

2024:PHHC 034423



RSA No.31 of 1991(O&M)

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

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**RSA No.31 of 1991 (O&M)
Date of Decision: 08.05.2024**

FOOD CORPORATION OF INDIA**.....Appellant-Plaintiff****Vs****GURDEV SINGH AND ANOTHER****...Respondent(s)-Defendants****CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA***

Present: Mr. H.S. Dhandi, Advocate
for the appellant.

Ms. Karamjeet Sharma, Advocate
for the respondents (Legal-Aid Counsel).

HARKESH MANUJA, J. (Oral)

[1]. By way of present appeal, challenge has been laid to the judgment and decree dated 01.08.1990 passed by the District Judge, Faridkot whereby the judgment and decree dated 07.02.1989 passed by the Addl. Senior Sub Judge, Moga, has been reversed, thereby dismissing the suit for recovery of damages to the tune of Rs.3,55,902.70 paise, filed at the instance of appellant-plaintiff.

[2]. Briefly stating, the dispute relates to award of a contract for handling and transportation of foodgrains and allied material in and around FCI godowns/hired godowns/open plinths at Nihal Singh Wala and Rail head at Moga and Barnala for a period of two years.

[3]. The case set up in the plaint was that the appellant-plaintiff vide telegram/letter dated 09.04.1981/10.04.1981 allotted the aforesaid work in favour of the respondents for a period of two years i.e. 01.04.1981 to 31.03.1983, however since the respondents did not start work, the appellant/plaintiff was compelled to



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allot the same through fresh tender process thereby resulting into financial loss to the tune of Rs.2,84,752.74 paise to it and, thus prayer was made for recovery of the aforesaid amount as damages along with interest @ 12%.

[4]. In response, a detailed written statement was filed on behalf of respondents-defendants while controverting the case set up by the plaintiff/appellant. Though the factum of having applied in terms of tender process was admitted by the respondents/defendants, however it was denied that any intimation about its acceptance in favour of the respondents/defendants through telegram/letter dated 09.04.1981/10.04.1981 was ever conveyed to them and there was, thus no occasion for them to have initiated the work. It was further pleaded that no damages were payable by them in favour of the appellant/plaintiff as the contract between the parties was not complete since the security amount in pursuance of acceptance of tender was never deposited.

[5]. The Trial Court vide judgment and decree dated 07.02.1989 decreed the suit in favour of the appellant/plaintiff having recorded a finding that the acceptance of bid submitted by the respondents/defendants in pursuance to the tender process was conveyed to them vide telegram/letter dated 09.04.1981/10.04.1981 as proved on record from Ex.P-2 to Ex.P-4 and, thus having failed to carry out the work order, thereby resulting into financial loss to the appellant/plaintiff, the respondents/defendants were held liable for payment of damages to the tune of Rs.3,55,902.34 paise.

[6]. Aggrieved thereof, the respondents/defendants filed first appeal, which came to be allowed by the District Judge, Faridkot vide judgment and decree dated 01.08.1990 while recording that the factum of acceptance of bid



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submitted by the appellants/defendants been conveyed to them at the instance of plaintiff/respondent was never proved on record and, thus it was not entitled to recover any damages or interest thereupon.

[7]. Impugning the aforesaid judgment and decree dated 01.08.1990, learned counsel for the appellant submits that there has been misreading of documentary evidence on record as the First Appellate Court did not appreciate the documents Ex.P-2 to Ex.P-5 in its proper perspective which clearly establish on record that the acceptance to tender in favour of the respondents/defendants was duly conveyed to them and still they did not start the work thereby compelling the plaintiff/appellant to carry out fresh tender process causing financial loss to the tune of Rs.2,84,752.74 paise and, thus the suit was liable to be decreed in its favour.

[8]. On the other hand, learned counsel for the respondents submits that the judgment and decree passed by the First Appellate Court warrants no interference as the same was based on proper appreciation of documentary as well as oral evidence available on record.

[9]. I have heard learned counsel for the parties and have gone the paper book as well as records of this case.

[10]. In the given facts and situation, the primary question to be adjudicated upon in the case in hand is whether, the acceptance of tender in favour of defendants–respondents was ever conveyed to them through the telegram dated 10.04.1981 (Ex.P-2), based on postal receipt Exhibit P-3.



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Admittedly, there is no evidence on record to establish that
aforementioned telegram was received by either of the defendants/ respondents, as
such the entire case of the appellant/ plaintiff hinges upon the presumption flowing
from illustration f of Section 114 of the Indian Evidence Act, 1872. For the said
purpose, it may be relevant to first go through Section 4 and illustration f to
Section 114 of the Indian Evidence Act 1872, which are reproduced hereunder:-

“Section 4: *May presume: Whenever it is provided by this Act that the
Court may presume a fact, it may either regard such fact as
proved, unless and until it is disproved, or may call for proof
of it.*
*"Shall presume". - Whenever it is directed by this Act that
the Court shall presume a fact, it shall regard such fact as
proved, unless and until it is disproved.*
*"Conclusive proof" - When one fact is declared by this Act to
be conclusive proof of another, the Court shall, on proof of
the one fact, regard the other as proved, and shall not allow
evidence to be given for the purpose of disproving it.*

Section 114: *Court may presume existence of certain facts.*
*The Court may presume the existence of any fact which it
thinks likely to have happened, regard being had to the
common course of natural events, human conduct and public
and private business, in their relation to the facts of the
particular case.*
Illustrations: (a) to (e)

xxx	xxx	xxx
xxx	xxx	xxx

*as to illustration (f) -- the question is, whether a letter was
received. It is shown to have been posted, but the usual
course of the post was interrupted by disturbances;”*

[11]. Cumulative analysis of Section 4 and Section 114 of the Indian
Evidence Act, 1872 shows that the presumption about existence of an act as



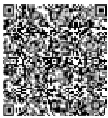
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enumerated under Section 114 thereof is merely a permissible one and not inevitable and as such it may or may not be drawn, depending upon the facts and circumstances, the same being rebuttable. Reference in this regard can be made to decision in case of ***Mst. L.M.S. Ummu Saleema Vs. B.B. Gujral***, AIR 1981 Supreme Court 1191. Relevant portion thereof is reproduced hereunder:-

“The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on 14.8.1980 and in due course reached the addressee. But, IT is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the Court may hold the presumption rebutted.”

[12]. Applying the aforesaid principle of law to the facts and circumstances of the present case, no illegality or perversity can be found with the findings recorded by the first Appellate Court which failed to draw presumption in favour of plaintiff/ appellant regarding sending of Telegram dated 10.04.1981 (Exhibit P-2)/intimation of acceptance of tender in favour of defendants/respondents, especially for the following reasons:-

- (a) Acceptance of tender was stated to be conveyed to respondents/ defendants vide telegram dated 10.04.1981 (Ex.P-2); whereas its postal receipt is dated 09.04.1981 (Ex.P-3) and thus the intimation becomes incomprehensible;
- (b) Entry from dispatch register of appellant/ plaintiff, proved as Ex.P4 relates to some letter issued to the respondents/ defendants on 09.04.1981 (Ex.P-3), however, no such



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letter dated 09.04.1981 addressed to respondents/ defendants has been produced on record except for a telegram dated 10.04.1981 (Ex.P-2) which in any case cannot be co-related with the dispatch register (Ex.P-4);

- (c) Postal receipt dated 09.04.1981 (Ex.P-3) only contains stamp of the postal department with no details as to whom it was addressed;
- (d) No witness from the postal department has been produced to prove that vide postal receipt dated 09.04.1981 (Ex.P3) any letter/ communication was made only in the name of respondents/ defendants by the appellant/ plaintiff.

[13]. In view of the detailed discussion made hereinabove, there being no misreading of pleadings or any evidence available on record on the part of first Appellate Court, neither any material evidence having lost sight off, the present appeal being devoid of merits is hereby dismissed, upholding the judgment and decree dated 01.08.1990 passed by the first Appellate Court, resulting into dismissal of suit.

[14]. All other pending application(s) if any shall stand disposed of.

May 08, 2024

Atik

Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No