(1975) 03 DEL CK 0024

In the Delhi High Court

Case No : Suit No. 286 of 1970

Ratlam Straw Board Mills Private Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 26-03-1975

Acts Referred:

Citation : AIR 1975 Delhi 270

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Advocate : P.N. Talwar, for the Appellant; M.L. Bhargava, for the Respondent

Judgement

1. The plaintiff through this suit has prayed for a decree against the defendants to the effect that by the non-acceptance of the advance sample by the defendants the contract of supply dated 4th June, 1968, had come to an end. The plaintiff further seeks a declaration that the breach of the contract was on the part of the defendants and that defendants are not entitled to recover an amount from them. A further declaration is sought to the effect that it bp heidt that there is no valid contract between the parties as the offer made by the plaintiff was not specially accepted by the defendants and defendants be restrained form effecting any recovery from the plaintiff.

2. Contract dated 4th June, 1968, for supply of paper water-proof Bitumen in (size) of 36" to the specification No. IND-ME/577(a) was included between the parties. By letter dated 16th June,1968, the chief Inspector of Military Explosives substituted the above said specification by specification NO. JSS-1212. On plaintiff''s asking for a copy of the specification, defendant N0.2 vide its communication dated 5th july, 1968, retreated that the specification governing the supply had been correctly mentioned in the acceptance of tender IND/ ME/577 (a). The case of the plaintiff is that they were to make the supply only if the advance sample submitted by them, had been accepted. The advance sample liavmf4 been rejected the plaintiff were prevented from making the supply. Further the grievance of the plaintiff is that the advance samples were rejected

by the defendants without any ostensible reason and that the contract had come to an end and frustrated so that no liability could be fixed against the plaintiff. The contract having been breached by the defendants, the plaintiff aver, they had no right to make risk purchase after the expiry of the specified period of six months of the failure to comply with the contract.

3. The plaintiff allege that the defendants unilaterally and arbitrarily made a demand of Rs.1,40,000/- from the plaintiff threatening to recover the said amount from the deposit of the plaintiff lying with them and also from the other dues of the plaintiff.

4. The defendants traversing the contentions of the plaintiff aver that breach of the contract was committed by the plaintiff in their failure to supply the stipulated goods according to the specifications. One of the objections raised by the defendants is that the plaint does not bear the proper court-fee. On the said averment the following issue, i.e., issue No.2 was framed.

"Whether the plaint has been properly valued for the purposes of court-fee ? OPP?

5. Since the above issue is a preliminary issue I propose to deal with the same first. Accordingly, the other averments in the pleadings of the parties need not be recorded nor a decision on the other issues need be given for the present.

6. The plaintiff fixed the value of the suit for the purposes of jurisdiction at Rs.1,40,000/- being the amount threatened to be recovered from it. The plaintiff, however, stated that the value of the suit for the purposes of the court-fee being fixed, affixed a court-fee of Rs.33/-on the suit.

7. The defendants challenge the value for the purposes of the court-fee. Hence the above issue. It is a well-settled law that with a view to determine what court-fees are payable on a plaint, the Court has to see what is the nature of the suit and the relief claimed in it having regard to the provisions of Section 7 of the Court-fees Act. In a suit where substantial relief is claimed though clothed in the garb of a declaratory decree with a consequential relief the Court is entitled to determine what is the real nature of the relief. In case if the Court is satisfied that the suit is not for a mere consequential relief but a substantial relief is claimed it can demand a proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible relief. The Court is not lightly to disturb the plaintiff''s valuation but a party cannot be allowed to put an arbitrary or an unreasonable value. If a party does so the Court can require the party to correct the valuation. In a case where the relief claimed is substantial relief the plaintiff must pay ad valorem court-fee on the substantial relief.

8. In the instant case the plaintiff are not only asking merely for a declaration that there was no valid contract between the parties or that by the non-acceptance of the advance sample by the defendants, the contract of supply has come to an end and that the breach of the contract was on the part of the

defendants and stood frustrated by their acts, the plaintiff seek the substantial relief for avoiding its liability under the contract by seeking an order from the Court restraining the defendants from effecting the recovery of the sum of Rs.1.40.000/- from the plaintiff.

9. The first part of the relief no doubt is confined to seeking a declaration. However, the second part of the relief claimed is for getting rid of the liability to pay the above said amount. This relief has t o be treated as a substantial relief and cannot be said to be a purely declaratory one. Besides, it does not flow directly from the declaratory relief. Only a relief which directly flows from the declaration, the valuation of which cannot be ascertained and which is not specifically provided for in the Court-fees Act, is a consequential relief. which relief cannot be claimed independently of the declaration. But where a Party wants to get rid of its liability either under a deed or a decree for a specified amount and seeks to avoid that liability the value of the relief would be the extent of the liability to which but for the suit he would be subjected.

10. In the instant case, as already noted above, the plaintiff seek an order from this Court restraining the defendants from effecting the recovery of Rs.1,40,000/- for which amount the plaintiff is sought to be made liable under the contract dated 4th June,1968, on account of the risk purchase made by the defendants. The value for the purposes of relief in the circumstances shall be value of the liability from which the plaintiff seek to be relieved.

11. Reference here may be made to a Full Bench decision of the Allahabad High Court in Kalu Ram Vs. Babu Lal and Others, . In that case the plaintiff sought to avoid a mortgage deed and the subsequent final decree passed on the basis of the deed on the ground that it was fictitious, and without consideration and legal necessity and on the ground of negligence and collusion of the guardian of the minors. The plaintiff valued the first relief at Rs.5,0001- and Paid Rs.10/- as court-fee thereon and valued second relief at Rs.6276-3-9 and paid another sum of Rs.10/- on it as court-fee thereon. In that connection it was observed that a relief for setting aside a decree was not a declaratory relief only. The effect was not merely a declaration but the effect would be to render the decree void and incapable of execution and would free the plaintiff from all liability under it. It was accordingly held that the court-fee payable in respect of the prayer for cancellation of the decree was on the value of the decree.

12. Reference may also be made here to a Division Bench decision of the Madhya Pradesh High Court in case, Badrilal Bholaram v. State of Madhya Pradesh, Air 1964 MP, In that case a Civil Suit (No.8 of 1955) was filed by the plaintiff claiming a declaration that certain orders passed by officers of the Forest Department whereby they imposed on him a liability for Rs.16.318-8-0 on account of price of trees said to have been illegally felled and by way of penalty, were illegal and against the terms of the forest contract. The plaintiff further claimed a permanent injunction restraining the defendants from recovering the aforesaid amount. He valued the relief claimed at Rs.1,600/- for Purposes of

court-fee and at Rs.16,318-8-0 for purposes of jurisdiction. The plaintiff also filed another suit (No.2-A of 1961) alleging that having regard to the terms and conditions of the lease granted to him, he was not liable to pay the enhanced royalty, amounting to Rs.61,173.41 demanded from him. Although he had valued this suit for the purposes of court-fee as well as jurisdiction at Rs.61,173.41, he Paid the fixed court-fee of Rs.20/- alleging that the suit was for a mere declaration. In that connection it was observed, "where the relief sought itself has a real money value which can be objectively ascertained, that value is the value of the relief and any other value ascribed to it is arbitrary and unreasonable." It was further observed that "where a plaintiff is sought to be made liable either under a deed or a decree for a specified amount and he seeks to avoid that liability, the value of the relief is the extent of loss, to which for the suit he would be subjected and from which he wants to be relieved." Accordingly, it was held that the plaintiff must pay ad valorem court-fee on the amount of such liability. It was held that the value of the relief of injunction claimed in each case was the amount the liability for which the plaintiff sought to avoid. (See also Zebul Nisa v. Dirt Mohammad, Air 1941 Lah 97.

13. In the instant case the defendants claim a sum of Rs.1,40,000/- on account of risk purchase alleged to have been made by them in terms of the cancelled contract vide risk Purchase acceptance of Tender dated 29th July, 1969 on the stores of the same specification as in the cancelled Acceptance of Tender. The plaintiff seek to avoid this liability which, but for the suit, is being enforced against him. The plaintiff want to be relieved of this liability. The relief sought by the plaintiff has a real money value which is a definite amount sought to be recovered by the defendants. That being so, the amount sought to be recovered would be the value of the relief claimed by the plaintiff and the court-fee payable must be ad valorem court-fee on the amount of the liability from which the plaintiff seek to be relieved.

14. The issue is decided accordingly.

15. The plaintiff are granted one month''s time to make good the deficiency in the court-fee on the payment of which the suit shall be decided on merit in respect of other issues.

16. Judgment accordingly.

