

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.67 of 2012****Reserved on 19.07.2021****Pronounced on 26.07.2021**

- M/s. J.B. Construction Company, through its Partner Jaspal Sethi, aged about 55 years, S/o Late Gurdas (Correct name is Gurudayal) Sethi, R/o Tikra Para, Bilaspur, Distt. Bilaspur (C.G.)

---- Appellant/Plaintiff**Versus**

1. Union of India, Through Divisional Engineer 'North', S.E.C. Railway, Senior Divisional Office 'North', S.E.C. Railway, Bilaspur (C.G.)
2. The General Manager, S.E.C.Railway, Bilaspur (C.G.)

---- Respondents/Defendants

For Appellant	:Shri Ravindra Agrawal along with Shri Abhijeet Mishra, Advocate.
For Respondents	:Shri Pratik Sinha, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment/Order**

1. This appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the judgment and decree dated 12.01.2012 passed in Civil Suit No.16-B/2010 whereby the learned trial Court has dismissed the suit holding it to be not maintainable.
2. Briefly stated the facts of the case are that the Plaintiff being a partner of M/s. J.B.Construction Company instituted a suit claiming refund of 432 number of fish plates or refund of Rs.1,30,000/- in lieu thereof by submitting, inter alia, that he is the railway contractor and has entered into an agreement with the Defendants, Railway Department, on 22.11.2002 for the

completion of work of execution of various pathway works in connection with 18 kms. CTR/TSR (16 kms. With Track Relaying Train and 2 kms. Manually) and other miscellaneous works worth Rs.41,17,405/- and the dispute, which has arisen between the parties was decided by the arbitrator vide its award dated 12.02.2007. According to the Plaintiff, the alleged fish plates (432 in number) have already been deposited by him with the Railway Department prior to passing of the alleged award on 21.11.2006, yet a sum of Rs.1,30,032/- has been recovered from him owing to non-deposit of the same. Further contention of him is that despite the issuance of notice on 04.12.2008 seeking refund of those fish plates or in lieu thereof for recovery of Rs.1,32,032/-, recovered illegally from him based upon the said award, no reply was ever given by the Railway Department, which compelled him for the institution of the suit in the instant nature, instituted on 05.05.2009.

3. While contesting the aforesaid claim, it is pleaded by the Defendants that since the arbitrator has already passed the award on 12.02.2007 after considering the dispute raised by the Plaintiff as per the terms and conditions stipulated in the alleged agreement and since the same has already attained its finality and, as the Plaintiff has failed to question the same under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, the 'Act of 1996'), therefore, the suit as framed is not maintainable and deserves to be dismissed.
4. After considering the evidence led by the parties, it was held by

the trial Court that the alleged fish plates have been returned by the Plaintiff vide receipt memo dated 21.11.2006, i.e., prior to passing of the arbitral award dated 12.02.2007 and held further that since the dispute as alleged herein was already decided by the arbitrator vide its award dated 12.02.2007 and which has neither been sought to be questioned nor has been assailed by the Plaintiff as provided under Sections 33 and 34 of the Act of 1996, therefore, the claim of him cannot be held to be maintainable. As a consequence of it, the suit has been dismissed holding it to be not maintainable, which has been impugned by way of this appeal.

5. Learned counsel for the Appellant/Plaintiff submits that the finding of the Court below holding the suit to be not maintainable under Sections 33 and 34 of the Act of 1996 is apparently contrary to law. According to him, since 432 fish plates have already been deposited with the Railway Department, therefore, non-returning the same or its cost is thus a dispute of civil nature and the trial Court has, therefore, committed a serious illegality in holding the suit to be not maintainable. The judgment and decree under appeal is, therefore, liable to be set aside.
6. On the other hand, learned counsel for Respondents/Defendants has supported the judgment and decree under appeal as passed by the trial Court.
7. I have heard learned counsel for the parties and perused the entire record carefully.

8. The main question which arises for determination in this appeal is as to whether the suit as framed seeking return of alleged 432 fish plates or its cost thereof from the Railway Department has rightly been held to be not maintainable based upon the arbitral award dated 12.02.2007?
9. From perusal of the record, it appears that by virtue of an agreement (Ex.P.1), the Plaintiff, a partner of M/s. J.B. Construction Company, was awarded the work for the completion of the work of execution of various pathway works in connection with 18 kms. CTR/TSR (16 kms. with Track Relaying Train and 2 kms. Manually) along with other miscellaneous works under the terms and conditions stipulated therein. Admittedly and according to the general condition of contract and rules, a dispute, which has arisen between the parties, was referred to the arbitrator on the basis of the application made by the Plaintiff and, one of the disputes considered by the arbitrator was in relation to cost of 432 fish plates worth Rs.3,30,912/-.
10. After considering the aforesaid dispute, it was observed by the arbitrator vide its award dated 12.02.2007 (Ex.P.4) that they (432 fish plates) were not returned by the Plaintiff and that by considering the cost of it to the tune of Rs.1,32,032/- has directed for its recovery from the Plaintiff.
11. According to the Plaintiff, the alleged 432 fish plates have already been returned on 21.11.2006, i.e., prior to passing of the said award on 12.02.2007 and has succeeded to establish the

said fact by producing the receipt memo (Ex.P.2) in this regard. But, it appears, as observed herein above, that the dispute as raised herein by the Plaintiff was one of the subject matters before the arbitrator and which has already been decided therein. Therefore, in view of said background, the alleged award, as passed by the arbitrator was to be questioned by the Plaintiff as per the provisions prescribed under Section 34 of the Act of 1996. Having failed to assail the same, the Plaintiff cannot be permitted to re-agitate the same in the instant suit and the trial Court has, therefore, rightly held that the suit as framed is not maintainable and I do not find any infirmity in the same.

12. Consequently, the appeal, being devoid of merits, is accordingly dismissed. No order as to costs.
13. A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
Judge