

FOOD CORPORATION OF INDIA

v.

M/S. LAXMI CATTLE FEED INDUSTRIES

FEBRUARY 22, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

*Contract Act, 1872:*

*Breach of contract—Agreement for sale of damaged-food grains entered into between Food Corporation and an Industry—Industry could not fulfil its part of the contract and requested for refund of balance amount deposited in terms of the contract—Corporation warned the industry to lift the balance stocks failing which the stocks would be disposed of at its risk—Industry filing a suit for recovery of damages—Decreed by Trial Court—Appeal against dismissed by the High Court—On appeal, Held: Evidence furnished by the Corporation clearly established the loss sustained by them—Without any material in support the Courts below held the Corporation liable for committing breach of the contract—Hence, judgment and decree of the Trial Court set aside.*

The appellant-Corporation invited tenders for purchasing the damaged foodgrains. Tender submitted by the respondent-Industries was accepted by the Corporation. In terms of the contract, respondent deposited certain amount with the appellant. Later, the respondent requested the appellant that part of the agreement which was not capable of being performed may be cancelled and balance amount be refunded and for waiver of storage charges levied by the authorities concerned. Certain amount was refunded by the appellant. In the meantime, a telegram was issued by the appellant-Corporation asking the respondent lift the balance stocks from the Depot immediately, failing which the stocks would be disposed of at the respondent's risk as per the terms of the contract. However, a suit was filed by the respondent for recovery of certain sum from the appellant alleging breach of contract. The Trial Court decreed the suit holding that the appellant had committed breach of the contract in refunding the balance amount and not supplying the goods to the entire extent for which the bid was submitted by the

A respondent. First Appeal was filed by the appellant-Corporation before the Delhi High Court which was dismissed by the High Court upholding the judgment and decree of the Trial Court. Hence the present appeal.

Allowing the appeal, the Court

B HELD: Without any material whatsoever the Courts below held that the appellant had committed breach. On the contrary, the evidence clearly established that the appellant had proved the loss sustained. The respondent was to establish its own case. It did not choose to lead evidence. Therefore, the Trial Court in the absence of any evidence tendered by the plaintiff should not have decreed the suit. The High Court committed error by proceeding under the erroneous assumption that the respondent had led evidence and not the appellant-Corporation. Hence, the judgment and decree of the trial Court as affirmed by the High Court cannot be sustained, and are set aside. [413-D-E-F]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5261 of 2003.

From the Final Order & Judgment and dated 30.1.2003 of Delhi High Court in Regular First Appeal No. 546 of 1988.

Ajit Pudussery for the Appellant.

E The Judgment of the Court was delivered by

F ARIJIT PASAYAT, J. Appellant-Corporation calls in question legality of the judgment rendered by a Division Bench of the Delhi High Court dismissing the First Appeal questioning correctness of the order dated 13.11.1987 of learned Additional District Judge, Delhi who had granted a decree of Rs.81,442.53 with interest in favour of the respondent who was the plaintiff before the Trial Court.

The background facts in a nutshell are as follows:-

G The appellant invited tenders from persons intending to purchase damaged foodgrains, by advertisement dated 9.6.1983. Tender submitted by the respondent was accepted on 22.7.1983. It is to be noted that the respondent was one of the successful bidders. Certain terms of the agreement which shall be indicated in detail stipulated payment of the price and the consequence of failure to do so i.e. levy of storage charges for the stock not lifted and interest. The tendered quantity was 2246 M.T. of damaged foodgrains.

H

Respondent deposited certain amounts. On 1.2.1984 the respondent requested that part of the agreement which was not capable of being executed may be cancelled and balance amount may be refunded. Prayer was also made for waiver of storage charges levied by the concerned district Manager. A sum of Rs.1,46,049.50 was refunded by the appellatant. Subsequently on 16.7.1984, a further sum of Rs.9959.68 was also refunded. The total amount of deposit by the respondent was Rs.8,45,972.31. Out of the same, a sum of Rs.1,44,864.85 was refunded by the district office of the appellatant-Corporation, Amritsar. On 16.2.1982 a telegram was issued by the Senior Regional Manager of the appellatant-Corporation, Punjab Region requesting the respondent to immediately lift the balance stocks from Jalandhar Depot latest by 5th March, 1985 failing which, it was mentioned the stocks would be disposed of at the respondent's risk as per the terms indicated in the contract. A suit was filed by the respondent which was numbered as Suit No.310 of 1985 for recovery of Rs.99,900/- from the appellatant alleging breach of contract. On 15.1.1986 written statement was filed substantially denying the allegations. It is to be noted that the plaintiff-respondent did not tender any evidence and evidence was led only by the appellatant-Corporation. The Trial Court decreed the suit holding that the appellatant had committed breach of the contract in refunding the balance of amount and not supplying the goods to the entire extent for which the bid was submitted by the plaintiff-respondent. Regular First Appeal was filed by the appellatant-Corporation before the Delhi High Court which was dismissed by impugned judgment and order dated 30.1.2003 upholding the judgment and decree of the Trial Court.

In support of the appeal learned counsel for the appellatant submitted that the Trial Court and the High Court have not considered the clauses relevant for the purpose of adjudication. The Trial Court proceeded on the basis as if appellatant was required to supply the goods for the whole amount deposited. The Trial Court as well as the High Court have also erroneously held that when the appellatant had failed to deliver the goods for the whole amount deposited, there was breach of contract and storage charges and interest on account of late payment cannot be claimed. The Trial Court also erroneously held that the goods were justifiably not lifted by the plaintiffs in time and it had paid more amount, and therefore no question of charging interest arises. The respondent has not entered appearance in spite of service of notice.

It is to be noted that the following issues were framed by the Trial Court:

- A "1. Whether the defendant is entitled to adjustment of Rs.31,097.91 on account of storage charges and Rs.5,374.20 on account of interest for the late payment? OPD
2. To what amount, if any, is the plaintiff firm entitled on account of principal sum and interest? OPP.
- B 3. Relief."

A few conditions in the contract need to be noted. They read as follows:

C "A. (ii) It will be the responsibility of the buyer to obtain necessary import/export permits from the concerned authorities in case the stocks are to be moved to place outside the one, where they are held. Such permit shall have to be produced at the time of taking delivery.

B. The Food Corporation of India do not guarantee to make any definite quantity of damaged foodgrains available to the buyers.

D xx xx xx xx

E(ii) The earnest money deposited by the successful tenders, along with the tender will be adjusted towards security deposit for due performance of the contract and would be liable to forfeiture. The security deposit will be refunded on the due completion of the contract but the Corporation will not be liable to pay interest thereon.

F (iii)(a) If the contractor fails or neglects to observe or perform any of his obligations under the contract, it shall be lawful for the Corporation to forfeit either in whole or in part in its absolute discretion the security deposit furnished by the contractor or any part thereof towards the satisfaction of any sum due to be claimed from the contractor for any damages, losses charges expenses or costs that may be incurred or suffered by the Corporation. The decision of the Corporation in this regard shall be final and binding on the contractor.

xx xx xx xx

G (F)(ii) In the event of failure to complete the payment and present the demand draft or deposit at call receipt within the aforesaid period of seven days, the Food Corporation of India shall have the option to forfeit the security and resale stocks at the risk and cost of the original buyer and also recover the loss sustained by the Food Corporation of India as a result of such failure or extend the period by 7 days for

H

making the payments provided interest of 18% per annum and storage charges at the rate of three paise per bag or part thereof are paid by the party. Any saving or profit on resale as aforesaid shall be exclusively to the account of the Food Corporation of India. A

(G) The buyer will make his own arrangements for transport and will not be entitled to claim any facility or assistance for transport from the Food Corporation of India. The things shall be placed at Food Corporation of India's cost by godown labour on buyer's trucks at the godown rates, or wagons of godowns labour or buyer will be responsible for subsequent handling including stacking of bags in the trucks/wagons." B C

It is to be noted from the judgment of the Trial Court that no evidence was led by the plaintiff. The High Court proceeded on the basis as if the plaintiff had led evidence and the appellant-Corporation had not led any evidence. On the contrary, the records clearly show that evidence was led to establish loss suffered on account of delay in lifting damaged stock. Without any material whatsoever the Trial Court as well as the High Court held that the appellant had committed breach. On the contrary the evidence clearly established that the appellant had proved the loss sustained. The plaintiff was to establish its own case. It did not choose to lead evidence. Therefore, the Trial Court in the absence of any evidence tendered by the plaintiff should not have decreed the suit. The High Court committed error by proceeding under the erroneous assumption that the plaintiff had led evidence and not the appellant-Corporation who was the defendant. D E

Above being the position, the judgment and decree of the trial Court as affirmed by the High Court cannot be sustained, and are set aside. The appeal is allowed. No costs. F

S.K.S.

Appeal allowed.