
(2009) 11 SHI CK 0052
In the High Court Of Himachal Pradesh

Himachal Pradesh State Forest Corporation Ltd.	APPELLANT
Vs	
Sh. Roop Singh Dilta	RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Contract Act, 1872 — Section 10, 2E

Citation : (2009) 11 SHI CK 0052

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This Regular Second Appeal is directed against the judgment of the learned District Judge, Shimla dated 1.7.1999 passed in Civil Appeal No. 137-S/13 of 1998 whereby he has allowed the appeal filed by the respondent (hereinafter referred to as the "defendant") and dismissed the suit of the appellant (hereinafter referred to as the "plaintiff").

2. The brief facts necessary for the decision of this appeal are that the plaintiff-Corporation entered into an agreement Ext.PW1/A with the defendant by which the work of extraction of rosin was allotted to the defendant. The original defendants No. 2 and 3 namely Gulab Singh and Salig Ram stood surety on behalf of the defendant.

3. As per this agreement, the defendant was to extract rosin from 17366 blazes. The agreement provided that approximately 15 quintals rosin was to be extracted from 1000 blazes.

4. The Corporation filed the suit alleging that since the work of extraction of rosin from 17366 blazes was awarded to the defendant, he was required to extract 260.49 quintals of pure rosin. However, he extracted only 203.34 quintals of rosin which also contained 10.20 quintals of "Sakki" impurity and, therefore, the pure rosin was only 193.14 quintals. Thus according to the plaintiff, the defendant caused loss of 67.35 quintals of rosin. After adjusting the various

amounts due to the defendant, the plaintiff filed a suit for recovery of Rs. 43,592.57 paise. The learned Trial Court decreed the suit for a sum of Rs. 36,112/-. The defendant filed an appeal and the learned lower Appellate Court vide impugned judgment has held that the agreement did not postulate the payment of any compensation in case the rosin extracted was less than the amount estimated in Clause 5(a) of the agreement. Therefore, the judgment and the decree of the learned Trial Court was set aside.

5. Hence the present appeal which was admitted on the following questions of law:

1. Whether Ext.PW1/A was sufficient contract in between the parties and contained all the conditions required u/s 2-E of the Indian Contract Act?

2. Whether the respondent/defendant could resile from the agreement Ex.PW1/A which was binding upon him, u/s 2(E) and Section 10 of the Indian Contract Act?

6. I have heard Sh. Neel Kamal Sood, learned counsel for the plaintiff-appellant and Sh. Avneesh Bhardwaj, Advocate appearing vice Sh. Ajay Kumar, learned counsel for the defendant.

7. The main argument is that admittedly the market rate of rosin was Rs. 750/- per quintal and since there is shortfall in the quantity of rosin, the defendant is liable to make good the same at the market rate. It would be pertinent to mention here that Clause 5(a) of the agreement on which reliance is placed by the plaintiff itself provides that the yield of rosin from the forest is estimated at 15 quintals for every thousand blazes. This Clause clearly shows that this was only an estimate and there was no clear-cut agreement between the plaintiff with the defendant that this was the minimum amount required to be produced from thousand blazes. This is more than apparent from a reading of Clause 5(b) of the agreement which clearly lays down that the value of work given in sub Clause (a) is approximate and is not guaranteed. It further provides that in case the quantum and the value of the work fall shorts or exceeds the estimated value given in sub Clause (a), the commission mate (defendant) will not be entitled to any compensation for shortfall in the work which was only estimated. How can the plaintiff claim damages on the ground that there was a fixed amount of work allotted and that the amount of produce was clearly indicated in the face of Clause 5(b).

8. A bare reading of the agreement itself clearly shows that the parties had never envisaged that the number of blazes is fixed or that the production from the blazes is certain. The production was only an estimated production. The learned lower Appellate Court rightly held that when there is an agreement in writing then oral evidence which is contrary to the provisions of the written agreement cannot be looked into.

9. In view of above discussion, I am of the considered view that the finding of the learned lower Appellate Court is absolutely correct and questions No. 2 and 3

are answered in favour of the appellant and against the respondent.

10. The appeal is accordingly dismissed. No order as to costs.