
(2010) 01 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 55 of 2009

M/s. Ashok Kumar

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Contract Act, 1872 — Section 74

Citation : (2010) 2 CivCC 265

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Sunil Garg, for Mr. N.D. Achint, for the Appellant; Narinder Singh, DAG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Cost amount of Rs.2,000/-, pursuant to order of the preceding date, has been paid today by learned counsel for the appellant to learned State counsel for respondents.

2. This is second appeal by the plaintiff, who has been unsuccessful in both the courts below.

3. Defendant-respondent No. 1 State of Haryana, through defendant-respondent No.2 Assistant Mining Engineer granted quarry lease to the plaintiff-appellant for the period from 17.02.1993 till 31.03.1996 for extraction of road metal and masonry stones at the rate of Rs.6 lacs per annum as lease money to be paid by plaintiff to defendants. Lease deed for the same was executed on 09.05.1993. The plaintiff deposited Rs. 1,50,000/- as security and also paid Rs.50,000/- as advance instalment because the lease money of Rs.6 lacs was payable in monthly instalments of Rs.50,000/-.

4. The case of the plaintiff in the plaint is that the lease deed was not acted upon from the very beginning because there was no approach to the quarry. The plaintiff made written and oral request to defendant No.2 for cancellation of the

lease and for refund of security amount and the amount of advance instalment. However, inspite of oral assurances, the defendants did not do so. On the other hand, notice dated 03.11.1995 was issued by defendant No.2 to the plaintiff requiring the plaintiff to deposit Rs.6 lacs as lease money for one year and Rs. 1,98,000/- as interest thereon. The plaintiff in the suit challenged the said notice being illegal and also sought direction to defendants to refund the security amount of Rs. 1,50,000/- and also to refund the advance instalment of Rs.50,000/-.

5. The defendants resisted the suit on various counts. Various preliminary objections were raised. On merits, it was admitted that lease was granted to the plaintiff and lease deed was executed. However, the defendants pleaded that the plaintiff worked out the lease peacefully without any disruption. No complaint was ever made by the plaintiff that path or approach to the quarry is not available. The plaintiff never stopped working. As per agreement, the plaintiff was under obligation to deposit Rs.50,000/- as instalment of lease money every month w.e.f. 17.03.1993. However, the plaintiff did not do so. Thereupon, notice dated 16.06.1993 was issued to the plaintiff requiring him to deposit the money with interest. Since the plaintiff failed to comply with the notice, lease agreement in favour of the plaintiff was cancelled on 03.03.1994 and pursuant thereto, the plaintiff surrendered possession of the mine to the defendants on 17.03.1994 in writing. Consequently, the defendants are entitled to lease money of Rs.6 lacs for the period from 17.03.1993 till 16.03.1994 along with Rs. 1,98,000/- as interest thereon. Instalment of Rs.50,000/- deposited by the plaintiff stood adjusted for the period from 17.02.1993 till 16.03.1993. Security amount was forfeited on account of default by the plaintiff.

6. Both the courts below have non-suited the plaintiff. Learned Civil Judge (Junior Division), Gurgaon, vide judgment and decree dated 16.04.2007, dismissed the suit. First appeal preferred by the plaintiff has been dismissed by learned Additional District Judge, Gurgaon, vide judgment and decree dated 13.11.2007. Feeling aggrieved, the plaintiff has filed the instant second appeal.

7. I have heard learned counsel for the parties and perused the case file.

8. In so far as the plea taken by the plaintiff in the plaint mat there was no approach passage for the quarry is concerned, the same is palpably false. Learned counsel for the plaintiff-appellant conceded mat prior to filing of the instant suit, no such intimation was given in writing by the plaintiff to the defendants. On the other hand, even in written notice Ex.P2 dated 13.09.1993, the plaintiff did not mention this fact. The whole claim of the plaintiff in the plaint is based on the plea that there was no approach passage for the quarry. However, the said plea is false and not proved at all. Consequently, the plaintiff has been rightly non-suited by both the courts below.

9. The plaintiff sought direction to the defendants to refund the amount of Rs.2,00,000/- i.e. Rs. 1,50,000/- being security amount and Rs.50,000/- being

the amount of advance instalment. However, if the plaintiff wanted recovery of the said amount, he should have sought relief of recovery of the said amount and should not have sought direction or mandatory injunction for refund of the said amount. Faced with this situation, learned counsel for the appellant contended that the plaintiff-appellant does not press the said relief.

10. Learned counsel for the appellant, however, vehemently contended that as per Clause 16 of the lease agreement, in the case of default in payment of contract money by the contractor-plaintiff, the contract was liable to be terminated by the defendants by giving one month's notice with forfeiture of security deposit as well as instalment paid in advance, and therefore, the defendants could not demand the amount of Rs.6 lacs as lease money and interest thereon. Learned counsel for the appellant vehemently referred to Section 74 of the Indian Contract Act, relating to liquidated damages and also relied on a judgment of Hon'ble Apex Court in the case of Fateh Chand Vs. Balkishan Das, . The contention is completely devoid of merit. Section 74 of the Indian Contract Act does not come into picture at all. Clause 16 of the agreement does not stipulate liquidated damages. On the other hand, it provides that in the event of default by the plaintiff, agreement could be terminated by giving one month's notice with forfeiture of security amount and advance instalment amount. In the instant case, the defendants are not demanding damages from the plaintiff. On the other hand, after serving notice on the plaintiff and after observing necessary formalities, the contract was cancelled on 03.03.1994 and the plaintiff surrendered possession of the quarry to the defendants on 17.03.1994 vide writing Ex.D2. Consequently, the quarry having remained in possession of the plaintiff-appellant till 17.03.1994, the defendants are entitled to lease money for the said period. The said lease money is not by way of penalty or damages. On the other hand, the said amount is lease money as per agreement for the period the quarry remained in possession of the plaintiff. The plaintiff is, therefore, liable to pay the same along with interest thereon, as stipulated in the agreement. The question of claiming any damages or liquidated damages referable to Section 74 of the Indian Contract Act does not arise qua the payment of Rs.6 lacs as lease money and the amount of Rs. 1,98,000/-as interest thereon.

11. In view of the aforesaid, I find no merit in the instant second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal, which is accordingly dismissed.