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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 14.09.2023

Judgment pronounced on: 13.12.2023

+ **RFA 344/2021**

NATIONAL AGRICULTURAL COOPERATIVE MARKETING
FEDERATION LTD.

..... Appellant

Through: Ms. Deepali Aggarwal, Adv.

versus

AVNEET GOEL

..... Respondent

Through: Mr. Sanyat Lodha, Mr. Ashutosh
Rana, Mr. Gaurav Aggarwal, Ms. Mahima Mishra,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The present appeal is challenging the judgment and decree dated 23.12.2020 passed by the learned ADJ-01, South East District, Saket Courts, New Delhi in Civil Suit No. 778/2017 whereby the suit filed by the Respondent-Plaintiff was decreed against the Appellant-Defendant for a sum of Rs. 29,46,405.63/- along with interest @ 12% p.a. from 22.05.2010 till the date of filing of the suit, interest @ 9% p.a. pendente lite and future interest @ 6% p.a.

Brief Facts



2. The brief facts as per the Appellant-Defendant are that the Appellant-Defendant is a cooperative organisation registered under the Multi State Co-operative Societies Act, 2002 and primarily engaged in the activities of marketing of agricultural products. The Respondent-Plaintiff is the sole proprietor of R.B. Enterprises and deals in sale and purchase of edible items.
3. Army Purchase Organisation (“APO”) placed two Purchase Orders/Acceptance of Tender (“AT”) on Appellant for supply of 800 MT and 1000 MT respectively of Gram Crushed (Kibbled) to its depots.
4. The Respondent, vide Offer Letter dated 22.08.2007, offered to the Appellant to make the supply of 1100 MT of Gram Crushed (Kibbled) to APO on Appellant’s behalf. As per Clause 3 of the Terms and Conditions as stipulated in the said Offer Letter, the Respondent had offered that the freight charges will be either as per Dispatch Advise cum Issue and Receipt Voucher (hereinafter “DAIRV”) or actual paid basis, whichever is less. Clause 3 reads as under:

“3. Freight shall be paid by us and that should be reimbursed by you as mentioned in DIARV or actual paid as per G.R. whichever is less, without TDS.”
5. The said offer was accepted by the Appellant on 29.08.2007. Clause 4 of the Acceptance Letter dated 29.08.2007 reads as under:

“4. Transportation – Transportation charges to various Depots of APO incurred by you shall be reimbursed on actual basis.”
6. The Respondent, vide letter dated 31.12.2007, made another offer to the Appellant for making further supplies to the APO on the



Appellant's behalf against pending orders on same terms and conditions as per previous order. The said offer was accepted by the Appellant on 07.01.2008.

7. The purchase order dated 07.01.2008 (hereinafter "Purchase Order") issued by the Appellant mentions Clause 4 as under:

"4. TRANSPORTATION – Transportation charges to various Depots of APO incurred by you shall be reimbursed on actual basis."

8. It is stated by the Appellant that the Appellant made payment towards transportation charges as per DAIRV norms of APO which was accepted by the Respondent without any protest or demur. The Appellant and the Respondent also exchanged numerous letters wherein the Respondent raised demands of freight charges as per actual basis, and the Appellant insisted to only release payments as per DAIRV norms and requested the Respondent to complete the delivery of supplies.
9. The Respondent issued notice u/s 115 of the Multi State Co-operative Society Act, 2002 dated 06.10.2010 to the Central Registrar of Co-operative Society, Department of Agricultural & Co-operation, Ministry of Agriculture and to the Appellant, making claim of Rs. 25,97,096.63/- along with interest on account of alleged transportation charges.
10. The Respondent filed its suit bearing CS 778/2017 seeking recovery of Rs. 29,46,405.63/- on the basis of Purchase Order dated 07.01.2008. The Appellant-Defendant filed its Written Statement denying the averments made by the Respondent in its suit. The Respondent filed its



Replication to the Written Statement filed by the Appellant denying its contents and reiterating the contents of its suit.

11. From the pleadings of the parties, the learned ADJ framed the following issues:

- i. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
- ii. Whether there is no cause of action against the defendant? OPD.
- iii. Whether there was an inadvertent mistake in the Purchase Order dated 07.01.2008 mentioning that the transportation charges shall be reimbursed on actual basis and not as per the payment of Depots of APO or on actual basis whichever is less? OPD.
- iv. Whether the plaintiff is entitled to receive Rs. 29,46,565.63/- or any other amount from the defendant towards the transportation charges? OPP.
- v. Whether the plaintiff is entitled for the interest on the principle amount? If so, at what rate and on what amount and for what period? OPP.

12. Before the learned ADJ, the Respondent led its evidence by examining 3 witnesses namely Mr. Sharad Aggarwal (PW-1), who was the authorised representative of the Respondent, Mr. Ashutosh Agarwal (PW-2), who was the commission agent for transportation, and Mr. Faiyyaz (PW-3) who was also the commission agent for transportation. The Appellant led its evidence by examining one witness namely Mr. N.K. Sharma (DW-1), who was the authorised representative of the



Appellant. All of them were duly cross-examined.

ADJ's Findings

13. After considering the pleadings, evidence and examining the record of the case, the learned ADJ decided all issues against the Appellant-Defendant and in favour of the Respondent-Plaintiff and a decree sheet was accordingly prepared.
14. On Issue No. 1, the learned ADJ was of the view that suit of the Respondent was based upon interpretation of covenant of a contract between Respondent and Appellant, eventually to honour another contract between the Appellant and APO. The Respondent had clearly made a distinction between his privity of contract with the Appellant as against that of Appellant with the APO. The liability was projected only against the Appellant in the contract and not against APO, thus, it could not be said that non-joinder of APO as a party was fatal to the case of the Respondent.
15. On Issue No. 2, the learned ADJ held that suit of the Respondent-Plaintiff was based upon certain facts constituting the right of being paid as per the terms of contract between the suit parties (which, as per the Respondent, was denied to him) supported with the legal basis to form a cause of action against the Appellant-Defendant. Thus, it held that the Appellant was not able to prove that the suit of the Respondent was bereft of any cause of action.
16. On Issue No. 3, the learned ADJ was of the view that the stipulation with respect to the transportation charges as contained in Clause 4 of Purchase Order dated 07.01.2008 (Ex.D2), that the transportation charges will be reimbursed on actual basis, stood unequivocally



admitted. The Appellant failed to clarify/prove how this stipulation carries a meaning/interpretation contrary to its plain meaning. The Appellant nowhere claimed that the Respondent failed to honor his obligations under the Purchase Order. The agreement between the parties is void only if both parties are under a mistake as to matter of fact. Moreover, DWI had stated that no attempt was made to amend the contract.

17. On Issue No. 4, the learned ADJ was of the view that since the stipulation in question in the Purchase Order was neither vague nor silent nor ambiguous and deserved to be plainly interpreted, the transportation charges incurred actually by the Respondent i.e. Rs. 29,46,565.63/- ought to be reimbursed under the head of transportation. The averment that the Respondent accepted the deducted payments without protest was nullified because of DW1's statement in his cross-examination that the bill-wise payment was not made, only *ad hoc* payments were made and any reduction in amount was not notified to the Respondent. In addition, the Respondent also proved the bills as Ex.P3.
18. On Issue No. 5, the learned ADJ noted the Respondent's claim that the Appellant neither chose to rebut the date as mentioned in notice nor the rate of interest as stated therein. It accordingly held that since the transaction was commercial in nature and the interest was duly claimed in all correspondences addressed by the Respondent to the Appellant including the Legal Notice dated 29.09.2009 issued on 01.10.2009 proved as Ex.P2 and Legal Notice dated 06.10.2010 proved on record as Ex.P4, interest @ 12% p.a. was granted in favour of the Respondent



from 22.05.2010 till the date of filing of suit, interest @ 9% p.a. during pendency of the suit from the date of filing till the date of Decree, and future interest @ 6% p.a. from the date of Decree till the date of actual realisation.

Appellant's Submissions

19. Before this Court, the Appellant has made the following issue-wise submissions:
20. At the outset, the Appellant has explained the nature of DAIRV. It is the acknowledgment by APO to a firm who delivers any commodity to APO that all the norms/rules as cited in the APO tenders were followed while making the delivery. It is stated that if these rules are not followed, an Army Depot will not issue a DAIRV receipt. It is further stated that no DAIRV receipt was produced by the Respondent before the Court, as APO never issued the same, as the Respondent has admittedly breached the norm/rule relating to expenditure on transport by allegedly paying the transporters above the ceiling fixed by the APO.
21. ***On Issue No. 1:*** Learned ADJ has failed to appreciate that APO is a necessary party as the Respondent has agreed to be paid as per the norms and receipts issued by the APO, hence it is the norms of APO which are directly and substantially in issue in the suit. Respondent's contention that there is no direct contact between the Respondent and APO is misconceived as the Respondent directly supplied Gram Crushed to APO. A) The Respondent, as per Clause 6 of the Purchase Order dated 07.01.2008, was required to submit duly acknowledged DAIRV within 7 days, only then could it claim 95% of the payment



from the Appellant. The same was not submitted by the Respondent. Since DAIRV issued by APO is essential to the dispute, APO must be impleaded as a party. B) The Respondent, as per Clause 6 of the Acceptance dated 07.01.2008, had an obligation to pursue Appellant's Claim with APO. C) Proviso to Order I Rule 9 of the Code of Civil Procedure, 1908 ("CPC") becomes applicable, as Clause 7 of the Purchase Order dated 07.01.2008 mandates that the Respondent will get payment from the Appellant when the Appellant receives its payment from APO.

22. **On Issue No. 2:** A) The offer dated 31.12.2007, which stated that terms and conditions of the previous offer will be followed in the subsequent contract, was accepted by the Appellant, and no counter offer (as alleged by the Respondent) was made. The original contract is the offer dated 22.08.2007 and the Appellant's letter dated 07.01.2008 is mere acceptance of it. B) Respondent failed to submit any DAIRV receipt, which was required as per the contract, thus it is not entitled to any payment from the Appellant and no cause of action arose in favor of the Respondent for any payment. C) The Respondent, as per its own offer letter dated 31.12.2007, has agreed to be paid as per terms and conditions of the previous offer i.e. as per DAIRV norms or actual basis, whichever is less. The Appellant has admittedly already paid transportation charges as per the DAIRV norms thus there is no cause of action.
23. **On Issue No. 3:** A) No objection was raised by the Respondent when reimbursed as per DAIRV norms in previous contract with the Appellant. The Respondent, in a previous contract with the Appellant



for the same commodity for supply to the same organisation, has charged transportation charges below the DAIRV ceiling as evidenced from Invoice No. 53576 dt. 28.02.2008. B) In the offer letter dated 31.12.2007, the Respondent has stated that Terms and Conditions of the new order will be same as per the previous order, in which the Respondent raised bill as per the DAIRV norms. Thus, the parties were *ad idem* about lesser transportation charges, and the Respondent is taking undue advantage of a clerical error (omission to include reference to APO norms in transportation charges) to claim higher transportation charges. C) All other terms of the Purchase Order clearly show that standards as per APO requirements were to be followed. Hence, Clause 4 was purely a clerical error. D) DAIRV norms are fundamental to the Contract with any organisation, Appellant's or APO's tender is only awarded to those firms who are willing to supply commodities to the APO within standard/ceiling prices. E) Respondent's contention that any price can be paid is contrary to Indian Contract Act, 1872 and will lead to absurdity. F) The learned ADJ has failed to correctly apply the law. G) The learned ADJ failed to consider that the conduct of the Appellant is *bona fide*, as it has released all dues of the Respondent including transportation charges, and it is only the differential amount in dispute. H) The Respondent has not produced its Offer Letter dated 31.12.2007 or any DAIRV receipts from the APO, which creates an adverse presumption against the Respondent which the learned ADJ failed to draw. I) The learned ADJ failed to apply the standard test of any prudent and reasonable man while accepting an offer i.e. the Appellant would not take up the liability to pay more



when the Respondent is willing to be paid less as per DAIRV norms.

24. ***On Issue No. 4:*** A) Respondent has approached the Court with unclean hands by not producing his own offer letter dated 31.12.2007 wherein it agreed to be paid as per the DAIRV norms. B) The bills are forged, fabricated and fraudulent, for which the learned counsel relies upon the testimony of PW2 and PW3. C) The witnesses of the Respondent are interested witnesses, and the Respondent is involved in unjust enrichment, the receipts are made pursuant to collusion between the Respondent and commission agents. D) No transporter was examined by the Respondent to prove the transport bills, which are the basis of the Respondent's claims. E) The receipts issued by transporters were unstamped and hence inadmissible.
25. ***On Issue No. 5:*** As per submissions under Issue 4, nothing is due to the Respondent from the Appellant and thus the Respondent is not entitled to any interest.

Respondent's Submissions

26. Before this Court, the Respondent has made the following issue-wise submissions:
27. ***On Issue No. 1:*** The cause of action of the Respondent flows from the contract between the Respondent and the Appellant. There exists no privity of contract between the Respondent and APO since there has been no direct contact between the Respondent and the APO and neither is there any liability that is flowing from and to the Respondent and APO. There is neither a dispute nor a contract between the Respondent and the APO.
28. ***On Issue No. 2:*** The Appellant has not raised any ground of appeal



against this issue. A cause of action is a question of fact which has to be gathered on the basis of averments made in the plaint in entirety. The Respondent, while filing a suit for recovery against the Appellant claimed that the Appellant did not pay the transportation charges as per Clause 4 of the terms and conditions mentioned in the Purchase Order dated 07.01.2008. Hence, given the facts and circumstances of the case, it cannot be said that there is no cause of action against the Appellant.

29. **On Issue No. 3:** The insertion of the impugned clause in the Purchase Order dated 07.01.2008 for reimbursement of transportation charges at actual basis was no inadvertent mistake but a concluded contract. Except the assertion made by the Appellant, there is nothing on record to show how/why there was an inadvertent mistake and why did the Appellant not take any steps to rectify the same and why the said stipulation should carry a meaning/interpretation contrary to its plain reading. An agreement is void only if both parties are under a mistake as to matter of fact. Further, the Purchase Order dated 07.01.2008 is an admitted document and its contents cannot be denied unilaterally, and the same clearly states that transportation charges will be reimbursed on actual basis. Reliance was placed on Sections 4 and 7 of the Indian Contract Act, 1872, and Sections 91 and 92 of the Indian Evidence Act, 1872.
30. **On Issue No. 4:** A) It is affirmed in PW-1's evidence affidavit that: a) the Purchase Order dated 07.01.2008 was awarded to the Respondent by the Appellant; b) that the transportation charges were to be reimbursed on actual basis; c) copies of the bills were provided to Appellant upon demand but payment was not made. DW-1 admitted



that the Purchase Order was issued by him but that the impugned stipulation was due to an inadvertent mistake. The Purchase Order is an admitted document by both parties. The transportation bills were also proved and no material contradiction has come out from cross-examination of the Respondent's witnesses. B) The Appellant has produced no documents/witnesses to disprove the bills/prove that they were inflated. The Respondent's witnesses were also not cross-examined on the above-stated facts, hence the statements as stated by the witnesses are deemed to be admitted by the Appellant. C) DW-1 did not place any document on record to prove that in similar purchase orders awarded to other parties, the impugned clause was customarily understood to include "as per DAIRV norms". D) The Appellant cannot plead new facts in the appeal, i.e. that the Respondent raised false bills, which were not brought before the Trial Court. E) The Appellant relies on minor contradictions of the Respondent's witnesses. Relying upon judicial precedents, it is argued that depositions have to be taken as a whole and minor inconsistencies which do not affect the main substance of the case are to be taken in correct perspective along with other evidences. Thus, the Respondent has proved that he is entitled to receive Rs. 29,46,405.63/- from the Appellant towards transportation charges. Reliance was placed on Section 92 and 94 of the Indian Evidence Act, 1872.

31. ***On Issue No. 5:*** The Appellant has not raised any ground in appeal against this issue.

Analysis

32. I have heard learned counsels for the parties.



Issue 1 (On Non-Joinder of APO as a Party)

33. I am of the view that the learned ADJ has correctly held that APO was not a necessary party in the suit. PWI, Mr. Sharad Aggarwal in his cross-examination as recorded on 03.03.2014 has stated:

“We have no concern with the terms and conditions between defendant and Army Purchase Organisation. We have supplied the goods as per order placed by defendant.”

34. In ***Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay***, (1992) 2 SCC 524, it was held:

“8. The case really turns on the true construction of the rule in particular the meaning of the words “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit”. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

...

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined



*must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357] , wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England* [(1950) 2 All ER 605, 611] , that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if*



those rights could be established, Devlin, J. has stated:

“The test is ‘May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights’.””

(emphasis supplied)

35. Necessary party is one without whom no decree can be passed. In the present case, the dispute arises from a stipulation in the contract between the Appellant and the Defendant, in order to honour another contract between the APO and the Appellant. The APO is not privy to the contract in dispute between the suit parties. The liability is projected only against the Appellant. The mere fact that APO standards had to be applied, or that the APO had to issue DAIRV receipts for payment to be released to the Respondent does not make APO a necessary party, as it does not affect the rights of APO or of any of the party claiming through the rights of APO.
36. The Plaintiff in a suit is *Dominus Litis*, and chooses in what way a suit is to be drafted, and which are the parties which are required to be impleaded as Defendants. In case the Plaintiff omits to implead a party, the suit can be dismissed for non-joinder of parties/the Court can direct the Plaintiff to implead the proper and necessary party. In ***Kranti Arora v. DIGJAM Ltd.***, 2022 SCC OnLine Del 2023, it was held:
- “18. Dominus litis is the person to whom a suit belongs and is master of a suit and is having real interest in the decision of a case. The plaintiff being dominus litis cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom*



he wants to implead as defendants and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as necessary party if that party is likely to suffer any legal injury due to outcome of the suit. The doctrine of dominus litis should not be over stretched in impleading the parties. The court can order a person to be impleaded as necessary party if his presence is required to decide real matter in dispute effectively... ”

37. For the reasons stated above, I am of the view that the impugned finding on Issue No. 1 does not suffer from any infirmity and the APO is not a proper or a necessary party.

Issue 2 (On Cause of Action)

38. The Appellant's contention that the original contract is the offer dated 22.08.2007 and that the Appellant's letter dated 07.01.2008 is mere acceptance of it is erroneous in law. The impugned stipulation on transportation charges is in the Purchase Order, as per which the Respondent was to be reimbursed transportation charges by the Appellant on "*actual basis*" and the same has not been done, hence the learned ADJ has rightly held that there exists a cause of action in favour of the Respondent in the present suit.

Issue 3 (On Interpretation of Impugned Clause in the Purchase Order)

39. I am of the view that the learned ADJ has rightly adjudicated this issue and held that the Appellant failed to prove that the stipulation with respect to transportation charges in the Purchase Order was inadvertently/mistakenly worded.



40. The impugned stipulation in the Purchase Order reads as under:

“4. Transportation – Transportation Charges to various Depots of APO incurred by you shall be reimbursed on actual basis.”

41. The Purchase Order dated 07.01.2008 is an admitted document, therefore, its contents cannot be denied unilaterally. Section 91 of the Indian Evidence Act, 1972 prohibits the leading of any evidence to establish the terms of a contract if those terms have been documented, except for the document itself. The section reads as under:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document –

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained...”

42. In **Roop Kumar v. Mohan Thedani**, (2003) 6 SCC 595, it was held that:

“13. Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the



ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the “best-evidence rule”. **It is in reality declaring a doctrine of the substantive law, namely, in the case of a written contract, that all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it.**

...

16. ...When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p. 294.) As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that **one with which the phrase “best evidence” is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted.**”

(emphasis supplied)



43. Further, it is stated by DWI, Mr. N.K. Sharma in his cross-examination dated 07.08.2014 that:

“I have seen the contract Ex.D2 and it was never amended but I clarified vide letter dated 24.8.2009 Ex.D10....We have not clarified anything else except vide Ex.D-10.”

44. The clarification given in letter dated 24.08.2009 (Ex.D10) reads:

*“...As earlier intimated vide our letter dated 01.06.2008 we have been releasing payment after receiving your bills promptly in terms of order referred above alongwith actual freight payable by APO as per DAIRV. **In our order under reference, it was mentioned that transportation charges incurred by you shall be reimbursed on actual basis, which means, that the actual freight payable by APO as per DAIRV....**”*

(emphasis supplied)

45. Thus, the impugned stipulation namely Clause 4 of the Purchase Order was accepted by DW1, however he tried to assign a new interpretation to the wordings as ‘*the actual freight payable by APO as per DAIRV*’. No attempt has been made to elaborate, whether in the testimony of DW1 or in the letter dated 24.08.2009, about why such interpretation is to be given to the impugned clause. Nothing on record suggests why such a clause is to be given an interpretation as projected in Ex.D10.
46. The Respondent originally vide letter dated 22.08.2007 offered the Appellant to make supply of 1100 MT of Gram Crushed (Kibbled) to APO on its behalf. In Clause 3 of the Terms and Conditions contained in the said letter, it was mentioned that the freight charges shall be paid either as per DAIRV or actual paid basis, whichever is less. However,



the Appellant vide a letter dated 29.08.2007 placed an order on the Respondent for supply of 1100 MT of Gram Crushed (Kibbled) to APO. It is pertinent to mention that Clause 4 of the Terms and Conditions contained in the letter dated 29.08.2007 mentioned that the freight charges shall be reimbursed on actual basis. Hence, taking into account the aforesaid facts and circumstances, it becomes clear that the letter dated 29.08.2007 was a counter offer that was made by the Appellant to the Respondent herein and which was accepted by the Respondent unconditionally by which a concluded contract came into existence and was also acted upon by both the parties.

47. When the Purchase Order, which is an admitted document by both parties and, in my understanding, a concluded contract between them, clearly stipulates that reimbursement will be done on actual basis, and the Appellant has placed nothing on record to prove why/how there was an inadvertent mistake/has not taken any steps to rectify the same, I am unable to give the impugned stipulation a meaning contrary to its plain English meaning.
48. It is further argued by the learned counsel for the Appellant that the Offer Letter dated 31.12.2007 for the second contract stated that the terms and conditions of the new order would be as per the previous order, which were as per DAIRV norms, and the same was reconfirmed by the Respondent on 02.01.2008. It is relevant to note that the first contract was concluded vide the letter dated 29.08.2007, Clause 4 of which clearly states:

*“4. Transportation – Transportation charges to various Depots of APO incurred by you shall be reimbursed **on actual basis.**”*



(emphasis supplied)

49. The statement “*same terms and conditions as per the previous order*” in the offer letter dated 31.12.2007 cannot mean those stated in the previous offer dated 22.08.2007, rather those which were finalised between the parties after the counter-offer by the Appellant in the form of the letter dated 29.08.2007, which was unconditionally accepted by the Respondent, and which clearly states that reimbursement of transportation charges was to be done as per actual basis. Needless to state, a concluded contract comes into existence only after the acceptance of an offer is made, which in this case was made by the Respondent by accepting the purchase orders of the Appellant vide letters dated 29.08.2007 and 07.01.2008. Thus, I find no merit in the contention of the Appellant that the parties were *ad idem* about the DAIRV norms being followed.
50. In *Airports Authority of India v. Sikka Associates*, 2017 SCC OnLine Del 12557, it was held:

“23. The submissions of the learned senior counsel for the petitioner that there was a mistake in the contract and therefore, the respondent cannot be paid more than what was agreed to be paid under the Board Resolution, is also ill-founded. Section 22 of the Indian Contract Act provides that a Contract caused by one of the parties to it being under mistake as to a matter of fact, does not make the contract voidable. In the present case, even otherwise, the petitioner on realising the alleged mistake in the contract, never resented the same and on the other hand not only continued with the same but also



gave additional work to the respondent.

...

*In the present case, there is neither a mistake of fact nor a mistake of law. The parties agreed to a particular consideration in the agreement and are bound by the same. As observed above, **a party cannot seek unilateral modification of such consideration alleging that it has been agreed by it due to some mistake**, especially where more than 70% of the work had already been completed by the other party.”*

(emphasis supplied)

51. In light of the above judgment, the ground taken by the Appellant that there was a mistake of fact, and the impugned clause in the Purchase Order is a clerical error possible in the day-to-day working of any organisation, is untenable.
52. In addition, the Written Statement filed by the Appellant is totally silent on the argument (which has been made for the first time before the Appellate Court) that DAIRV norms were fundamental to the contract and that the Respondent could only claim 95% of the payment from the Appellant after submitting duly acknowledged DAIRV receipts within 7 days. The contention that the Respondent did not present DAIRV receipts, and that the Appellant could only make payments thereafter, was never raised in the Written Statement. No issues were framed by the learned ADJ regarding this and the same were never argued before the learned ADJ. These issues, if at all, had to be specifically pleaded so that the same could have been adjudicated by the learned ADJ. These are issues of fact and not of law, and hence cannot be raised at



the Appellate stage. Even otherwise, if this was the case, then the Appellant should not have made any payment to the Respondent.

Issue 4 (On Recovery of Transportation Charges)

53. I am of the view that the learned ADJ has rightly decided that the Respondent has successfully discharged his onus to claim recovery of Rs. 29,46,405.63/- against transportation charges actually incurred by him in honouring his contractual obligations.

54. It is stated by the Appellant that PW-2's evidence is self-contradictory, as in the cross-examination dated 03.03.2014 he states:

"I had obtained the certificates from the concerned transporters and handed over the same to Mr. Manoj, official of the Plaintiff".

Subsequently, he states:

"The Certificates were duly completed in all respect and handed over to me by Mr. Manoj".

55. It is further stated that PW-2 admits that Plaintiff's official never verified whether the signatures (which are allegedly of Transporters) are genuine or forged, PW-3 admits that it was the Plaintiff who himself has supplied the format for the certificates issued by the transporters, PW-3 further admits that the certificates were issued about one year after the payment which means that the Respondent raised the bill against the Appellant just based on the word of mouth of the Commission agents and not on any concrete receipts.

56. This Court in the case of ***Ramesh Chand v. Suresh Chand***, 2012 SCC OnLine Del 1985 has held:



“5....

8. A civil case is decided on balance of probabilities. In every case, there may appear inconsistencies in the depositions of witnesses however, the depositions have to be taken as a whole. Minor inconsistencies which do not affect the main substance of the case, are to be taken in correct perspective along with the other evidences, including documentary evidence which is led in the case. Assuming that a witness is not stating correctly in some places does not mean that he is to be held lying generally and hence an unreliable witness.”

57. I am of the view that there are no material contradictions in the Respondent's witnesses' depositions. No witness/document has been produced by the Appellant to disprove the said transportation charges or to prove that the bills were inflated. The Respondent has proved the transportation bills via the testimony of PW-2 and PW-3, who had arranged the transportation and paid the transporters before getting reimbursed by the Respondent. Further, the Appellant did not question the genuineness of the bills (duly proved on record as Ex.P3) before the learned ADJ, and this ground is raised only in the appeal.
58. Hence, taking into account the aforesaid facts and circumstances, it is evident that the Respondent has proved that he is entitled to receive Rs. 29,46,405.63/- from the Appellant towards transportation charges.

Issue 5 (On Interest)



59. The contract between the parties is of a commercial nature and despite the Appellant asking for the amount, the same was not paid. The learned ADJ has correctly relied upon Section 3 of the Interest Act, 1978 to grant interest. I find no infirmity as regards the awarding of interest.

Conclusion

60. In view of the above, I am of the opinion that there are no infirmities in the order of the learned ADJ, and there is no merit in the appeal, which is accordingly dismissed and the impugned judgment and decree dated 23.12.2020 passed by the learned ADJ-01, South East District, Saket Courts, New Delhi in Civil Suit No. 778/2017 is upheld.

61. Pending applications, if any, stand disposed of.

JASMEET SINGH, J

DECEMBER 13th, 2023

skm

Click here to check corrigendum, if any