

(2003) 12 JH CK 0060
In the Jharkhand High Court
Case No : L.P.A. No. 555 of 2001

Shukla Construction

APPELLANT

Vs

Conservator of Forest, Ex officio General Manager and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 82

Citation : (2004) 1 JCR 10

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : N.N. Tiwari and V.K. Tiwari, for the Appellant; K.P. Deo and P.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—This appeal by respondent No. 3 in CWJC No. 2077 of 1999 challenges the decision of the learned Single Judge allowing the writ petition filed by respondents Nos. 1 to 3 herein and quashing the order of the certificate officer, Palamau upholding the objections of the appellant herein and directing the District Certificate Officer, Palamau to proceed with the recovery of the amounts due from the appellant under the provisions of the Revenue Recovery Act and in terms of the agreement entered into by the appellant with respondents Nos. 1 to 3. Pursuant to a notification inviting tenders for collection and sale of stored kendu leaves, the appellant submitted its tender. That tender was accepted and an agreement marked An-nexure-2 in the writ petition, was entered into and in terms of clause. 5 of the agreement, the purchase price was to be deposited in four equal instalments. Each instalment was to be of Rs. 8,42,924.82. The appellant deposited the first two instalments and lifted the proportionate quantity. The appellant failed to deposit the third instalment and lift the kendu leaves. According to the appellant, it was for the reason that the rainy season had set in and in spite of repeated requests by the appellant, the authorities took no steps to protect the kendu leave from being affected by rain.

The prayer to shift the stock to another place went unheeded. Adapting the position that the appellant had breached the agreement, respondents 1 to 3 invited fresh tenders for removal of the balance stock of kendu leaves, obviously at the risk and cost of the appellant. After accepting the tender submitted by M/s. Kanu Bhai Patel, the Divisional Forest Officer, West Sidhi, Madhya Pradesh, requested that steps be taken for realization of the loss suffered by the State from the appellant. A show cause notice was issued to the appellant calling upon it to deposit the sum of Rs. 8,70,910.80 P being the loss sustained to re-sale of the main stock of kendu leaves. A request was made to the collector, Palamau by the Divisional Forest Officer, Sidhi, (M.P.) to initiate a proceeding for recovery on the basis of the certificate issued by the concerned authority. On receipt of the notice of initiation of the proceedings, the appellant appeared before the certificate officer and filed an objection contending, inter alia, that the certificate proceeding was not maintainable, since the certificate impugned was for an unascertained sum, being the claim for loss on account of a re-tender unilaterally demanded by the forest department and without determination of the liability of the appellant and that the same cannot be recovered under the Revenue Recovery Act. It was also contended that there was no agreement to recover an unascertained amount of loss through a certificate proceeding. The certificate officer purported to uphold this objection of the appellant and rejected the certificate proceeding. Whether he had jurisdiction to entertain such an objection, he did not consider. Respondents No. 1 to 3 herein challenged that order of the certificate officer in the writ petition. It was contended by them that on the terms of the agreement entered into by the parties, they were entitled to recover the loss suffered as a consequence of the breach of contract committed by the appellant, on the basis of the difference between the amount for which the appellant bid the kendu leaves and the amount fetched at the re-sale at the risk and cost of the appellant and there is no question of the amount being an unascertained sum, for the recovery of which a suit or any other proceeding had to be initiated. The learned Single Judge, after considering the relevant arguments and after considering the decisions brought to his notice, came to the conclusion that the certificate officer was in error in thinking that a certificate proceeding could not be initiated for recovery of the amount. The learned Single Judge found that there was a specific term in the agreement that any breach of the agreement would result in the liability for payment of loss and damages recoverable as land revenue and no great adjudicatory process was involved in finding out the difference between the amount offered by the appellant and the amount fetched at the re-sale which was the quantum of the damages to be recovered from the appellant. Since it was a case of the appellant having committed breach of the agreement, the recovery was perfectly justified. The learned Single Judge relied on the decision of the Supreme Court in the State of Karnataka v. Rameshwara Rice Mills AIR 1987 SC 1359 in support. Thus, the learned Single Judge allowed the writ petition and setting aside the order passed by the certificate officer, remitted the proceedings to the certificate officer to proceed further in accordance with law. It is. feeling aggrieved by this decision

that this appeal has been filed by the defaulting contractor.

2. Clause 13 of the agreement deals with the cancellation of the agreement on the failure of the purchaser,--here the appellant,--to fulfil his obligation under the contract. It enables the Conservator of Forests, without prejudice, to other rights and remedies available under the law, to cancel the agreement. On such cancellation, he had the right to forfeit the full security deposit as well as to seize the undelivered kendu leaves in respect of which payment had already been made. The authority had also the right to sell the kendu leaves which were kept in the godown and in respect of which payment has not been made, in order to recover the loss sustained by the purchaser and to encash the bank guarantee, if any, in terms of clause 6 of the agreement and to sell the kendu leaves in respect of which payment has already been made, but delivery has not been taken from the purchaser. It is also provided that besides the above, if any amount was still left unsatisfied or if any further loss was incurred, the same was liable to be recovered as land revenue. Thus, on the terms of the agreement, it is clear that respondents 1 to 3 had the right to cancel the agreement and to re-sell the kendu leaves not paid for by the appellant and remaining in stock. This was what was done by respondents 1 to 3 when they sold the stock of the balance kendu leaves not paid for by the appellant. There is nothing to show that the re-sale of the balance kendu leaves was, in any manner, vitiated or unfair. There is no material put forward by the appellant on the basis of which such a conclusion can be drawn. Therefore, this is a case where the parties had agreed that the difference between the amount for which the appellant bid the right to remove the kendu leaves and the amount that was fetched at the re-sale on the failure of the appellant to fulfil his part of the contract, can be recovered as the loss suffered by respondents No. 1 to 3 as land revenue.

3. Learned counsel for the appellant tried to argue that the appellant was disputing the liability and the amount sought to be recovered was an unascertained sum of damages and for such recovery, certificate proceedings cannot be had. He relied on the decisions in that regard, including the decision of the Supreme Court in *State of Karnataka v. Ramashwara Rice Mills* AIR 1987 SC 1359. He also relied on the decision in the *State of Madhya Pradesh Vs. Nagarmal Bhagwandas Marwari*, to contend that the difference in price cannot be recovered u/s 82 of the Forest Act by the Forest Department. Learned counsel for respondent Nos. 1 to 3. on the other hand, contended that the fact that the appellant failed to deposit the third instalment and remove the kendu leaves was admitted, went a long way in supporting the stand of respondents Nos. 1 to 3 that they were entitled to recover the difference in the price between the original sale and the resale from the appellant. Counsel pointed out that the re-sale was as per the contract entered into between the parties and it was at the risk and cost of the appellant. No great adjudication was involved in ascertaining the loss suffered by the State or the compensation that was due to it and the same could be ascertained by simply finding out the difference between the amount contracted for by the appellant and the amount fetched at the re-sale. Counsel

relied on the decision of the Supreme Court referred to by the learned Single Judge. He also pointed out that the appellant had agreed that the amount could be recovered as land revenue and that also enabled the initiation of the certificate proceedings. According to the counsel, this was a case of recovery of an ascertained sum as damages.

4. No doubt, the appellant attempted to put forward a case that respondents Nos. 1 to 3 had not removed the kendu leaves for safe keeping on the onset of monsoon. It appears to us that such a case is put forward only as a defence to this proceeding. The fact remains that the appellant paid only two instalments out of the four and removed the proportionate quantity of kendu leaves and it failed to remove the balance kendu leaves on payment of the third and fourth instalments. Adequate opportunities were given to the appellant for paying the third instalment and for removing the proportionate quantity of kendu leaves. The appellant failed to deposit the third instalment and to remove the kendu leaves. In that situation, in terms of clause 13 of the agreement, respondents Nos. 1 to 3 were fully justified in re-selling the balance stock of kendu leaves at the risk and cost of the appellant. The appellant is bound by the terms of the contract entered into with respondents 1 to 3. On the terms of that agreement, the appellant is also liable for the difference in price between the original sale and the subsequent sale or resale. It is one thing to say that the liability was disputed, but yet another thing to say that the amount was unascertained. Here, on the admitted facts, there was a breach of contract by the appellant and respondents Nos. 1 to 3 had proceeded to enforce their rights in terms of the contract. The sum to be recovered was clearly an ascertained sum, being the difference between the price offered by the appellant and the price fetched at the re-sale. This cannot, therefore, be considered to be a case involving a disputed liability and further dispute as to the quantum of that liability. Nor can it be said that this is for enforcement of a claim for an unascertained sum of damages arising out of an alleged breach of contract. On the facts of the case we think that the learned Single Judge was justified in taking the view that the certificate proceeding was initiated with jurisdiction and the certificate officer was in error in upholding the objection raised by the appellant to the recovery. On the whole, we are satisfied that the learned Single Judge was justified in his conclusion that the recovery proceeding could be initiated for recovery of the amount specified in the certificate. We are not in a position to accept the view of the Madhya Pradesh High Court that difference in price cannot be recovered in terms of Section 82 of the Forest Act. The term in the contract cannot be overlooked. So long as the amount is capable of being ascertained on a mere arithmetical calculation and the amount has become due on the terms of the agreement between the parties and on a breach of contract by one of them, we find no reason to hold that the said sum cannot be recovered u/s 82 of the Forest Act.

5. In the view we have taken as above, we are not considering the question whether the certificate officer, Palamau to whom the certificate is sent for enforcement has jurisdiction to entertain such an objection from the appellant

and whether such an objection, if at all, can be entertained only by the concerned authority in Madhya Pradesh.

6. Thus, we are satisfied that the learned Single Judge was justified in allowing the writ petition. Hence, we confirm his decision and dismiss this appeal. We make no order as to costs.