

(2012) 02 DEL CK 0107

In the Delhi High Court

Case No : Regular First Appeal (OS) 44 of 2000

Om Prakash Jain

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Contract Act, 1872 — Section 14, 19

Penal Code, 1860 (IPC) — Section 120B, 420, 471

Citation : (2012) 02 DEL CK 0107

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rakesh Tikku, with Mrs. Priyanka Singh, Mr. A. Mishra and Mr. Siddhartha Tanwar, for the Appellant;

Judgement

Pradeep Nandrajog, J.—A partnership firm carrying on business in the name and style of "V.K.Industries and Fabricators" was constituted on September 10, 1966 and with the mutual consent of the partners was dissolved. The firm was registered as a Small Scale Industrial Unit with the Government of Uttar Pradesh. The appellant claims to have purchased the assets and goodwill of "V.K.Industries and Fabricators", along with its name and sought registration as a SSI Unit as a "re-roller".

2. At an auction conducted by the General Manager Northern Railway on November 05, 1966, "V.K.Industries and Fabricators" participated as a bidder knowing fully well that only registered re-rollers could bid for the sale of re-rollable scrap. The highest bid was made by the appellant. 400 MTs of scrap was offered to be purchased by him @`460/-per MT and he deposited `46,000/-, being 25% of the bid amount. On the bid being confirmed he deposited the remaining sum of `1,38,000/-on November 16, 1966 as also loading charges in sum of `1,400/-. On November 21 and 22, 1966 he took delivery of 61.92 MTs of scrap, valued at `28,699.92, but could not lift the rest because an issue arose regarding the entitlement of "V.K.Industries and Fabricators" to bid at the

auction. The issue was in respect of a certificate dated November 04, 1966 purportedly issued under the signatures of one V.N.Dwivedi, District Industries Officer, Ghaziabad. It was suspected to be a forged certificate. CBI had registered RC No.12 of 1967 for offences punishable under Sections 420/471/120-B IPC.

3. The goods in question became case property and appellant moved an application before the learned Metropolitan Magistrate for goods to be released to him on superdari and obtained an order favourable to him which was set aside by the Appellate Court at the instance of Union of India.

4. Appellant thereupon filed a civil suit; claiming at the first instance a right to lift the auctioned goods and in the alternative to the sum deposited by him with the Indian Railways as also damages in sum of `75,000/-. Pre-suit interest was also claimed and so was pendente-lite and future interest.

5. Various issues were settled and some of them were decided in favour of the appellant. Declining specific performance of the contract which, was sought for under the guise of being permitted to lift the auctioned goods, the learned Single Judge held that the certificate relied upon was a forged document and thus "V.K.Industries and Fabricators" could not bid at the auction. The learned Single Judge further opined that being goods, specific performance could not be enforced and there being no evidence of damages suffered held that the appellant would be entitled to a decree only in sum of `1,56,700/-; being the price paid and proportionate freight charges for goods which were not permitted to be lifted.

6. The learned Single Judge has declined interest holding that due to the fault of the appellant in tendering a fabricated certificate, the goods became case property, and thus the Railways could not use the goods and for said reason it was opined that the appellant would not be entitled to any interest.

7. At the hearing of the appeal, Sh. Rakesh Tikku, learned Senior Counsel for the appellant had restricted submissions to grant of interest to the appellant and had made us go through the documentary evidence having a bearing upon whether the certificate relied upon was a forged document as also on the subject of the railways not permitting the appellant to receive the goods on superdari.

8. Since voluminous documents were to be considered by us, we had reserved the matter for judgment, but while dictating the judgment we realized that vide Ex.D-2, being the judgment dated 29.08.1978 pronounced in RC No.12/1967 i.e. the case registered by CBI, the appellant had been acquitted but with a finding that the certificate in question was a forged document; acquittal was for the reason there was no evidence to prove that the appellant was a party to any conspiracy. The said judgment was not challenged by anybody.

9. It is thus apparent that the goods ceased to be case property when the decision was rendered and appeal was not filed.

10. In the field of the Contract Law, it would be a case where the appellant misrepresented that the firm V.K. Industries and Fabricators was entitled to participate to bid at the auction and additionally played a fraud by relying upon a certificate which was forged. Nothing more.

11. As per Section 14 of the Contract Act, a consent is not free if caused by fraud or misrepresentation and as per Section 19, where consent is caused by fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

12. Thus, the Union of India and the Indian Railways could repudiate the contract. If it was their case that they suffered any loss or damages, the Railways and the Union of India could have proceeded to recover the same. They did not do so. It is not their case that the value of the goods became less. Thus, the consideration received by them under a contract which was voidable at their option was required to be returned, if not earlier, at least when the decision Ex.D-2 was pronounced on August 29, 1978.

13. By not paying over the said sum to the appellant, interest has to be paid with effect from said date. And we order accordingly.

14. As regards the rate of interest, since the appellant is also a faulting party, we are of the opinion that simple interest @6% per annum would be sufficient.

15. The appeal is partially allowed. Impugned judgment and decree dated July 04, 2000 is modified and the suit filed by the appellant stands disposed of decreeing `1,56,700/-(the same amount as has been decreed by the learned Single Judge) in favour of the appellant and against the Union of India through the General Manager, Northern Railway together with simple interest @6% per annum with effect from 29.08.1978 till realization.

16. However, we refrain from making any costs in appeal.