

(1989) 11 PAT CK 0006

In the Patna High Court

Case No : Appeal from Original Decree No. 9 of 1983 (R)

M/s Tainwala Engineering and Foundary Works

APPELLANT

Vs

Heavy Engineering Corporation Ltd. and Another

RESPONDENT

Date of Decision : 27-11-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 74

Citation : (1990) 2 PLJR 189

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; A.K. Sinha, S. Prasad and P. Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This first appeal arises out of a judgment and decree dated 13.10.1982 passed by Shri Kamala Prasad, Additional Subordinate Judge, Ranchi in Money Suit No. 165/42 of 1978-82, whereby and whereunder the said learned court dismissed the plaintiff-appellant's suit. The facts of the case lie in a very narrow compass.

2. The plaintiff is a partnership firm registered under the Partnership Act. According to the plaintiff, it carries on business of cast iron pipes.

3. In terms of an agreement contained in the sale letter dated 15.9.1975 issued by the defendant department, the plaintiff agreed to purchase 1950 metric tonnes of C.I. Skull for a sum of Rs. 8,09,250/- from the defendants.

4. According to the plaintiff in terms of the aforementioned agreement, it had deposited a sum of Rs. 10,000/- alongwith its offer and the said amount was later on converted into a security amount in terms of clause (4) of the aforementioned agreement contained in the letter dated 15.9.1975.

5. It is admitted that the plaintiff did not deposit a sum of Rs. 50,000/- with the

defendent in terms of the said letter dated 15.9.1975.

6. The dependants, thereupon allegedly forfeited the security amount to the extent of Rs. 10,000/-. The plaintiff has filed the aforementioned suit for recovery of aforementioned sum of Rs. 10000/ alongwith interest, i.e. for a total sum of Rs 12,700/-.

The defendants-respondents appeared in the aforementioned suit and filed a written statement alleging Inter alia therein that the aforementioned security amount deposited by the plaintiff was liable to be forfeited, as it committed breaches of contract.

8. On the basis of the pleadings of the parties, the learned court below framed the following issues :--

(1) Is the suit as framed maintainable ?

(2) Has the plaintiff got valid cause of action or right to sue ?

(3) Is the suit barred by law of limitation ?

(4) Is the claim of the plaintiff genuine and correct and he is legally entitled to get a decree for realisation of a sum of Rs 12.700/- alongwith cost of the suit with pendente lite and future interest over the claimed amount till the date of its realisation as claimed for or not ?

(5) To what other relief or reliefs, if any, is the plaintiff entitled ?

9. While deciding issue No. 4, the learned court below has held that the plaintiff is not entitled to the relief claimed by him in view of the fact that it did not deposit a further sum of Rs. 50,000/- pursuant to the aforementioned sale letter dated 15.9.75 within the stipulated period.

10. Mr. P.K. prasad, the learned counsel appearing on behalf of the plaintiff-appellant, submitted that in the instant case, the defendants did not suffer any loss or damages and as such, there was absolutely no reason for the respondents to forfeit the aforementioned security amount.

The learned counsel, in this connection, has drawn my attention to Section 74 of the Indian Contract Act.

11. Mr. A.K. Sinha, the learned counsel appearing on behalf of the defendants, on the other hand, submitted that in the instant case, the sum of Rs. 10,000/- deposited by the plaintiff, was by way of earnest money and as such, the provisions of Section 74 of the Indian Contract Act have no application in the facts and circumstances of this case.

The learned counsel, in this connection, has relied upon the decision in Mohammad Dalil Khan vs. State of Andhra Pradesh, reported in 1963 A.P. 216 and in Shri Hanuman Cotton Mills and Others Vs. Tata Air Craft Limited, .

12. The learned counsel further submitted that, in any event, there is no pleading on the part of the plaintiff that the defendants did not suffer any loss whatsoever and in that view of the matter, no issue was framed by the learned trial court with regard to the question as to whether in the facts and circumstances of the case the Section 74 of the Indian Contract Act shall apply or not.

13. In view of the rival contentions of the parties, the questions which arise for consideration in this appeal are as follows :--

(1) whether the defendants could forfeit the security amount although no damage was suffered by it ?

(2) Whether, in the facts and circumstances of this case, the plaintiff was required to prove that no loss or damages was suffered by the defendant ?

14. In this case, the basic facts of the case. are admitted. The defendants have not denied the contents of its letter dated 15.9.75 which is contained in Annexure-1 to the plaint The defendants have further not denied that the afore mentioned sum of Rs. 10,000/- which was deposited by way of earnest money, was later on converted into security deposit.

15. Clause (4) of the aforementioned sale letter dated 15th September, 1975 reads as follows :--

The earnest money of Rs 10,000/ deposited by you and receipted by chief cashier receipt No. 138/13789 dated sic 6.1975 is converted to security deposit and shall be refunded to you after satisfactory completion of the contract subject to settlement of accounts.

16. In the instant case, therefore, admittedly the aforementioned amount of Rs. 10,000/- was treated to be a security amount and this could not have been treated by the parties as earnest money.

17. The decisions relied upon by Mr. A.K. Sinha are in relation to earnest money and not relating to security deposit.

18. In *Maula Bux Vs. Union of India (UOI)*, , the Supreme Court has distinguished earnest money from security amount and held that the amount deposited by the contractor as security for guaranteeing due performance of contract, is not earnest money.

The Supreme Court itself has held that whereas forfeiture of earnest money does not come within the purview of section 74 of the Contract Act but the said provision is attracted in a case where stipulated sum is required to be paid by one party of the contract to the other party by way of compensation for breach of contract by way of penalty or otherwise.

19. In *Mania Box's case (supra)*, it has been held that the expression "whether or not actual damage or loss is proved to have been caused thereby" is intended

to cover different classes of contract which come to the courts. In that case, the Supreme Court has held as follows :--

In case of breach of some contracts it may be impossible for the court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties, if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.

20. In view of the aforementioned authoritative pronouncement of the Supreme Court, it was for the defendants to prove the amount of loss suffered by it owing to the alleged nonperformance of contract on the part of the plaintiff. It is not and cannot be the case of the defendant that the loss allegedly suffered by it cannot be assessed in terms of money. As admittedly the defendants have neither pleaded nor proved that it has suffered any loss or damages by reason of the alleged breach of contract on the part of the plaintiff the security amount deposited by the plaintiff could not have been forfeited in terms of section 74 of the Indian Contract Act.

21. However, regard being had to the facts and in the circumstances, I am of the view that the plaintiff should not be entitled to any interest on the aforesaid amount.

22. In the result, this appeal is allowed and the judgment and decree passed by the learned court below is set aside and it is held that the plaintiff is entitled to obtain a decree for a sum of Rs. 10,000/- from the defendants.

The defendants respondents are hereby directed to pay the aforementioned amount within two months from today, failing which the same shall carry interest at the rate of 9 per cent per annum till realisation of the payment. In the facts and circumstances of the case the parties shall bear their own costs throughout.