IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1551-1998 (O&M)
Date of Decision:-**29.04.2024**

State of Haryana through Collector & Deputy Commissioner and Another

… Appellants

Versus

Pawan Kumar and Another

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by:- Ms. Safia Gupta, AAG, Haryana
for the appellants.

Mr. R.K. Gupta, Advocate
for the respondents.

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RITU TAGORE, J.

1. This appeal is directed against the judgment dated 13.01.1998 passed by learned Additional District Judge, Bhiwani, by virtue of which judgment dated 06.08.1994, passed by the learned trial Court, in civil suit No.239 of 1988 titled as *Pawan Kumar vs. State of Haryana through Collector and Another*, has been reversed and suit of the respondents (plaintiffs before the learned trial Court) have been decreed, restraining the appellants (defendants before the learned trial Court) from recovering ₹60,2000/- from the respondents on the basis of letter No.1864/EX dated

13.05.1988 and withholding the bid money of ₹15,300/- deposited by the respondents at the time of auction.

2. For sake of convenience, the parties shall be referred to as per their status before the learned trial Court.

3. Relevant facts for the adjudication of this appeal are that the plaintiffs under the name and style of M/s Dalbir Singh and Company participated in an auction held on 10.03.1988 of Country Liquor vends of District Rewari, including L14-A Vend of Paintawas Kalan Village and were declared the highest bidders. Accordingly, as per the terms and conditions of the auction, plaintiffs deposited 5% of the bid money as security towards the total purchase price of ₹3,06,000/- for the Licence of vend L-14/A Paintawas Kalan and 11-2/3rd% of the bid money was to be deposited within 10 days from the date of auction. Further, according to the version of plaintiffs, their offer was to be accepted subject to the approval by the Financial Commissioner, who is the Excise & Taxation Commissioner of Excise Department, Haryana under the Punjab Excise Act, 1914.

4. It is also the case of the plaintiffs that two liquor vends in nearby area of village Paintawas Kalan were created by the department, which were not announced at the time of auction and Gram Panchayat, Paintawas Kalan also passed a Resolution against running of the vend. Sensing loss to their business and threat to their lives at the hand of villagers, the plaintiffs revoked their offer before it was accepted by the Financial Commissioner and defendants were informed on 11.03.1988 by postal letter (under certificate of posting) and were requested not to approve the vend of the

plaintiffs. On 21.03.1988, a telegram was also sent to Financial Commissioner by plaintiff No.2, reiterating their act of revocation of their offer with request not to approve their contract. The plaintiffs pleaded that despite that they received a notice issued by the Collector designated under the Excise Act, seeking explanation against non-deposit of 11-2/3rd% amount as security and also issued show cause notice of terminating / cancelling the license of the plaintiffs under Section 86(c) of Excise Act and forfeiture of security amount deposited by the plaintiffs and recovery of deficient amount and charges on account of re-auction of the vend in question.

5. According to plaintiffs, they filed their reply, disputing the action of the defendants being contrary to the terms of the bid. The plaintiffs alleged that since they had withdrawn their offer, prior to the acceptance by the designated authority, they were not liable for any penal action, as proposed. The plaintiffs termed the action of defendants as illegal, contrary to the terms of auction/bid and filed the suit, pleading to restrain the defendants from preceding against them.

6. Upon being put to the notice by the leaned trial Court, the defendants caused their appearance in the suit and filed the written statement, pleading that plaintiffs had participated in the auction of liquor vend including L-14/A vend of village Paintawas Kalan, and as per the conditions of auction publicized widely and made known to all, the offer given by the plaintiffs was accepted on the fall of the hammer, and they were declared highest bidder. The plaintiff deposited 5% i.e. ₹15,300/- of total bid money but failed to deposit security amount i.e. 11-2/3rd% of the bid money within 10 days of the date of auction.

7. According to defendants, as per terms of clause No.6(ii) of the bid Rules, winner of bid, if refuses to accept the license, he is liable to pay deficient license amount and expenses of license amount in case of reselling of vend in open auction and amount is recoverable as per Section 60 of Punjab Excise Act, 1914. The defendants admitted to have received reply of the plaintiffs to the show cause notice given by them, however, asserted their entitlement to recover ₹60,200/-, from plaintiffs as arrears of land revenue in accordance with Rules 36(27) of the Haryana Liquor License Rules, 1970. The defendants denied to have received any letter or telegrams of revocation of the bid proposal and also denied that bid was subject to any approval by Financial Commissioner. The defendants asserted that contract was complete on the acceptance of bid, on fall of the hammer by the Presiding Officer on 10.03.1988 and deposit of 5% bid amount and signing of bid sheet. The defendants claimed that plaintiffs were not competent to withdraw from the contract once accepted and are liable to pay the penalty and charges on refusal to perform the contract as per terms and conditions of the contract and applicable rules. On the above material assertions, defendants prayed for dismissal of the suit of the plaintiffs.

8. The plaintiffs filed replication, reiterating their stand by denying version of the defendants. From the pleading of the party, learned trial Court framed the following issues:-

1. Whether the recovery letter dated 13.05.1988 whereby the defendants have sought to recover an amount of ₹60,200/- from the plaintiffs is illegal, null and void and without jurisdiction? OPP

2. Whether the suit is bad for want of notice under section 80 CPC? OPD

3 Whether the plaintiff has got no locus standi or cause of action to sue? OPD

4. Whether the suit is bad for non-joinder of necessary parties, if so its effect? OPD.

5. Whether the suit is not valued properly for the purposes of court fee and jurisdiction? OPD

6. Whether the jurisdiction of the civil court is barred in view of Section 158 of the Punjab Land Revenue Act? OPD

7. Relief.

9. The parties led their evidence as detailed in the judgment of the learned Courts below. The learned trial Court on appraisal of evidence and rules governing the contract and purchase of liquor vend license, concluded that plaintiffs defaulted and breached the terms and conditions of the contract, and were held liable to pay the notice amount. Consequently, dismissed the suit.

10. Being aggrieved from the judgment and decree of the learned trial Court, the plaintiffs filed the appeal and the learned Appellate Court on reassessment of the evidence, terms and conditions of the bid and Purchase Rules of license of liquor vend, found learned trial Court erred in appreciating the evidence and law properly, reversed the findings and concluded that before the acceptance of their bid offer, plaintiffs had withdrawn their offer and revoked it within the stipulated period of 10 days, as per the conditions No.6(i) and 6(ii) of the Auction Rules, therefore, not

liable to pay the notice amount and decreed the suit of the plaintiff by reversing the findings of learned trial Court.

11. The defendants being dissatisfied from the decision of First Appellate Court, filed this Regular Second Appeal.

12. Learned counsel for the appellants-State submitted that it is admitted position that plaintiffs had participated in the bid in question for the license of liquor vend L-14/A of village Paintawas Kalan and were declared highest bidder. The plaintiffs deposited 5% of the bid amount but they later on refused to perform the other terms of the contract and did not deposit 11-2/3rd% security amount and the vend was re-auctioned.

13. Learned counsel for the appellants-State further argued that as per the terms of the auction, the contract was concluded on the acceptance of bid offer given by the plaintiffs, by fall of the hammer before the Presiding Officer. The payment of 5% of the bid amount and signing of the bid sheet reinforces the completion of contract. There was no requirement of any approval from the higher authority i.e. Financial Commissioner as projected by the plaintiffs. The learned counsel stated that learned Appellate Court wrongly interpreted the terms and conditions of the bid and other governing rules, and fell in error to conclude that the plaintiffs had withdrawn their offer before it was approved by the Financial Commissioner, thereof not liable to pay the amount as demanded under the notice. The bid was not subject to approval from any authority but was subject to acceptance by the Presiding Officer present at the auction, fully empowered and authorized to accept the offer at the spot as per rules and terms of the bid. In support of

her submissions, placed reliance on judicial pronouncement titled as **State of Haryana and Other vs. Lal Chand and Others, 1984 AIR (Supreme Court) 1326**, in which, it is observed that *"in case of default in payment of installment, the petitioner is liable to pay the difference of amount, he agreed to pay at the time of first auction and re-auction"*. The learned counsel for the appellants-State thus urged that appeal be accepted by setting aside the judgment and decree dated 13.01.1998 of the First Appellate Court, and by restoring that of learned trial Court.

14. Contra, learned counsel for the respondents defended the findings of the learned First Appellate Court, stating they are based on sound exposition of law in the given facts and evidence. Learned counsel urged that material facts are not in dispute to the extent that plaintiffs were declared highest bidder in the purchase of license of vend of village Paintawas Kalan. It it stated that it is proved on record that plaintiffs had withdrawn their offer immediately after the bid, through letter dated 11.03.1988 and telegram dated 21.03.1988, and even learned trial Court had given the findings in this regard. It is further stated that as per Rules, offer was to be accepted by the Financial Commissioner and plaintiffs could withdraw from the offer before its acceptance by the concerned authority, and no contract can be said to be concluded with the plaintiffs. It is stated that learned Appellate Court, rightly dealt with the material issues and negated the contentions of the defendants/appellants that per conditions No.6(i) and 6(ii), plaintiffs had no right to withdraw from their offer and bid proposal was not subject to the acceptance by the Financial Commissioner, as per Rules. The learned counsel stated that similar question of law was answered against the

Government while interpreting the Delhi Liquor License Rules in **Union of India and Others vs. Bhimsen Walaiti Ram, 1971 AIR (Supreme Court) 2295** and in **Ram Lal vs. State of Punjab and Others, 1979 PLR 314**, where bid was released in favour of petitioner and was not approved, it was held that auction bidder was at liberty to withdraw his bid. Learned Counsel for the respondents/plaintiffs stated that plaintiffs have validly withdrawn their offer and are not liable to pay the amount under the notice. It is stated that appeal is devoid of merits and be dismissed.

15. I have considered the submissions of learned counsel for the parties in the light of the evidence on record and hold that appeal is without substance and no case is made out to interfere in the well-reasoned conclusions and findings recorded by the learned Appellate Court, for reasons stated infra:-

16. The moot points before this Court are as under:-

i. Whether with acceptance of the bid by the defendants in favour of plaintiffs, amounts to a complete contract?

ii. Whether plaintiffs could withdraw from their offer (bid-proposal) before the acceptance by the Financial Commissioner?

iii. Whether the bid was required to be approved by the Financial Commissioner for concluding the contract?

17. Ex.D1 is the announcement document, which contains the conditions with reference to License for retail to be made at the time of auction of license for retail vends of country spirit (L-14 and L-14-A) and

foreign liquor (L-2) in Haryana for the financial year 1988-89, which was to be announced at the time of auction and were required to be fulfilled. This document is not disputed between the parties. The condition No.1 is read as under:-

> "1. All licenses, whether for wholesale or for retail sale, shall be granted subject to the provisions of the Punjab Excise Act, 1914 (1 of 1914) and the rules framed thereunder from time to time, as applicable to Haryana. The minimum license fee fixed for each vend shall be announced at the time of auction."

Condition No.2 provides that :-

> "2. The Financial Commissioner, may reject, without assigning any reasons, any bid accepted by the collector or presiding officer, as the case may be, within ten days from the date of the auction."

Condition No.6(i):-

> "6(i) The successful bidder shall deposit by way of security an amount of equivalent to 16-2/3rd% of the annual license fee or an equivalent of 2 months licence fee (bid money). He shall have to pay a sum equal to 5% of the total amount of bid money in cash at the fall of the hammer and the remaining amount of 11-2/3rd% within a period of ten days of the date of auction. xxxx"

Condition No.6(ii):-

> "6(ii) If any person whose bid has been accepted at the auction fails to make deposit of the amount of security or if he refuses to accept the license, the license may be resold by public auction or private contract by the competent authority and any deficiency in license fee and all expenses of such resale or attempted resale shall be

recoverable from the said person in the same manner as laid down in Section 60 of the Punjab Excise Act (1 of 1914)."

18. In view of the above material conditions read with the substantive provisions of the Indian Contract Act, 1872, the poser before this Court is :– whether the acceptance of bid in favour of the plaintiffs, on fall of hammer before the Presiding Officer and deposit of 5% of the bid money by the plaintiffs, amounts to completion of the contract on the same day or, the contract was yet not concluded/completed on that day and same was to be completed after any communication was received from the designated authority, accepting the offer given by the plaintiffs?

19. At this stage, it is desirable to recall the provisions of Sections 3 and 4 of the Indian Contract Act, 1872, which *inter-alia* provides that the communication of proposals, the acceptance of proposals and the revocation of proposals and acceptances respectively; are deemed to be made by any or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation or, which has the effect of communicating it. The communication of a proposal is complete, when it comes to the knowledge of the person to whom it is made, whereas the communication of an acceptance is complete as against the proposal when it is put into a course of transmission to him so as to be out of the power of the acceptor.

20. At this stage, illuminating reference can be made to observations made in **Lal Chand and Others case (*supra)***, wherein it was observed as under:-

> "xxxx that an offer can always be withdrawn before it is finally accepted and that a conditional acceptance is not an acceptance in law. In Bhim Sen Walaiti Ram's case, supra, the Court held that the contract of sale was not complete till the bid was confirmed by the Chief Commissioner and till such confirmation the person whose bid had been provisionally accepted was entitled to withdraw his bid and that when the bid was withdrawn before the confirmation by the Chief Commissioner, the bidder was not liable for damages on account of any breach of contract or for the shortfall on the re-sale."

21. Now coming to the facts of present case, Ex.D1 the material documents detailing rights and obligations of the parties to the auction, specifically provides that all licenses were to be granted subject to the provision of Punjab Excise Act, 1914 and Rules framed thereunder from time to time. This means that the terms and conditions laid down in Ex.D1 cannot be read in absence of the Punjab Excise Act, 1914 and rules framed thereunder.

22. Now, condition No.2 of Ex.D1 specifically provides that Financial Commissioner may reject, without assigning any reason, any bid accepted by the Collector or Presiding Officer, as the case may be within 10 days from the date of auction. In these circumstances, Rule 24 of the Haryana Liquor License Rules, 1970 needs to be gone into, which read as under:-

> "The Collector shall forward to the Financial Commissioner for approval statements in Form M-14 and M.I-A showing the locality of each vend sold, the minimum licence fee determined under sub-

> rule (1) the name, parentage and full permanent address of the person to whom the vend has been sold at the highest bid and in any case in which the vend has not been sold to the highest bidder, a short statement of the reasons for rejecting it. If no intimation to contrary is received within 10 days from the date of the auction, the Collector shall assume that the Financial Commissioner has accepted the proposal. The Deputy Excise & Taxation Commissioner shall forward a list of all licenses and the vends obtained by them to the Superintendent of Police in the district and the managers of all the distilleries licensed in Haryana".

23. The existence of the aforesaid Rule is not disputed. This Rule when read with condition No.2 of Ex.D-1 clearly makes out that Financial Commissioner was the authority to reject any bid ascertained by the Collector or the Presiding Officer, as the case may be, within 10 days from the date of auction. It means contract was not completed, even if requisite amount bid, by way of offer amount was deposited by the highest-bidder, herein plaintiffs, at the time of auction, because it was still open for the Financial Commissioner to reject it. Thus, the offer of plaintiffs could conclude into a contract till was communicated to plaintiffs that their offer has not been rejected but accepted. Evidently, the rules do not provide for any specific form of communication, required to be given, yet on completion of 10 days waiting period of rejection by the Financial Commissioner, the acceptance of the offer can be deemed as accepted. This again lead to hold that proposal of sale was subject to approval by the Financial Commissioner, till then it was mere a proposal and not a concluded contract, which can attract the penal clause under which plaintiffs have been asked to pay the

money under the notice. The learned Appellate Court has rightly concluded by referring to the Rule 24 and other Rules of the bid, as detailed therein, read with principles of law defining contract under the Indian Contract Act, 1872 that contract had not been concluded till it was expressly approved/accepted or deemed to have been accepted by Financial Commissioner, after the expiry of 10 days from the bid, with no communication of rejection of proposal of the plaintiffs. It is, thus, rightly observed by learned Appellate Court that the plaintiffs were at liberty to withdraw from their offer given by way of payment of bid amount, within 10 days or prior to receiving any communication of acceptance of their proposal. In given discussion, it is held that contract was not concluded at the time of acceptance of bid by the Presiding Officer in favour of the plaintiffs. It was merely an offer of the plaintiffs, which was yet to be accepted by the Financial Commissioner as per the Rules and Conditions *(ibid)* laid. It is thus, unerringly held that findings of learned Appellate Court are valid and requires no interference.

24. Admittedly, auction was held on 10.03.1988. The plaintiffs by placing on record, copy of letter dated 11.03.1988 of revocation of the bid addressed to the Commissioner Excise and Taxation, Haryana Chandigarh (Ex.P-1), copy of under postal certificate (Ex.P-2), have proved that the plaintiffs withdrew their offer immediately and intimated to the defendants/appellants. They also proved sending of telegram on 21.03.1988 (Ex.P-14), reiterating their withdrawal from the proposal. Though, appellants tried to deny having received any such communication, but failed to lead any cogent evidence in this regard. This aspect of evidence was also rightly dealt

with by the learned Appellate Court. Learned counsel for the Appellants-State though vehemently urged that learned Appellate Court wrongly interpreted the evidence on this aspect, however, failed to impress this Court to have a different view.

25. Once it is held that plaintiffs had informed the defendants of their intention of withdrawal of their proposal given in the bid before same could be concluded into a contract, it cannot be said that plaintiffs had breached the terms of the contract. In the given factual matrix and the governing rules of the auction in question and law of contract, plaintiffs are held not liable to pay the amount of notice issued by the defendants. Accordingly the moot points formulated above stands answered against the appellants.

26. In view of what has been stated above, it is held that learned Appellate Court has rightly drawn the conclusions on the basis of evidence, as such, the findings are legal and valid and are upheld accordingly; and requires no interference by this Court. The question of law stand answered against the appellants/defendants. Accordingly, present regular second appeal is hereby dismissed.

27. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

29.04.2024
Gaurav Sorot

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No