

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 205 of 2018****Reserved on 29-1-2020****Judgment delivered on 31-1-2020**

1. General Manager, South East Central Railway Division Bilaspur, District Bilaspur, Chhattisgarh
 2. Divisional Manager South East Central Railway, Division Bilaspur, District Bilaspur, Chhattisgarh
 3. Sr. Den Line-3 South East Central Railway, Division Bilaspur, District Bilaspur, Chhattisgarh
- (Defendants)**

---- Petitioner**Versus**

Ahmed Ali S/o Mohd. Yushuf Aged About 53 Years R/o Ward No.10,
 Railway Colony, Manendragarh, District Korea, Chhattisgarh (Plaintiff),
 District : Koriya (Baikunthpur), Chhattisgarh

---- Respondent

For Appellants	: Mr. H.S. Ahluwalia, Adv.
For Respondent	: Mr. Manoj Sinha, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. Appellants have preferred this Civil Appeal against the impugned judgment and decree dated 30-1-2018 passed by Additional District Judge, Manendragarh Distt. Koriya CG in Civil Suit No. 8A/2014 whereby and whereunder he partly decreed the suit of respondent.
2. This is admitted by the appellants that their department had invited auction on 24-8-2007 for forming fish in the pond situated near the Manendragarh Railway Station, auction notice no. was W/A/A/01/2007-08. The term of the licence was 3 years, respondent had participated in the auction and floated a tender, at the time of floating the tender he had deposited Rs. 6,000/- in their department, at the time of acceptance of said tender he had also deposited Rs. 12,600/- within prescribed period in their office, he had also filed a writ petition before this Court in which it was observed that he may file civil suit against them, appellant No. 1 had received a registered notice sent by counsel for the respondent.
3. In brief, the respondent's case is that the officers and employees of appellants had directed him to deposit the 10% amount as security in favour of CAO/SECR/BSP hence he had deposited a bank draft dated 15-9-2007

for a sum of Rs. 18,600/- of SBI branch Manendragarh on 17-9-2007 to their officer and obtained receipt of it. He had completed all the legal formalities but appellants had not issued the order. Appellant has lost the said bank draft and they made allegation upon him that he had not deposited the security amount. His notice was not replied by them.

4. In brief, the appellant's case is that as per Para 2 of their letter W(L)/372/POND/MDGR/23 dated 29-8-2007 respondent had to deposit Rs. 18,600/- as special FDR in favour of FA and CAO. He had replied by his letter dated 10-9-2007 that he will deposit Rs. 18600/- in the form of FDR within a week, then it is not natural that their employees had given direction to him to deposit the security amount in favour of CAO/SECR/BSP and he had deposited the bank draft of Rs. 18,600/- instead of FDR. He had not complied the terms of the auction except depositing earnest money and licence fee for Rs. 2007-08 i.e. 18600/- their employees have not lost said bank draft.

5. Trial Court by the impugned judgment and decree partly decreed the suit of respondent. Being aggrieved the appellants have preferred this appeal.

6. In brief, case of the appellant regarding appeal is that the trial Court has not appreciated the evidence in proper perspective. In Ex. D-4, from 10-9-2007 to 14-9-2007 entries have been made. 15-9-2007 and 16-9-2007 were holidays. From 17-9-2007 onwards entries are in existence. Trial Court failed to observe that the seal used by the respondent is very much different in its printing nature as compared to the actual seal print of their office of receipt - dispatch section. The said bank draft was not paid upto date 6-2-2016.

7. **Point for determination:-**

There are following points for determination in the case in hand:-

- (i) Whether respondent had deposited an amount of Rs. 18600/- as security in the form of special FDR in favour of FA and CAO ?
- (ii) Whether respondent had completed all formalities thus he is entitled to get the order regarding the tender ?
- (iii) Relief and costs.

Point for determination No.(i)-Finding with reasons:-

8. Issue no. (i) covers the scope of this point for determination.

9. PW 1 respondent / plaintiff himself and PW 2 Mustak Ahmad who is

cousin brother of PW 1 Ahmed Ali say in para 4 of their statements given on oath that the officer of appellants directed P.W. 1 Ahmed Ali that he will deposit the security amount Rs. 18600/- by DD in favour of CAO/SECR/BSP then he deposited a bank draft for Rs. 18,600/- dated 15-9-2007 of SBI branch Manendragarh on 17-9-2007.

10. D.W. 1 R. Ramesh Kumar the then office superintendent Senior Divisional Engineer (co-ordination), SECR, Bilaspur says in para 3 of his statement given on oath that Railway officers never directed respondent that he will deposit security amount in favour of CAO/SECR/BSP. Respondent never deposited the bank draft of sum of Rs. 18,600/- dated 15-9-2007 on 17-9-2007.

11. In the letter Ex. P-5 dated 17-9-2007 it has been mentioned by respondent that he had received appellants' letter dated 29-8-2007 and he had written a letter dated 10-9-2007 and demanded one week's time. On 17-9-2007 he has deposited security amount Rs. 18,600/- by DD in favour of CAO/SERC/BSP. In Ex. P-5 allegedly there is seal impression of 'Varisth Mandal Abhiyanta (samanvay), DPUMRailway, Bilaspur receiving date is 17-9-2007.

12. As per the Ex. P-7 receipt, respondent had deposited Rs. 18600/- for bank draft on 15-9-2007 at SBI branch Manendragarh.

13. Respondent has put this case by filing letter of Sr. Divisional Engineer (Central) SEC Railway, Bilaspur dated 29-8-2007 that Sr. Divisional Engineer (Central)SECR Railway had written him said letter and as per para 2 of that letter, he was directed to deposit an amount of Rs. 18600/- as security in the form of special FDR in favour of FA & CAO immediately. It would be pertinent to mention here that in Ex. P-5, there is a reference of this letter.

14. Respondent by filing the photocopy of letter dated 10-9-2007 put this case that in reference of respondent's letter dated 29-8-2007 he had promised that within a week he will deposit security amount Rs. 18600/-. In the form of FDR. It would be noticeable that in Ex. P-5 there is a reference of this letter.

15. In Ex. P-2 dated 25-6-2012 it has not been specifically stated that allegedly security amount Rs. 18,600/- was deposited in which form and which manner by respondent, and he had also obtained receipt. This is not the natural human conduct.

16. As per Ex. P-3 dated 5-8-2013 respondent mentioned in para 2 that on 15-9-2007 he had come in the office of appellants to deposit the security amount Rs. 18600/- by demand draft in favour of CAO/SECR/BSP and also to execute the agreement but he was sent back saying that he will inform about execution of agreement.

17. Respondent has not proved any receipt or acknowledgement specifically receiving of security amount Rs. 18,600/- in DD form by officials of appellants.

18. DD 1 R. Ramesh says in para 10 that in Ex. D-1 there are seal impressions of receipt-dispatch section of office of Sr. Divisional Engineer (coordination), SECR, which are attested by office superintendent D.K. Tripathi whom signature he knows.

19. There is no such evidence on record on strength of which it can be said that aforesaid statement of para 10 of DW 1 R. Ramesh is not believable. Thus, this Court believes aforesaid para 10 of DW 1 R. Ramesh.

20. This is appellants' case that in Ex. E-2 and Ex. D-3 seal impression of office of Sr. Divisional Engineer (Coordination), SECR were present.

21. As per the provision of Section 73 of the Evidence Act, 1872, from comparison of impression of seal present on Ex. D-1, Ex. D-2 and Ex. D-3 with seal impression of ex. P-5 this Court prima facie finds that seal impression of Ex. P-5 is different in font size from the seal impression of Ex. D-1, Ex. D-2, Ex. D-3. In other words after comparison under Section 73 of Evidence Act, 1872, this Court prima facie finds out that alleged seal impression of Ex. P-5 does not belong to appellants.

22. As per photocopy of receipt register of the appellants Ex. D-4-C there are so many entries of receipts from 10-9-2007 to 14-9-2007, 17-9-2007 onwards. It is notable that on 8-9-2007, 9-9-2007, 15-9-2007 and 16-9-2007 were holidays due to Saturday and Sunday. There is no entry on 17-9-2007 regarding the deposit of bank draft for Rs. 18600/- in the form of DD by respondent. Trial Court wrongly observed in para 13 of his judgment that there is no entry after 8-9-2007 till 18-9-2007.

23. There is no such evidence available on record on strength of which it can be said that entries of Ex. D-4-C are not simple, not natural and not normal or fabricated.

24. Moreover, respondent has failed to prove that said amount of DD was credited in the account of appellants.

25. After the appreciation of the evidence discussed herebefore this Court disbelieves aforesaid statement of AW 1 Ahmed Ali, AW 2 Mustak Ali, Ex. P-5, Ex. P-7 in the reference that respondent had deposited an amount of Rs. 18600/- as security in the form of special FDR in favour of FA and CAO or in the form of demand draft, and this Court believes aforesaid statement of para 3 of DW 1 R. Ramesh Kumar. Thus, this Court finds that respondent had not deposited an amount of Rs. 18,600/- as security in the form of special FDR in favour of FA and CAO or in the form of DD. Thus, this Court decides point for determination No. (i) accordingly.

Point for determination No.(ii)-Finding with reasons:-

26. This has been earlier decided that respondent had not deposited an amount of Rs. 18600/- as security in the form of special FDR in favour of FA and CAO or in the form of demand draft. Thus, this Court finds that respondent had not completed all formalities thus, he did not become entitled to get the order regarding the tender. Thus, this Court decides point for determination No. (ii) accordingly.

Point for determination No. (iii)- Finding with reasons:-

23. This has been earlier decided that respondent had not deposited an amount of Rs. 18,600/- as security in the form of special FDR in favour of FA and CAO or in the form of demand draft, he had not completed all formalities. Moreover, the tender period was 3 years from 24-8-2007. The said period is already lapsed before the filing of plaint i.e. 1-10-2014. Thus, he is not entitled to get the order regarding the tender.

24. After appreciation of the evidence discussed herebefore this Court finds that trial Court has committed illegality while passing the impugned judgment and decree whereby and whereunder he partly allowed the respondent's suit. Appellants succeeded to prove their appeal. Consequently, the appeal is allowed. The impugned judgment and decree of the trial Court which are related to partly allowing the respondent's suit are hereby set aside.

Looking to the facts and circumstances of the case, both the parties will bear their own costs.

A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge