

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2499-2018 (O&M)

Date of pronouncement: 13.12.2022

Rajinder Kumar

...Appellant

Versus

Municipal Council, Kotkapura and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. N.K. Manchanda, Advocate for the appellant.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Rajinder Kumar had brought a suit against defendants Municipal Council, Kotkapura and others, seeking grant of mandatory injunction on the averments that he is working as a contractor at Bus Stand Kotkapura for the last 30 years; in the auction of shops conducted in the year 2014, the plaintiff was successful bidder as regards the shop at Bus Stand Kotkapura from 01.04.2014 to 31.03.2015; in the year 2015, no auction had taken place since business was quite down and due to slump in the market; the agreement with the plaintiff continued till new auction on earlier terms and conditions; the plaintiff is carrying on the contract on the same terms and conditions making the payments regularly; in the year 2016, defendant No.1 put up a public notice regarding auction of vendor shops at Bus Stand Kotkapura along with

auction of cycle stand, scooter stand, adda fees etc.; the auction took place on 12.01.2016; the terms and conditions of auction were not mentioned in the notice and were announced at the spot on 12.01.2016 at 12.00 O' clock just before the acution started; at that time, it was told that reserve price of all the items of auction notice would be 10% less from the previous contract price as the auction was for 14 months, therefore, reserve price was calculated by defendant No.1 and announced at the spot; in terms of that reserve price announced, the plaintiff participated in the auction and was declared as a successful bidder for Rs.16 lacs with regard to item No.1 of the public auction notice; thereafter, when the plaintiff went to the office of defendant No.1 and calculated the reserve price, it was found that reserve price announced at the spot was wrong and without reduction of 10% in the previous contract price; the defendant No.1 was required to announce 10% reduction in the contract price of previous year, which should have been around Rs.14,50,000/- but defendant No.1 wrongly gave reserve price of Rs.15,95,000/- at the spot; the mistake was pointed out to defendant No.1 and its employees but to no effect; according to the plaintiff since he is a successful bidder, he is entitled to reduction in the reserve price as allowed by the State Government which was legally and validly binding on defendant No.1; the reserve price calculated by defendant No.1 and announced at the spot is patently wrong and is liable to be corrected and the plaintiff is entitled to be given benefit of

10% discount/reduction in the reserve price; on refusal of defendant No.1 to do so, the plaintiff filed the suit in question.

2. On notice, defendant No.1 appeared and filed written statement, contesting the suit raising various preliminary objections to wit that the plaintiff was estopped by his own act and conduct from filing the present suit; the suit was bad for mis-joinder of defendants No.2 and 3; they were neither necessary nor proper party. On merits, the answering defendant admitted that the plaintiff was successful bidder of auction of vendor shops at Bus Stand Kotkapura from 01.04.2014 to 31.03.2015 in an auction which had taken place on 12.01.2016; it was also admitted that present auction was for 14 months, therefore, the reserve price was calculated by defendant No.1 and announced at the spot; defendant put to auction the shop at Bus Stand on 04.03.2015, 30.03.2015 and 10.04.2015 but none of the bidder came forward to take contract so the auction had to be cancelled on all those occasions; the contract was given amounting to Rs.16,00,100/- w.e.f. 16.01.2016 to 31.03.2017 for whole period i.e. 14 months 15 days; the rebate of 10% in the reserve price which was kept for auction in the year 2015 had already been given to the plaintiff and the plaintiff was not entitled to any other rebate; refuting the remaining averments in the plaint, defendant No.1 prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed by the trial Court:-

(1) Whether the plaintiff is entitled to the relief of

mandatory injunction as prayed for? OPP

(2) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

(3) Whether the suit is bad for mis-joinder of defendants No.2 and 3 as they are neither necessary nor property party? OPD.

(4) Relief.

4. Parties were given opportunities to lead evidence in support of their respective claims. During the course of evidence of the plaintiff, he got his own statement recorded as PW-1 and repeated on oath his case as given in the plaint. He further examined Rajesh Kumar who supported his version on material aspects. With that the evidence of the plaintiff was closed.

5. In rebuttal, defendant No.1 examined DW-1 Manmohan Singh Chawla, Inspector, Municipal Council, Kotkapura. With that the evidence of defendant No.1 was closed.

6. After hearing arguments, the trial Court decided issues No.1 to 3 against the plaintiff and in favour of defendant No.1. As a result of findings on issues, suit of the plaintiff was dismissed with costs, vide judgment dt. 18.02.2017.

7. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge, Faridkot, which was assigned to Addl. District Judge, Faridkot, who vide judgment and decree dated 20.09.2017 affirmed the judgment and decree passed by the trial Court and dismissed the appeal filed by the plaintiff.

8. Still feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing the present Regular Second Appeal.

9. I have heard learned counsel for the appellant/plaintiff besides going through the record.

10. In this case, both the Courts considering the facts and circumstances of the case, on analysis of the evidence adduced by the parties, in view of the settled legal position have returned the findings against the plaintiff. It has been observed that the bid in question is pertaining to the year 2016-17 and the plaintiff was required to show as to what was the reserve price which was kept for auction pertaining to the year 2015-16 but he has not brought any material on record and the plaintiff should have approached the Director, Local Bodies for redressal of his grievances, which he did not do, therefore, not availing equal by efficacious remedy available to him. Therefore, in terms of Section 41 (h) of the Specific Relief Act, he was not entitled to grant of any injunction. The finding has also been recorded that the plaintiff is estopped by his own act and conduct to file the present suit.

11. Learned ADJ, Faridkot who had heard and disposed of the appeal in the judgment delivered by him has observed that admittedly the plaintiff was declared as a successful bidder for the last auction on 2014 regarding shops situated at Bus Stand Kotkapura for the period 01.04.2014 to 31.03.2015 with no auction having taken place in the year 2015, the plaintiff was allowed to carry on the contract on 01.04.2015, however, defendant No.1 put a public notice regarding the

auction of shops of Bus Stand Kotkapura. It has been noticed that the contention raised by the plaintiff that terms and conditions of contract is not mentioned in the auction notice nor the same were announced on 12.01.2016 and further no benefit of 10% of the reserve price of previous auction of the shops as detailed in the headnote of the plaint had been given. In that way, no case for grant of mandatory to the plaintiff was made out.

12. The judgments passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therewith which might have called for interference by this Court while disposing of Regular Second Appeal. No substantial question of law or fact is involved in this case. The appeal is found to be without merit and is dismissed accordingly.

13.12.2022

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No