
(2001) 09 GAU CK 0007

In the Gauhati High Court

Case No : LPA No. 49 of 1997 in F.A. No. 33 of 1990

Mukunda Oja and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Citation : (2001) 3 GLT 233

Hon'ble Judges : R.S. Mongia, Acting C.J.; Ranjan Gogoi, J

Bench : Division Bench

Advocate : B.K. Das, P.K. Roy Choudhury and R.K. Kar, for the Appellant; B.M. Sarma and Sr. G.A. Assam, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—This Letters Patent Appeal is directed against the Judgment and Order dated 10.4.1997 passed by the learned Single Judge of this Court in First Appeal No. 33 of 1990. By the Judgment and Order under challenge in the present appeal, the learned Single Judge has reversed the Judgment and Decree dated 22.12.1989 passed by the learned Asstt. District Judge, Barpeta in Money Suit No. 11/1988 decreeing the suit of the plaintiff (appellant herein) for an amount of Rs. 1.24,850.00 along with interest thereon @ 6% per annum from the date of filing of the suit.

2. The case of the present appellants as plaintiffs in Money Suit No. 11/1988 is that the plaintiffs had hired from the defendants storing space in the cold storage cooling chamber at Howly as per terms and conditions of an agreement dated 11.9.1987. According to the plaintiffs, in pursuance of the aforesaid agreement they had deposited, in all 1401 bags of potatoes on different dates in the cold storage cooling chamber let out by the defendants. The further case of the plaintiffs is that the aforesaid potatoes stored in the Cold Storage. Chamber was damaged due to gross negligence and carelessness on the part of the defendants. According to the plaintiffs once goods in question were stored in the Gold Storage, it was the responsibility of the defendants to keep the stored

goods in proper condition and there having been a breach of the said obligation, the plaintiffs are entitled to compensation which was quantified in the plaint at Rs. 1,95,650.00. The plaintiffs also claimed interest on the said amount alleged to be due @ 12% per annum.

3. The defendants in the suit filed a joint written statement denying the claims of the plaintiffs as set forth in the plaint. The defendants in the suit denied by liability on account of the alleged damage to the stored goods by contending that the damage, if any, was on account of power failure and low voltage during such time the power was available. According to the defendants, at the time of execution of agreement by and between the parties, the plaintiffs were informed about the non availability of stand by Generating sets to ensure uninterrupted power supply and as the plaintiffs had taken the risk of storing goods in such circumstances, the defendants stood absolved of the liability by virtue of Clauses 3 and 7 of the Cold Storage order, 1980, which Clauses exonerated the defendants from any responsibility for damage of the goods stored due to circumstances beyond the control of the Management.

4. On the basis of the pleadings of the parties, the learned trial court framed as many as nine issues for trial in the suit, 3 witnesses were examined by each of the parties and a large number of documents were exhibited.

The learned Trial Court having, inter alia, found Issue Nos. 8 and 9 in favour of the plaintiff, decreed the suit which decree has been reversed by the learned single Judge giving rise to the instant letters patent appeal.

5. Of the issues framed for trial, Issue Nos. 7, 8 and 9 being relevant for the purpose of determining the respective rights and liabilities of the parties to the suit are reproduced hereinbelow:

"7. Which of the parties violated the cold storage rules.

8. Whether the defendant party was negligent and careless.

9. whether the plaintiff is entitled to get Rs. 1.95,650.00."

6. We have heard Mr. B. Das, learned Sr. Counsel assisted by Mr. P.K. Roy Choudhury, learned counsel for the appellants and Mr. B.M. Sarma, learned State Counsel representing respondents in the instant appeal.

7. A perusal of the judgment of the learned Single Judge, presently under challenge, would reveal that the learned Single Judge after an elaborate consideration of the contentions advanced by the parties before him as well as the evidence and other materials on record had allowed the appeal filed by the present respondents, primarily on the ground that the rights and liabilities of the parties to the suit have to be determined on the basis of contents of the contract agreement dated 11.9.1987 executed by the said parties. The learned Single Judge, after recording the finding that Clause 8 of the contract Agreement having stood deleted and replaced by a substituted condition, it is the aforesaid

substituted condition which would govern the respective rights and liabilities. The learned Single Judge held that in the view of the aforesaid substituted condition which made it clear that no Generating Set was available in the Cold Storage plant and as the plaintiffs had contracted to do business with the defendants on that basis, no liability can be fastened on the defendants on account of damage of the goods stored occasioned by failure of power supply. On that basis, the learned Single Judge came to the conclusion that the plaintiffs are not entitled to seek compensation for damages. It may be useful at this stage to reproduce Clause 8 of the Contract Agreement as per printed form and the substitution made as herein below:

The Cold Storage Plant "No generating set is powered by electric is available at supply from ASEB. There present at Howly is electrical generating Unit." set, to be operated whenever long time break down of power supply from ASEB results."

8. Mr. B.K. Das, learned Sr. Counsel appearing for the appellant has assailed the correctness of the conclusion reached by the learned Single Judge by contending that the learned Single Judge had committed manifest errors of law in determining the entitlement of the plaintiffs on the basis of the aforesaid terms of the Contract Agreement when the respective rights and obligations of the parties are governed by a statutory enactment. In the instant case, according to learned counsel, under the provisions of the Cold Storage Order, 1980 framed under the Essential Commodities Act, 1955, there was an obligation on the part of the defendants to provide uninterrupted power supply and there was a corresponding legal right vested in the plaintiffs to expect such uninterrupted power supply. As an admitted breach of such statutory obligation has taken place, the learned Sr. Counsel contends, the defendants in the suit must be held liable. Alternatively, Mr. Das contends that the aforesaid condition No. 8 of the Contract Agreement between the parties would not bind the plaintiffs inasmuch as such substitution was subsequent to the execution of the contract between the parties. Additionally, it is contended on behalf of the appellants that the damage to the goods stored was also on account of faulty/incorrect storage by the defendants making them liable for damages. The learned state counsel resists the aforesaid contentions and argues that there is no infirmity in the impugned judgment and order passed by the learned single Judge that Mould require interference by the appellate court exercising powers under Clause 15 of the letters patent granted to the Calcutta High Court as adopted by this Court.

9. The provisions of the Cold Storage Order, 1980 lay down the statutory conditions and restrictions subject to which a cold Storage plant is required to be run and managed. The very essence of making available Cold Storage facilities pre-supposes uninterrupted power supply and such interrupted power supply can only be ensured through regular power supply by the Electricity Road and back up power through generating sets. The breach of the statutory obligations and duties entails various consequences including penal consequences on the licensee of the cold storage plant. However, the duties and liabilities flowing from

the provisions of the statutory enactment would naturally be vis-a-vis the licensor and licensee. The rights and duties of a person hiring such Cold storage facilities from the licensee would be governed by the specific terms and conditions of the Contract Agreement under which the facility was hired. In the instant case, we find that Clause 8 of the Contract was deleted and a substituted condition was incorporated. The plaintiffs knowing fully well that no generating set is available, chose to hire cold storage facilities at Howli from the do business. Having taken the risk and having agreed to do business in terms of the substituted condition No. 8, the plaintiffs naturally can not now be allowed to claim compensation on account of damage of the goods stored occasioned by erratic power supply and non-availability of back up power. It was open for the plaintiffs not to inter into the contract in term of the substituted condition No. 8 but having agreed to store goods in cold storage plant on the basis of the said substituted condition No. 8, their entitlement would have to be governed by the expressed terms of the contract. For the aforesaid reason, we are in respectful agreement with the conclusion reached by the learned Single Judge on this aspect of the matter.

10. Insofar as the second argument advanced on behalf of the appellant is concerned, we find from the records of the case that the plaintiffs copy of the Contract Agreement dated 11.9.1987 was exhibited and marked at Exhibit-1. We have perused the contents of the said exhibit and we find that Clause 8 of the printed form was deleted and substituted by the following endorsement:

"No generating set at present at Howli Unit."

The defendants copy of the contract agreement has also been exhibited and marked as Exhibit "ka". In the said copy also there is similar endorsement against the condition No. 8. The plaintiffs having exhibited its copy of the contract agreement containing the aforesaid substituted condition No. 8 in the trial, naturally, has led no evidence to the effect that the plaintiffs were not aware of the aforesaid substituted condition. In view of the above, we find no merit in the second contention advanced on behalf of the appellants.

11. The third argument advanced on behalf of the appellants that the damage to the goods was on account of defective, though vaguely pleaded by the plaintiffs, has not been substantiated by any evidence at all. The plaintiffs' case as unfolded by the evidence on record, has consistently been that a damage to the stored goods has been caused on account of failure of the defendants to ensure uninterrupted power supply. The aforesaid third argument, therefore, has no merit.

12. No other point has been urged on behalf of the appellants.

13. In view of the above, we do not find any infirmity in the Judgment and Order dated 10.4.1997 passed by the learned Single Judge in First Appeal No. 33 of 1990. The instant letters patent appeal, therefore, stands dismissed.

The respondents would naturally be entitled to restitution of the amounts, if any, received by the appellants in terms of the judgment and decree dated 22.12.1989 passed by the learned trial court.