

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-2273-1989

Reserved on : 18.8.2023

Date of Decision: 8.11.2023

Ashfaq Khan

....Appellant

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Som Nath Saini, Advocate, for the appellant.

Mr. Neeraj Sheoran, DAG, Haryana

KARAMJIT SINGH, J.

The present appeal has been filed by the appellant/plaintiff against the judgment and decree dated 12.1.1984 passed by the Court of Senior Sub Judge, Faridabad whereby the suit of the appellant/plaintiff was partly decreed for recovery of Rs. 55,000/- with proportionate costs and judgment and decree dated 8.6.1989 whereby the appeal filed by the appellant/plaintiff against the judgment and decree dated 12.1.1984 has been dismissed.

2. Brief facts of the case of the appellant/plaintiff are that fishing rights in Yamuna river and its tributaries pertaining to District Gurgaon including Faridabad for the period from 1.9.1979 to 31.8.1980 were auctioned by Agricultural Department (Fisheries), Haryana on 17.7.1979. In the said auction, the appellant/plaintiff was the highest bidder for ₹ 5,00,200/-. The appellant/plaintiff deposited earnest money of ₹ 200/-, 1/3rd amount of the total bid i.e. ₹ 1,70,000/- and 2% security i.e. ₹ 10,000/-.

3. The department accepted the bid finally and informed the appellant/plaintiff vide letter dated 23.8.1979 and then written agreement

was signed between the parties on 5.10.1979 and the appellant/plaintiff also furnished the requisite surety bond. However, the said surety bond was not accepted by the department and the appellant/plaintiff was directed to pledge the property but he made request that the appellant/plaintiff be exempted from doing so and further, made request that he be issued proper license. However, the department failed to do so and did not provide any license for fishing to the appellant/plaintiff and as such, he failed to commence his fishing work during the season; that in order to cover up its lapse, the department issued one duplicate license dated 16.10.1979 to the appellant/plaintiff on which fresh request was made by the appellant/plaintiff to issue him a proper license for fishing and in case of failure, he would withdraw his offer and further requested the department to refund amount of ₹ 1,70,000/- and ₹ 10,000/-. On this, department sent letter dated 2.11.1979 whereby it was informed to the appellant/plaintiff that his license for fishing has been cancelled. On this, the appellant/plaintiff filed CWP-4158-1979 challenging cancellation of his license. The said writ petition was disposed of by High Court on 29.11.1979 directing the appellant/plaintiff to furnish the requisite surety bond and other documents. The appellant-plaintiff after making all the efforts, informed the department on 4.12.1979 that he is withdrawing his offer as there was no concluded contract and further made request to refund the amount of ₹ 1,80,000/-. In this regard, another letter dated 12.12.1979 was also sent to the department. However, the respondents-defendants failed to do the needful. Hence the suit was filed for recovery of ₹ 1,80,000/-.

4. The suit was contested by the respondents-defendants who filed written statement wherein it was admitted that the appellant-plaintiff was

the highest bidder and he deposited earnest money of ₹ 200/-. Even deposit of another amount of ₹ 1,70,000/- and ₹ 10,000/- by the appellant-plaintiff was also admitted. It was further pleaded that on deposit of 1/3rd of the total amount of contract and 2% cash security, the appellant-plaintiff became licensee and the license was issued to the appellant-plaintiff on 5.9.1979 and thereafter, the appellant-plaintiff issued permit to the fishermen for catching fish from the area of the river which was auctioned to him. In their written statement, the defendants admitted that in CWP-4158-1979 filed by the appellant-plaintiff, the matter was compromised and the appellant-plaintiff was allowed to do fishing for the remaining period i.e. from 1.12.1979 to 31.8.1980 subject to payment of ₹ 3,75,150/- and the said offer was accepted by both the parties and consequently, the writ petition was disposed of vide order dated 29.11.1979. On this, the appellant plaintiff was directed to furnish requisite surety bonds and other documents but he failed to do the needful and finally, refused to do so vide letter dated 12.12.1979. On receipt of the said letter, the department re-auctioned the fishery rights to some other person for ₹ 43,000/- only for the remaining period. In this way, the respondents-defendants suffered financial loss of ₹ 2,77,200/- which they are entitled to recover from the appellant-plaintiff as per Rule 11 of Punjab Fishery Rules. Other averments of the plaint were denied being wrong and it was pleaded that the suit be dismissed. The appellant-plaintiff filed replication reiterating the averments made in the plaint and denying the pleas taken by the respondents-defendants in their written statement.

5. On the pleadings of the parties, following issues were framed by the learned trial Court : -

1. Whether there was no concluded contract between the parties

as alleged and as such whether the plaintiff is entitled to refund of Rs.1,80,000/- from the defendants as alleged? OPP

2. Whether the suit is not maintainable in the present form?

OPD

3. Whether written statement on behalf of defendants has not been filed through a duly authorised person? OPP

3A. What is the effect of the order passed by the Hon'ble High Court on 29.11.79 in the writ petition in question? OPParties.

3B. Whether the plaintiff committed default in the furnishing of security etc. as alleged in the written statement, if so, to what effect? OPD

4. Relief.

6. Counsel for the appellant-plaintiff examined Zamil Ahmed who reiterated the contents of the plaint being attorney of the plaintiff and he proved concerned power of attorney as Ex.P1 and documents Ex.P2 to Ex.P11.

7. On the other hand, counsel for the respondents-defendants examined DW1-Brij Mohan, Fishery Development Officer, DW2-Rajbir Singh, Fishery Officer, DW3-Brij Mohan Sharma, Project Officer, DW4-Dayaldeen, DW5-Gopi Singh, DW6-Umesh Dutt, DW7-P.S.Sodhi, Tehsildar, DW8-Mohinder Kumar, Accountant, Fishery Department, DW9-Bandya Dayal, DW10-Rafiq, DW11-R.C.Bhatti, Advocate and DW12-D.K.Kaushik, Director, Fisheries.

8. After hearing counsel for the parties, learned trial Court came to the conclusion that with abrupt cancellation of the contract by the

appellant-plaintiff and further as the appellant-plaintiff kept on fishing from the auctioned waters, the respondents-defendants suffered financial loss worth ₹ 1,25,000/- for the period from 1.9.1979 to 3.11.1979 and consequently, the suit of the appellant-plaintiff was partly decreed for recovery of ₹55,000/- by deducting aforesaid financial loss from the total amount of ₹1,80,00/-.

9. The appellant-plaintiff being aggrieved by the said judgment and decree of the trial Court dated 12.1.1984, filed an appeal and the same was also dismissed by the Court of learned District Judge, Faridabad vide judgment dated 8.6.1989.

10. The appellant-plaintiff being not satisfied has filed the present appeal against both the impugned judgments passed by the Courts below.

11. I have heard the counsel for the parties and gone through the record of the case.

12. Counsel appearing on behalf of the appellant-plaintiff, while assailing the impugned judgments has, *inter alia*, contended that fishing rights for certain area of Yamuna river were auctioned by the respondents-defendants for the period from 1.9.1979 to 31.8.1980 and the appellant-plaintiff also participated in the said auction and gave highest bid of ₹ 5,00,200/- and the same was provisionally accepted and he being highest bidder deposited ₹ 200/- as earnest money and also deposited ₹ 1,70,000/- being 1/3rd amount of the total bid and ₹ 10,000/- as 2% security; that on 23.8.1979, the appellant-plaintiff was asked to execute agreement and furnish security bonds; that on 5.9.1979, the agreement was signed and the appellant-plaintiff also furnished the requisite security in the shape of

bonds; that, however, on 2.11.1979, the license in favour of the appellant-

plaintiff was cancelled. The cancellation of license was challenged by the appellant-plaintiff in CWP-4158-1979 wherein compromise was effected and finally, the said writ petition was disposed of on 29.11.1979 and High Court allowed the appellant-plaintiff to continue with fishing for the remaining period. Counsel has further contended that again the appellant-plaintiff was asked to furnish fresh security and to execute fresh agreement which was not acceptable to the appellant-plaintiff and as such, he informed the respondents-defendants on 4.12.1979 with regard to withdrawal of his offer at once and he also requested the respondents-defendants to refund the aforesaid amount of ₹ 1,80,000/- as he was never allowed to do fishing during the period from 1.9.1979 to 30.11.1979. Counsel for the appellant-plaintiff further submits that the contract between the parties was never finalised and the fishery rights were re-auctioned by the respondents-defendants in the month of December, 1979 and there is nothing on record to prove that due to withdrawal of his offer by the appellant-plaintiff, the other party suffered financial loss worth ₹ 1,25,000/-; that thus, the appellant-plaintiff is entitled to get refund of the entire suit amount of ₹ 1,80,000/- and the suit filed by the appellant-plaintiff deserves to be decreed in toto.

13. On the other hand, counsel for the respondents, while supporting the impugned judgment, has *inter alia* contended that after the execution of the contract between the parties, the appellant-plaintiff started doing fishing in the Yamuna river through his agents as is evident from the testimony of DWs and the said fishing on behalf of the appellant-plaintiff continued up to 30.11.1979. It has been further contended that thereafter, the appellant-plaintiff suddenly cancelled the contract vide letter dated

4.12.1979 and sought refund of the suit amount. Counsel for the respondents has further contended that with the cancellation of the contract, the fishing rights were re-auctioned to some other person for ₹ 43,000/- only for the remaining period and thus, the respondents suffered loss of ₹ 2,77,200/-. It is further submitted that the learned trial Court while taking liberal view partly decreed the suit of the appellant-plaintiff for ₹ 55000/-. He, while referring to the Punjab Fishery Rules, has submitted that the respondents were not liable to reimburse the balance amount to the appellant-plaintiff; that, thus, no ground is made out to set aside the impugned judgments.

14. I have considered the submissions made by the counsel for the parties.

15. Undisputed facts are that the respondents-defendants auctioned fishing rights in Yamuna river pertaining to District Gurgaon including Faridabad for the period from 1.9.1979 to 31.8.1980 on 17.7.1979 and the appellant-plaintiff gave highest bid of ₹ 5,00,200/- and the appellant-plaintiff deposited earnest money of ₹ 2000/-, ₹ 1,70,000/- as 1/3rd amount of the total bid and ₹ 10,000/- as 2% security with the department. Thereafter, certain dispute arose between the parties and the appellant-plaintiff filed CWP-4158-1979 and finally, the dispute was settled and High Court passed order dated 29.11.1979 directing the appellant-plaintiff to furnish the requisite surety bonds and other documents. Thereafter, the appellant-plaintiff informed the department on 4.12.1979 that he is withdrawing his offer and also made request to refund the amount of ₹ 1,80,000/- to him.

16. Both the Courts below rightly held that the contract between

the parties was finalized with the deposit of 1/3rd amount of total bid worth ₹ 1,70,000/- by the appellant-plaintiff along with security worth ₹ 10,000/- with the respondents-defendants. After the finalization of the contract between the parties and deposit of the aforesaid amount, the appellant-plaintiff who was the highest bidder, was having no authority to withdraw the offer. The request of the withdrawal of offer made by the appellant-plaintiff on 4/12.12.1979 resulted in breach of contract on the part of the appellant-plaintiff and consequently, the respondents-defendants cancelled the license issued in the name of the appellant-plaintiff. In case of the aforesaid default on the part of the appellant-plaintiff, 1/3rd amount of the total bid and security deposited by the appellant-plaintiff were liable to be forfeited because due to the said default, the respondents-defendants suffered financial loss as in the re-auction, highest bid received was of ₹ 43,000/- only for the remaining period. Further, as per Rule 11 of Punjab Fishery Rules, 1966 formulated under Punjab Fisheries Act, 1914 Ex.PX, in case of cancellation of the license, the licensee or permit holder as the case may be, shall not be entitled to refund of any amount paid by him to the Government towards contract amount or by way of loss of damages, whatever which may occur to him.

17. For the foregoing reasons, this Court does not find any fault with the findings recorded by both the Courts below. No question of law muchless substantial question of law arises for consideration in this appeal.

18. Consequently, the appeal is dismissed.

(KARAMJIT SINGH)
JUDGE

November 8, 2023
Paritosh Kumar