truck No. HR-63A-3451 was sold by the driver of the plaintiff with full knowledge, notice and connivance of the plaintiff and FIR No. 231 dated 01.10.2010 under Section 406 IPC, at Police Station Sector 10-A, Gurgaon was lodged by one Suresh Kumar in this regard. It was further pleaded that in spite of sending release order to the plaintiff on 07.10.2010 by defendant No.2, the plaintiff did not lift the food grains from the concerned point and despite reminders given on 18.10.2010 and 21.10.2010, the plaintiff failed to transport the food grains. The plaintiff was also provided 25086 quintals of wheat for the month of October 2010, and 22020 quintals of wheat for the month of November 2010 for transportation to various destinations but the plaintiff could lift only 3785.25 quintals of wheat upto 22.10.2010 and failed to carry the remaining food grains. The plaintiff was given two notices dated 13.10.2010 and 21.10.2010 to comply with the terms and conditions of the agreement but the plaintiff violated the terms and conditions of the agreement. In order to avoid further delay in delivery of food grains to the depot holders and to avoid loss to the

defendants, the defendants allotted the transportation of the food grains to other three separate contractors for the period 10.11.2010 to 31.10.2010. The plaintiff has caused loss by violating the terms & conditions of the agreement, therefore, the security amount of plaintiff stood forfeited and the contract of supply of wheat and rice to Sub Divisions of Gurgaon, Sohna and Pataudi stood cancelled and terminated on 25.10.2010 by the order of Deputy Commissioner, Gurgaon before filing of the present suit. While denying the rest of the averments made in the plaint, a prayer was made to dismiss the suit with costs.

5. Defendant No.5 adopted the written statement filed on behalf of defendants No. 1 to 4. No replication was filed. From the pleadings of the parties, following issues were framed by the trial Court :-

- “1. Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendants not to cancel the contract of supply of wheat and rice under APL/BPL/AAY/MDM Schemes to Sub Divisions Gurgaon, Sohna and Pataudi for the financial year 2010-2011 and not to give the said contract to some other person instead of plaintiff in any manner whatsoever and to make the payment of the security amount as well as transportation charges to the plaintiff for the financial year 2009-2010 along with interest thereon from the date of due till payment, by declaring the letters dated 23.10.2010 as illegal, null and void and not binding on the plaintiff? OPP*
- 2. Whether the plaintiff is entitled to a consequential relief of permanent injunction on the grounds as alleged? OPP*
- 3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the plaintiff has concealed the real and true facts from the Court? OPD*
- 6. Whether the plaintiff is estopped from filing the present suit*

by his act and conduct? OPD

7. *Relief.”*

6. The plaintiff in order to prove his case examined Mukesh Kumar as PW-1 and Bhanwar Pal Singh as PW-2. After tendering certain documents plaintiff closed his evidence. On the other hand, the defendants have examined Devender Kumar Khandelwal as DW-1 and Ct. Virender as DW-2. After tendering certain documents, defendants closed their evidence. No rebuttal evidence was led by the plaintiff.

7. The Lower Court, on appreciation of the evidence, partly decreed the suit and the order dated 25.10.2010 vide which the security amount for the year 2010-11 was forfeited and the order blacklisting the plaintiff was set aside, being violative of the principles of natural justice. The defendants were directed to give a reasonable opportunity of hearing to the plaintiff and to pass an order thereafter. The appeal preferred by the appellant and respondent No. 2 herein has been dismissed by the lower Appellate Court while upholding the judgment and decree passed by the trial Court. Aggrieved against the said orders, the instant second appeal has been filed.

8. Learned counsel appearing on behalf of the appellant herein contends that both the Courts below have erred in setting aside the order dated 25.10.2010 whereby the security amount deposited by the plaintiff was forfeited and he was blacklisted with a direction that a reasonable opportunity be afforded to the plaintiff before blacklisting him. It is argued that the plaintiff has failed to comply with the terms and conditions of the agreement as he did not lift quantities of wheat /food grains within the time specified in the release order which resulted in the appellant being constrained to hire three separate contractors for the period from 10.10.2010 till 31.1.2010. It was on account of his failure to perform under the contract that the same was cancelled and terminated w.e.f. 23.10.20. It is also

submitted that a suit for mandatory injunction would not be maintainable after the contract has been terminated.

9. Per contra, learned counsel appearing on behalf of the respondents herein contends that there is a concurrent finding of fact in his favour to the extent that no reasonable opportunity of hearing was given before forfeiting the security amount of ₹ 8,50,000/- and blacklisting the respondent from working with the appellant in future. It is also argued that both the Courts below have only passed an order to the extent that fair opportunity be given to the respondent before any adverse orders are passed.

10. I have heard learned counsel for the parties and have gone through the judgments and decree passed by the Courts below.

11. There is no doubt about the fact that in the agreement entered into between the parties, the respondent herein was to supply vehicles to the appellant to transport food grains to various shops and depots under a scheme that had been initiated by the Haryana Government. The respondent set up a claim that he was performing his work diligently, however, it was the appellant who did not confirm to the release orders and did not load the food grains on to his trucks / vehicles. This was done in order to harass him so that the contract could have been awarded to someone else, which allegations have been denied by the appellant in its written statement filed. It was alleged that on account of theft of the food grains during transportation and incapability of the respondent in fulfilling the terms of the contract, that the contract was terminated, a notice dated 23.10.2010 regarding forfeiture of the security amount as well as blacklisting was issued. Both the Courts below while considering the arguments and the evidence on the record, noted that the appellant herein had issued three letters dated 23.10.2010 which were served upon the respondent on 25.10.2010 and it was on the same day the contract was terminated. These notices are available on the record as mark 5 to

Mark 7 and admitted by the appellant as Ex. D-2 and D-3, which pertain to notices given by the appellant to the respondents calling upon him to explain why his contract should not be cancelled and notice stating that security amount had been forfeited for the year 2010-11 while declaring him to be blacklisted. The Courts below taking note of clause 14 of the terms & conditions of the agreement entered into between the parties, which provided that the Committee shall be competent to cancel the agreement at any time after giving opportunity, concluded that there was no adequate opportunity given. Notice dated 23.10.2010 was served upon the respondent on 25.10.2010 itself and that very day itself the contract was terminated. The Courts below set aside the order dated 25.10.2010 by which order the security amount for the year 2010-11 was forfeited and he was declared as blacklisted being violative of the natural justice. The argument as raised by the counsel appearing on behalf of the appellant that the suit was not maintainable as the contract stood terminated and there is no challenge to the same, is not maintainable since both the Courts below have only allowed the prayer of the respondent to the limited extent of deciding the issue of refund of security and blacklisting. There is no such decision taken allowing the respondents to continue with the contract over and above the specified period.

12. Therefore, finding that no substantial question of law arises in the instant regular second appeal, the same is dismissed.

02.05.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.