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A. MOHAMMED BASHEER
v.
STATE OF KERALA AND ORS.

JULY 17, 2003

B

[V.N. KHARE, C.J., BRIJESH KUMAR AND S.B. SINHA, JJ.]

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Auction: Recovery of loss incurred due to re-auction because of non-payment of bid amount by former bidder—Public auction for right to collect and remove residual of tree growth and fire wood in a forest range—Knocked down in favour of appellant—Before confirmation of bid fire broke in forest concerned wherein some of forest produce destroyed—Appellant's claim for a reduction in bid amount not accepted, his bid confirmed and he was required to deposit the entire bid amount—Appellant did not deposit the amount -Re-auction conducted, but this time for a lesser amount—Appellant

D *was asked to pay the differential amount by way of damages—Appellant's writ petition before High Court dismissed—Held, the question as to whether there is a breach of terms of the notice inviting tender or not should be adjudicated by an authority declared to be competent therefor—In a case where there is a dispute as to whether a damage has occurred, a finding of fact in that behalf must be arrived at by the competent authority, whereafter*

E *the amount of damages should be quantified—Such quantification of damages must also be in consonance with the terms of the relevant rules—There was only a bid for removal of residual tree growth and fire wood, a substantial part of which was destroyed in fire—It is under such circumstances, the appellant wrote to the Divisional Forest Officer for cancellation of his bid*

F *or reduction of the bid amount—Appellant sought reduction in money offered by him as a result of a subsequent event which was a 'vis-major'—No concluded contract, thus, could come into effect and under such circumstances, the question of realisation of shortfall in the form of damages does not arise—Order of High Court set aside—Subsequent event.*

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Spl. Dy. Tehsildar, Manjeri v. Kunju Moideen, (1980) KLT 850, approved.

Abdul Rahiman v. Divisional Forest Officer, (1988) 2 KLT 290, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3948 of 1994.

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From the Judgment and Order dated 2.7.1993 of the Kerala High Court in O.P. No. 6135 of 1981-F. A

Ms. Malini Poduval for the Appellant.

Ms. Karthika Sukumaran, N.R. Shonker and N. Sudhakaran for Respondent No. 2. B

K.R. Sasiprabhu (N.P.) for the State.

The following Order of the Court was delivered :

The Forest Department in the State of Kerala decided to auction the right to collect and remove the residual of the tree growth and fire wood in sub-coupe No. 9 in Coupe No. 3, Pathanamthitta Range by means of public auction and the auction was fixed on 8th February, 1979. On that day, the appellant offered a bid for a sum of Rs. 3,00,100. Before the bid was confirmed, it is alleged that a fire had broken out in the forest, with the result the residual tree growth and fire wood was destroyed. The appellant herein wrote a letter to the respondents demanding reduction in the money offered by him. Despite that letter, the Managing Director confirmed the bid of the appellant and called upon him to produce the stamp paper for executing the necessary agreement and further to deposit Rs. 3,00,100 over and above the deposit already made by the appellant. Since the appellant did not deposit the money as directed by the Managing Director, the respondent re-auctioned the remaining residual tree growth and fire wood for a sum of Rs. 2,00,400. Since there was a shortfall of Rs. 1,21,439 the Managing Director wrote to the appellant to deposit the said amount by way of damages. It is under such circumstances, the appellant filed a petition under Article 226 of the Constitution before the Kerala High Court. C
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The Kerala High Court in view of its Full Bench decision in the case of *Abdul Rahiman v. Divisional Forest Officer*, reported in (1988) 2 K.L.T. 290, dismissed the writ petition. It is against the said judgment of the High Court, the appellant is in appeal before us. G

Ms. Malini Poduval, learned counsel urged that the view taken by the High Court that the matter is covered by a Full Bench decision of the Kerala High Court is erroneous. She urged that the said decision is distinguishable and has no bearing in the present case. H

- A We find substance in the argument. In the present case we find that there was only a bid for removal of residual tree growth and fire wood, a substantial part of which was destroyed in fire. It is under such circumstances, the appellant wrote to the Divisional Forest Officer for cancellation of his bid or reduction of the bid amount. In the case of *Abdul Rahiman's* case (supra) the breach of contract stood admitted. In *Abdul Rahiman* (supra) the Full Bench referred to an earlier decision reported in 1980 K.L.T. 850* and distinguished the same on the ground that what was sought to be recovered therein was not an amount due on account of or in respect of timber under any contract thereof and, thus, Section 79 could not be invoked. The case of the appellant, however, appears to be squarely covered by the decision of
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- C the Kerala High Court reported in 1980 K.L.T. 850.*

- D It is trite that the question as to whether there is a breach of terms of the notice inviting tender or not should be adjudicated by an authority declared to be competent therefor. In a case where there is a dispute as to whether a damage has occurred, a finding of fact in that behalf must be arrived at by the competent authority, whereafter the amount of damages should be quantified. Such quantification of damages must also be in consonance with the terms of the relevant rules.

- E As indicated hereinbefore, the appellant herein sought reduction in money offered by him as a result of a subsequent event which was a 'vis-major'. No concluded contract, thus, could come into effect and under such circumstances, the question of realisation of shortfall in the form of damages does not arise.

- F In that view of the matter, the appeal deserve to be allowed. We, therefore, allow the writ petition and set aside the judgment and order under challenge.

The appeal is allowed. There shall be no order as to costs.

R.P.

Appeal allowed.

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