

(2007) 10 OHC CK 0003
In the Orissa High Court
Case No : First Appeal No. 56 of 1982

State of Orissa and Others	Vs	APPELLANT
K. Rajesekhar Senapathy		RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Orissa Forest Contract Rules, 1966 — Rule 40

Citation : (2007) CLT 298 Supp

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Advocate : S.S. Rao, for the Respondent

Final Decision : Dismissed

Judgement

S. Panda, J.—Defendants who are the Appellants have challenged the judgment and decree dated 12.11.1981 and 23.11.1981 respectively passed by the Learned Subordinate Judge, Paralakhemundi in Money Suit No. 20 of 1978. The suit is for recovery of Rs. 17,150.40 from the Defendant-Appellants who are the Collector, Ganjam and the S.D.P.O., Paralakhemundi respectively.

2. The brief facts of the case are as follows:

The Plaintiff was a forest contractor and was carrying on business in timbers. In pursuance of a notice issued by Defendant No. 2, public auction was conducted on 27.8.1975. Plaintiff being the highest bidder got delivery of possession of auctioned logs except Lot Nos. 24 and 25. It is further stated that in respect of Lot Nos. 24 and 25 price was fixed at Rs. 10,050/- and Rs. 2700/- respectively excluding the sales tax. Plaintiff on depositing the security amount prayed for time for payment of the entire bid amount on or before 1.12.1975 and the period of contract was from 17.11.1975 to 16.12.1975. Subsequently the period of contract was extended till 15.4.1976 on the request of the Plaintiff. On 11.3.1976 Plaintiff paid the sale consideration amount i.e. the entire bid amount for Lot

Nos. 24 and 25 with interest. Accordingly, the property work was approved and assigned in favour of the Plaintiff by the Defendant No. 2 on 19.3.1976. Thereafter, the Plaintiff submitted the passing lists for taking delivery of the materials of Lot Nos. 24 and 25 to the Forest Range Officer, Chandragiri on 31st March, 1976. The Range Officer, Chandragiri forwarded the passing lists to the Forester, Nalaghata for effecting delivery of logs as per lot Nos. 24 and 25 to the Plaintiff but the Forester, Nalaghata refused to give delivery of those Lots. Hence, the Plaintiff reported the same to Defendant No. 2 at Mohana and lastly he wrote a letter on 15.5.1976 to Defendant No. 2 to deliver the Lot Nos. 24 and 25 to him. As Plaintiff was ready and willing to take delivery of Lot Nos. 24 and 25 and repeatedly requested the concerned Range Officer ultimately he filed an application for extension of time which was extended upto 17.3.1976 but by the aforesaid date neither the Range Officer of Chandragiri nor Forester of Nalaghata gave delivery of the said auctioned materials to the Plaintiff. Thereafter, Plaintiff several times approached the Defendant No. 2 but no useful purpose was served. On 17.1.1978 & 15.6.1978 Plaintiff again wrote letter requesting him to give delivery of those Lots which were purchased by him in the auction or to refund the deposited money. Neither Defendant No. 2 nor his subordinate staff gave delivery of those two Lot of logs to Plaintiff. Lastly on 16.6.1978 Defendant No. 2 along with Plaintiff went to Paniganda village, where Defendant No. 2 instructed the Range Officer of Chandragiri and the Forester, Nalaghat to effect the delivery of logs under Lot Nos. 24 and 25 but at the spot they found that there were no good logs of same measurement, quality and numbers which were auctioned to the Plaintiff. Out of 130 logs under the aforesaid two Lots only 123 logs were found at the spot and those 123 logs were different from the auctioned materials. Plaintiff further averred that due to negligence, misconduct and laches by Defendant No. 2 and his staff, Plaintiff was not able to take delivery of the auctioned logs though he had paid the entire consideration amount. Hence, on 22nd June, 1978 Plaintiff issued a notice u/s 80 of the CPC to both Defendants as well as Chief Conservator of Forests, Orissa and then filed the suit for a direction to deliver the

3. On the pleadings of the parties, the Learned Trial Court has framed as many as four issues. To prove their respective cases, Plaintiff has examined himself as P.W. 1 and relied on documents which have been marked as Exts. 1 to 20 and the Defendants have examined five witnesses and relied on documents marked as Ext. A to Ext. W. On considering the oral and documentary evidence, the Learned Trial Court came to the findings that the Plaintiff has committed breach of contract and it is the Plaintiff for whose laches and negligence the auctioned materials under Lot Nos. 24 and 25 were not lifted in spite of extension of time granted to him. As the Plaintiff had deposited the auction money and requested for extension of time to lift the auction materials the Defendant No. 2 has cancelled the re-sale notice.

4. On the basis of the above findings, the Learned Trial Court has decreed the Plaintiffs suit in part and has rejected the Plaintiffs claim in respect of seven logs

which were damaged by fire due to negligence of the Plaintiff. Hence, the Learned Trial Court has deducted the price of those seven logs at Rs. 680/- and also rejected the Plaintiffs claim for interest on the deposited auction amount and the rent deposited by the Plaintiff.

5. Being aggrieved by the said judgment and decree, the Defendants have preferred this First Appeal.

6. Respondent-Respondent has also filed a cross-objection in respect of his claim rejected by the Learned Trial Court.

7. In this case Plaintiff has examined himself as P.W. 1. He has stated in his evidence that though Lot Nos. 24 and 25 had been settled in his favour on 21.11.1975 he has failed to deposit the auction amount within the stipulated time due to financial difficulties. It has been further stated by him that he deposited the amount on 11.3.1976 and after depositing the amount he made an application for extension of time for lifting timbers. The cause shown for non-lifting timbers was due to heavy rain and labour problem. Thus, it was the duty of the Plaintiff to remove the sold materials within the time extended but instead of doing so he avoided to take delivery of stock. From the said evidence of the Plaintiff, it is clearly established that due to gross negligence and laches of the Plaintiff the sold materials have been damaged. It is the settled principle of law that Plaintiff is to prove his case and he is not entitled to take advantage of the weakness of defence.

8. So far as damage of seven logs are concerned, Plaintiff has not lifted the same within the stipulated time and he deposited the rent of Rs. 80/- on 2.4.1977. He also deposited the Deporent of Rs. 80/- on 2.4.1977. Even though all the 123 logs were in good conditions, the Plaintiff avoided to take delivery of the entire stock and filed the suit on 16.11.1978. If the Plaintiff was really interested to perform his part of the contract, then he should have taken the logs in time which created a doubt on the bona-fide of the Plaintiff. Hence, the Learned Trial Court has rightly allowed the claim of the Plaintiff in part.

9. In view of Rule 40 of the Orissa Forest Contract Rules, the forest contractors shall not be entitled to any compensation what so ever for any loss that may be sustained by him relating to the sold materials and the Plaintiff has entered into a contract with Defendants after knowing fully well the said clause and on his request re-sale notice was cancelled by the Defendants. The Learned Trial Court has also rightly rejected the claim of the Plaintiff in respect of the interest on the deposited amount made by the Plaintiff due to his own negligence. Since some of the auctioned properties have been damaged on account of the laches of the Plaintiff, he is not entitled to get the price of those materials.

10. The Learned Trial Court has scrutinized the evidence properly and discussed the entire materials on record vividly. This Court finds no reason to differ from the findings arrived at by the Learned Trial Court. Hence, the judgment and decree passed by the Learned Trial Court are hereby confirmed and both the

appeal and the cross-appeal fail. Accordingly, both are dismissed.

11. There is no order as to costs.