

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 303 of 2019****Reserved on 17.01.2020****Delivered on 20.01.2020**

Bajrang Agrotech India Private Limited, through Director Sunil Bansal, S/o Shri Satyaprakash Bansal, aged about 40 years, Village Samoda, Dhamdha, Road, Durg, R/o Kadambari Nagar, Durg, Tahsil and District Durg (CG).

---Appellant**Versus**

Rajnandgaon Oil Private Limited, Factory Mohgaon (Devi), Mohandi, District Bhandara Maharastra, Office address Sureshchandra Jain Building, First Floor, Nehru Putla, Itwari Nagpur (Maharashtra).

----Respondent

For appellant : Mr. H.B. Agrawal, Sr. Adv. along with Ms. Richa Dwivedi, Advocate

For Respondent : Mr. Ashish Surana along with Ms. Dixa Surana, Adv.

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

1. Appellant has preferred this Civil Appeal against the judgment and decree dated 26.02.2019 passed in Civil Suit No. 41-B/2016 by First Additional Judge to the Court of First Additional District Judge, Durg whereby and whereunder he partly decreed the suit of appellant.

2. This is admitted by respondent that there was an agreement between him and appellant that he will purchase the rice bran (Korha) from the appellant for his solvent plant, both were agreed that respondent will pay 80% payment after receiving the rice bran and remaining part would be paid thereafter, appellant had supplied the said rice bran to the respondent in different dates and respondent had also paid some amount to appellant, after last accounting only Rs.22,504/- was due upon him, appellant had sent him notice through his counsel which was replied by him on 18.02.2016.

3. In brief the appellant's case is that as per the ledger account from 01.04.2015 to 11.01.2016 the sale amount is Rs.9,53,593/-. Respondent paid him Rs.9 lacs and Rs.53,593/- were due upon respondent. Respondent

had sent a photocopy of cheque for a sum of Rs. 22,504/- along with his reply. But he had not received either original cheque or due amount.

4. In brief the respondent's case is that 20% amount was withheld because both were agreed that rice bran would be sent to the laboratory for testing by him and remaining amount would be paid looking to the proportionate standard. Appellant had come in his institution and admitted that on 18.02.2016 only Rs.22,504/- were due. He had sent the demand draft for that amount to the appellant. Nothing is due upon him.

5. Trial Court by judgment and decree dated 26.02.2019 ordered that appellant is entitled to get Rs.22,504/- from the respondent and he is also entitled to get 6% per annum simple interest from date of judgment till realization, both parties will bear their own cost.

6. Being aggrieved by the aforesaid judgment and decree the appellant has preferred this First Appeal to the extent of not allowing Rs.80,593/- and 18% interest per annum from date of filing of the suit till realization.

7. In brief the appellant's case is that the trial Court has committed illegality in not allowing his claim for Rs.80,593/- instead of it allowing only Rs.22,504/-. Trial Court ought to have awarded 18% interest per annum from the date of filing of the suit instead of 6% per annum interest.

8. **Points for determination :-**

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

(1) Whether on account of sale – purchase transaction of rice bran, Rs. 5,34,593/- were due on 11.01.2016 upon respondent ?

(2) Whether the appellant is entitled to get the Rs. 25,000/- as Interest/ damages upon outstanding amount Rs.5,34,593/- ?

(3) Whether the appellant is entitled to Rs.2,000/- as notice expense from respondent ?

(4) Whether the appellant is entitled to get 18% interest per annum from the date of presentation of plaint till realization of decretal amount ?

(5) Relief and costs.

Point for determination No. 1- Finding with reasons:-

9. Issue No.1 framed by trial Court is identical to this point for determination.

10. As per alleged ledger account Ex. P-1, notice Ex. P-2, Rs.53,593/- were outstanding against respondent.

11. As per the reply of notice Ex. P-4 only Rs.22,504/- were outstanding

against the respondent and he had sent a draft of same amount to the appellant.

12. After receiving Ex. P-4 appellant had not raised any objection before the respondent that allegedly outstanding amount is Rs. 53,593/- and it is not Rs.22,504/-. Moreover the appellant has failed to show why the 20% amount was retained by respondent. In these circumstances, the pleading of respondent that 20% amount was retained by him because it was agreed between them that after the laboratory report the remaining amount would be paid in proportionate the standard of oil. In these circumstances, this Court disbelieves Ex. P-1 and Ex. P-2 in the reference that allegedly outstanding amount was Rs.53,593/-.

13. After the appreciation of evidence discussed here before, and looking to the admitted fact, this Court finds that, on account of sale – purchase transaction of rice bran, Rs. 53,593/- were not due on 11.01.2016 upon respondent, instead of it only Rs.22,504/- were due on 11.01.2016 upon respondent. Thus, this Court decides point for determination No.1 accordingly.

Point for determination No. 2- Finding with reasons:-

14. Issue No.2 framed by the trial Court covers the scope of this point for determination.

15. This has been earlier decided that outstanding amount was Rs. 22,504/-.

16. The appellant failed to prove any document which establishes that allegedly 18% per annum interest or any damage was agreed between them, upon outstanding amount.

17. P.W.1 Sunil Bansal says in para Nos. 9 & 10 during his cross-examination that he had received the bank draft of Rs.22,504/- along with Ex. P-4. He further says in para No.10 that he had not produced the said bank draft for encashment to the Bank.

18. In these circumstances, this Court finds that the appellant is not entitled to get any amount as interest or damages upon outstanding amount Rs.22,504/-. Thus, this Court decides point for determination No.2 accordingly.

Point for determination No. 3- Finding with reasons:-

19. The scope of issue No. 4 covers the scope of this point for determination.

20. This has been earlier decided that respondent's pleading that both the parties were agreed that 20% amount be retained by respondent which would be paid after the laboratory report according to standard of oil, respondent had sent a bank draft for outstanding amount Rs.22,504/- which was not submitted by the appellant to the Bank for its encashment. In these circumstances, this Court finds that the appellant is not entitled to get any amount for the expense of Ex. P-2. Thus, this Court decides point for determination No. 3 accordingly.

Point for determination No. 4- Finding with reasons:-

21. Issue No. 2 framed by the trial Court covers the scope of this point for determination.

22. This has been earlier decided that the appellant failed to show that any rate of interest was agreed between them, respondent had sent the bank draft regarding outstanding amount Rs. 22,504/- to the appellant which was not produced to concerned bank for encashment. Thus, this Court finds that the appellant is not entitled to get 18% interest per annum from the date of presentation of plaint till realization of decretal amount instead of it he is entitled to get 6% per annum interest on decretal amount from the date of presentation of the plaint i.e. 23.04.2016 till its realization. Thus, this Court decides point for determination No.4 accordingly.

Point for determination No.5- Finding with reasons:-

23. Looking to the facts and circumstances of the case, this Court finds that the appellant is not entitled to get the cost of the suit from respondent.

24. After the complete and full appreciation of the evidence discussed herebefore, this Court finds that the trial Court has not committed any illegality while partly allowing the suit of the appellant. Hence, the judgment and decree of the trial Court are affirmed to the extent of findings given by this Court in aforesaid points for determination. Appeal is accordingly dismissed.

25. The decree be drawn accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge