(1986) 04 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 79 of 1975

Hardayal Mal Vijai Kumar APPELLANT

Vs

Food Corporation of India RESPONDENT

Date of Decision : 03-04-1986

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Food Corporations Act, 1964 — Section 3, 37, 6, 7

Citation : (1986) WLN 193

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kishan Mal Lodha, J.—The defendant has filed this appeal u/s 96 of the CPC against the judgment and decree dated January 21, 1975 of the Additional District Judge, Sriganganagar, by which the plaintiff-respondent''s suit was decreed for Rs. 6650/-with proportionate costs against the defendant-appellant. The plaintiff was awarded future interest at rate of 6% p.a. on Rs. 6650/-. The plaintiff-respondent filed a suit for Rs. 10,950/-as damages for breach of contract and Rs. 1724.50 as interest thereon. The plaintiff is a statutory Corporation established u/s 3 of the Food Corporation Act, 1964. The defendant is a partnership firm. The defendant made an offer vide Ex. 4A on November 18, 1968 for the purchase of 1000 Qtls. of Gram at rate of Rs. 90.50 per quintal at scale point at CWC/RSWC or FCI Godown at Hanumangarh. The offer was accepted by the District Manager of the plaintiff, under his letter dated November 19, 1968 and the defendant was required to take the delivery from the plaintiff''s godown upto November 29, 1968. The defendant appellant had also deposited Rs. 1000/- by way of security for the performance of the contract with M/s Durgadutt Nath Mal, an agent of the plaintiff. The defendant failed to apply for or taking delivery of the goods upto November 29, 1968, where upon, the plaintiff called upon the defendant to take delivery within seven days. There was no response. The defendant is said to have approached the District Manager of the plaintiff when he was on tour at Hanumangarh on March 17, 1969. The defendant expressed his willingness to carry out the contract and the District Manager accepted the request and extended the time for performance of the contract upto March 26, 1969. According to the plaintiff, time was further extended for the purpose at the request upto April 30, 1969. The defendant failed to take the delivery upto the extended time. The defendant sought further time. The case of the plaintiff is that the market rate of gram prevailing at Hanumangarh town on November 30, 1969 was Rs. 79.55 per quintal. The plaintiff thus suffered a loss of Rs. 10.95 per quintal, which it was entitled to recover from the defendant. Thus, the total loss suffered by the plaintiff came to be Rs. 10,950/-. The plaintiff also claimed interest at rate of 9% p.a. on the amount of damages, which, according to it. came to be Rs. 1724. 50. The security of Rs. 1000/- deposited by the defendant was also forfeited. The plaintiff, therefore, brought the suit for Rs. 12,674. 50, against the defendant. The defendant-appellant contested the suit. It was pleaded that the plaintiff did not accept the defendant''s offer and the plaintiff''s alleged letter of acceptance was in fact a counter-offer, as it contained new terms and conditions, which were never accepted by the defendant. It was alleged in the written statement that there was no concluded contract between the parties and, therefore, the plaintiff''s agent Durgadutt Nathmal, refunded the amount of Rs. 1000/-under order of the District Manager of the plaintiff. Various other pleas were raised by the defendant in opposition of the suit of the plaintiff. The plaintiff filed rejoinder. The learned Additional District Judge framed the following issues:

(1) Whether the plaint has been signed verified by an unauthorised person? If not what is its affect on the suit?

(2) Whether there was no completed contract between the parties?

(3) Whether the plaintiff suffered a loss of Rs. 10,950/- as alleged in para 8 of the plaintiff?

(4) Whether the plaintiff is entitled to interest? If so, at what rate?

(5) What is the date of breach of contract if any?

(6) Whether the defendant deposited Rs. 1000/- as security deposit and the plaintiff can forfeit it?

(7) Whether the plaintiff cannot recover any loss as alleged in para 16 of the written statement?

(8) Whether stipulation of forfeiture is a penalty clause and cannot be enforced?

(9) Whether there was an agreement between the parties for extension of time? If yes, whether the agreement is invalid?

(10) Whether the plaintiff is duty bound to adjust Rs. 1000/-against the loss if any?

(11) Relief?

The plaintiff examimned P.W. 1 Rajendra Prasad, P.W. 2, B.N. Rao, P.W. 3 Omprakesh Gupta, P.W. 4 Durgadutt, and P.W. 5 S.N. Khandelwal. The defendant examined Hardayal. The learned Additional District Judge has recorded the following findings:

(1) that the District Manager, Ganganagar, was duly authorised to file the suit and verify and sign the plaint for the purpose. Issue No. 1 was decided in favour of the plaintiff;

(2) that a complete contract had concluded between the parties and such contract was subject to the usual terms and conditions, a few of which have been narrated in the letter of acceptance (Ex. 5). Issue No. 2 was decided against the defendant;

(3) that damages suffered by the plaintiff were Rs. 6650. Issue No. 3 was partly decided in favour of the plaintiff;

(4) that the plaintiff is not entitled to the interest. Issue No. 4 was decided against the plaintiff;

(5) that the date of breach of contract by the defendant was April 30, 1969. Issue No. 5 was, accordingly, decided;

(6) that the security amount of Rs. 1000/- if still lying with the plaintiff shall have to be adjusted towards the damages;

(7) that the plaintiff was entitled to the damages equivalent to the difference between the contracted rate and the market rate prevailing on the day of breach i.e. April 30, 1969. Issue No. 7 was decided in favour of the plaintiff;

(8) that it is not necessary to decide issue No. 8;

(9) that in view of the finding recorded on issue No. 5, no finding is necessary on issue No. 9;

(10) that in view of finding in recorded on issue No. 6, no finding is necessary on issue No. 10.

2. In view of the findings recorded by the learned Additional District Judge, he decreed the suit of the plaintiff for Rs. 6650/- by way of damages suffered on account of the breach of contract against the defendant. He dismissed the rest of the claim of the plaintiff. He also awarded future interest at rate of 6% p.a. on Rs. 6650/-. Aggrieved, the defendant has filed this appeal.

3. I have heard Mr. L.R. Mehta, learned Counsel for the appellant and Mr. D.S. Shishodia, for the respondent and carefully considered the judgment dated January 21, 1975 of the Additional District Judge, Sriganganagar.

4. Mr. L.R. Mehta. learned Counsel for the appellant has assailed finding on issue

Nos. 1 and 2 in this appeal. I propose to examine them, It was urged by the learned Counsel that the Divisional Manager of the plaintiff was not competent to institute the suit, and verify the plaint. He submitted that the power to institute the suit and sign and verify the plaint vested in the Board of Directors of the Corporation. According to him, the Board could delegate its powers to any of its officers, but that power further could not be delegated to its subordinate officers. My attention was invited to Sections 6, 7(3) and 37 of the Food Corporation Act, 1969. The material statements in this connection are of PW 1 Rajendra Prasad and PW 2 B.N. Rao. The copies of the Resolutions Exs. 1 and 2 have been produced and they have been proved by the statements of PW 1 and PW 2. Under these resolutions, powers were delegated to the various officers. Under item No. 34 of the Resolution of the Board full power of sanction to file the suit was delegated to the Managing Director. The District Manager, Ganganagar was authorised by the Managing Director to file the suit, out of which this appeal has arisen. In this connection, reference may be made to Ex. 3. It is, therefore, apparent that there was no delegation by the Managing Director to the District Manager. The delegation of the Managing Director by the Board was the power to sanction the filing of the suit. A perusal of Ex. 3 dated Angust 5, 1970 shows that the Managing Director did not delegate the power of sanction. He only accorded sanction for filing of the suit by the District Manager. In these circumstances, it is futile to contend that the Managing Director had made any further delegation of the powers. The objection raised by the learned Counsel for the appellant that the plaint has been signed and verified by an unauthorised person, is not correct. The District Manager, Ganganagar, was duly authorised to file the suit and verify and sign the plaint. The finding recorded by the learned Additional District Judge in respect of issue No. 1 is correct and no good reason has been shown by the learned Counsel for the appellant to take a view contrary to the one taken by the learned Additional District Judge, Sriganganagar. The finding on issue No. 1 is, therefore, affirmed.

5. It was, next, argued by the learned Counsel for the appellant that there was no completed contract between the parties. In other words, learned Counsel for the appellant pressed that issue No. 2 was wrongly decided against the defendant-appellant. Mr. Lekh Raj Mehta has placed the offer for purpose of 1000 Qtls contained in Ex. 4A dated November 18, 1968 and letter Ex. 5A dated November 19, 1968 of the District Manager. The material part of the offer for purchase given by the defendant to the District Manager, is as follows:

I/We hereby make offer to purchase gram from the Food Corporation of India as detailed below or such portion thereof as specified in the acceptence of the offer. We have understood the terms and conditions for purchases of gram from the Food Corporation of India. We shall be bound by these terms.

The letter Ex. 5 was sent by the District Manager to the defendant in connection with the offer made by the defendant. The relevant part of the letter (Ex. 5) is as follows:

Your offer dated 18-11-1968 for purchase of one thousand quintals gram at Rs. 90.50 (Rupees ninety and paise fifty) per quintal is hereby accepted on the following terms and conditions:

(1) You will have to deposit Rs. 1,000/- as security deposit with us;

(2) Delivery at our andodowns would be taken up to 29-11-68 on the scale point;

(3) The cost of gram would have to be deposited in the State Bank of Bikaner and Jaipur at Sriganganagar before delivery starts. On receipt of payment the concerned Quality Inspector would be directed to give delivery from our godowns. Gram has been sold on as is where is basis and no reconditioning will be made. The rates are for gross weight including cost of gunny and Sales Tax. Tare of gunny bags would be included in the weight of gram for purposes of calculation of price;

(4) Weight Check Memo at the time of delivery would be prepared by our staff and weight mentioned therein would be taken as the basis for accounting purposes;

The purchaser will be entitled to put his signatures on the weight check memos.

The contention of the learned Counsel for the appellant is that the offer made in Ex. 4 was not accepted by the plaintiff and by Ex. 5, which is said to be a letter of acceptance on behalf of the plaintiff, unilateral alterations in the offer have been made and so, there was no acceptance but a counter-offer by the plaintiff. According to the learned Counsel for the defendant-appellant, the defendant had not agreed to this counter offer and so, there was no concluded contract between the parties. The copies of the letters Exs. 4A and 5A were placed for my perusal by the learned Counsel for the appellant. The letter of offer Ex. 4A shows that defendant before making any offer, had understood the terms and conditions from the Food Corporation of India and bound himself by those terms and conditions, as the words used in Ex. 4A are "have understood the terms and conditions for purchase of gram from the Food Corporation of India. We shall be bound by these terms". It is correct that no document has been placed on record containing the terms and conditions governing supply of stock and, thus, the terms and conditions have not been proved in accordance with the provisions contained in the Evidence Act. The letter Ex. 4A is conspicuously silent regarding the terms and conditions, none the less it is implicit in it that usual terms and conditions of the contract of supply of stock by the Food Corporation of India, were accepted by the defendant. In this connection, it will be useful to make reference to the letter Ex. 9, which is signed by defendant Hardayal. Defendant Hardayal has admitted that the signatures ''A to B'' were that of the defendant''s partner Mohanlal. By this letter Ex 9, the defendant has sought extention of time for taking delivery of the goods contracted for. Had he not accepted the terms and conditions contained in the letter Ex. 5, there would have been no occasion for writing letter Ex. 9 dated August 24, 1969. This shows that there was a complete concluded contract between them, otherwise no extention of time could be sought. It was only after complete and concluded contract that the defendant appellant asked for time for taking delivery and that was of course subject to usual terms and conditions and so other conditions contained in the letter Ex. 5, dated November 19, 968, which was sent by the District Manager of the plaintiff to the defendant.

6. Having considered the reasons given by the learned Additional District Judge while deciding issue Mo. 2 I am of opinion that issue No. 2 has been correctly decided against the defendant. As stated above, besides challenging findings on issues No. 1 and 2, learned Counsel for the appellant did not raise any other point in support of the appeal challenging the decree passed against the defendant-appellant. Thus, no other point survived for my consideration.

7. The suit for Rs. 6650/- with proportionate costs was rightly decreed in favour of the plaintiff-respondent, against the defendant-appellant. The learned Additional District Judge, Sriganganagar was right in awarding future interest 6% p.a. on Rs. 6,650/-.

8. The result is that this appeal fails and it is hereby dismissed.

9. In the circumstances of the case, there will be no order as to costs.

