

(2001) 08 OHC CK 0024
In the Orissa High Court
Case No : First Appeal No. 58 of 1981

State of Orissa and Others

APPELLANT

Vs

Rajendra Singh Bhatia

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 35A, 96
Orissa Forest Contract Rules, 1966 — Rule 16, 34(1), 35

Citation : AIR 2002 Ori 75 : (2001) 92 CLT 587 : (2001) 2 OLR 588

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : A.G. and Additional Standing, for the Appellant; Gautam Mukherji, Partha Mukherji, Jhuna Rath, Bibhuti Mishra and Ashoka Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—The State of Orissa is the appellant against the judgment and decree passed by the learned Sub-Judge, Rairangpur in a Money Suit bearing No. 1 of 1978 directing the State to pay a sum of Rs. 29,52435 paise along with proportionate cost.

2. The factual matrix leading to this appeal is as follows: The respondent was the plaintiff in the trial court and had taken a Forest contract relating to Tinadiha (F. S. S. W. (Coupe No. XV1I/2 D.L. No. 6/1970-71) coupe in Karanjia Division in auction sale. An agreement was executed between the plaintiff and the Chief Forest Conservator of Forests and it was agreed that total amount of Rs. 1,15,100 would be paid by the plaintiff in four instalments.

3. It is not in dispute that the plaintiff had paid three instalments in due time and extracted the logs as well as other forest produce in terms of the contract. But there was delay in payment of 4th instalment which he paid on 26-12-1972 amounting to Rs. 15,000/- and balance amount together with interest on 2-4-1973. He had also applied for extension of time as fixed in the contract and

as per the O. F. C. Rules, 1966. But the authorities seemed not to have been inclined to extend, the time by affording opportunity to the plaintiff to extract the logs as well as other forest produce from the forest. Many correspondences went on between the plaintiff and the D. F. O. and other officials. But as nothing materialised and plaintiff was unable to extract the forest logs, he issued a notice demanding Rs. 60.000/-from the defendants. But they had neither paid the amount nor replied to the letter. Therefore, the plaintiff was obliged to bring the present suit.

4. The defendants filed their written statement in the trial court by indicating that the plaintiff deliberately delayed" in paying the money as a reason whereof, the forest contract expired its term. The plaintiff did not apply for extension of time within the contractual period and for that reason they did not extend the time and otherwise also it is discretionary for them either to extend the time or refuse the same and the plaintiff not having acted bona fide, therefore, they are within their limits to refuse such extension.

5. The trial court on an elaborate analysis of evidence did not grant any damage to the plaintiff, save and except; the money which he deposited with the State in respect of the 4th instalment. Therefore, the State Government being affected by such judgment has preferred this appeal.

6. The learned Advocate appearing for the State has strongly urged that there was sufficient delay in making payment of the fourth instalment. Therefore, the D. F. O. and other officials are justified in refusing extension. The right of extension is not a legal right of the plaintiff and it is always discretionary for the Chief Conservator. But in this case, since the plaintiff had not acted bona fide, the State Government and its officials are justified to refuse extension of time.

7. Mr. Mukherji, learned counsel appearing for the plaintiff-respondent had supported the judgment and submitted that time and again the plaintiff had sent notice for holding inspection and to determine the amount of loss, if any, owing to delay in making deposit. But the authorities paid a deaf ear to such notice and casually took the matter without any positive response. The plaintiff had to run from post to pillar for getting the time extended for extraction of forest produce from the coupe area or to take back the amount. But when the authorities did not respond to the notice, therefore, the plaintiff did not have any other option than to file the suit for compensation. It has been further submitted that the coupe was auctioned in favour of the plaintiff till early part of 1973. The money has been deposited in that year. But unfortunately till today the State Government has enjoyed the utility of the said deposit and paid deaf ear to return the same. Therefore, they are also liable to pay back the amount deposited alongwith interest at a reasonable rate.

8. In this case, the plaintiff's deposit for fourth instalment is not in dispute and also it is further admitted by the State that the plaintiff had left some trees and other forest produce in the forest. The plaintiff undisputedly delayed in

depositing the 4th instalment. There is no provision in the contract that in case of delay in depositing the 4th instalment, the contractor cannot claim for extension of time.

9. In this particular case, they did not adduce any evidence to show that they took prompt steps for finalising the application for extension. On the other hand, they slept over the matter for a long time. The plaintiff had to run from post to pillar for getting back his amount or to get an extension to operate the coupe which he got in the auction. The plaintiff had deposited three out of four instalments in time, and made part-payment in respect of the 4th instalment a month after the due date which he made good by depositing the balance amount with interest three months thereafter. It has not been alleged nor proved that Government sustained any loss on account of such delayed payment. Even if it is assumed that Government sustained any loss, it was open to them to realise the same from the amount deposited by the plaintiff and return back the balance, if any, to the plaintiff, in case extension was to be refused. The appellant also did not permit the plaintiff to remove the logs. On the other hand, they kept the money with them without refunding the same. As it is already held that there is nothing to support that Government sustained any loss towards the delayed payment, there appears to be no justification to withhold the amount. Rule 35 of the Orissa Forest Contract Rules, 1966, stipulates as under :--

"35. Termination of Contract for breach of Condition :--

(1) If the forest contractor commits any breach of conditions of contract other than those mentioned in Rule 34(1) the contract may be terminated by the Conservator of Forest if executed by the Divisional Forest Officer, by the Chief Conservator of Forests if executed by the Conservator of Forest and by the State Government if executed by the Chief Conservator of Forests or by the Government,

(2) Such termination shall be notified to the forest contractor by a written notice delivered on him personally or sent to him by registered post acknowledgement due post and thereupon all the contractor's rights under the contract including all accessory licences shall cease and all the forest produce remaining with the contract area or at depots referred to in Rule 16 shall become absolute property of Government."

10. On a plain reading of the rules, it is however gathered that in case for any reason the contractor commits any breach of conditions of contract, then the authorities can terminate the contract and the contractor's right under the contract including all accessory, licence shall cease and all the forest produce remaining within the contract area or at the depots shall become the absolute property of the Government.

11. In this particular case, such fact does not arise since for delayed payment of 4th. instalment, the Government had not initiated any action to terminate the contract. They were the custodian of the money deposited upto 4th instalment.

In that event it cannot be said that the trial court has committed any illegality or factual error in directing the State Government to refund the amount.

12. During the pendency of the appeal, it appears that the State Government has deposited the decretal dues in this Court. Now the question arises as to whether the State Government can be saddled to pay interest for the purpose of delayed payment. The plaintiff had claimed interest in the suit. The trial court's decree and judgment are silent. Therefore, it is construed that the trial court is not inclined to grant interest against the State Government.

13. Mr. Mukherji, the learned advocate appearing for the plaintiff-respondent has submitted that since the State Government had illegally and unreasonably withheld the money from 1972 till the date of deposit made in Court, they should be asked to pay reasonable amount of interest and he relied upon the Order 41, Rule 33 of the CPC which reveals as follows :

"The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order, as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection and may, where there have been decree in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decree, although an appeal may not have been filed against such decrees,

Provided that, the appellate Court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

14. Although, the decree is silent with regard " to payment of interest, but in the peculiar situation since the plaintiff had deposited the amount of Rs. 29.524.35 paise towards 4th instalment, which has been utilised by the Government from 1972 till 1988, for more than 20 years, the State Government in the aforesaid situation should be directed to pay pendente lite interest atleast @6% per annum from the date of the suit i.e. from 2-1-1978 till 14-7-1998, when the decretal amount has been deposited in this Court. The appellants are directed to pay or deposit the amount within a period of three months, failing which, the plaintiff is at liberty to recover the amount through execution proceeding.

15. With the above modification of the order of the trial court, the appeal is dismissed, without costs.

16. Since the appeal has been dismissed, the plaintiff-respondent is at liberty to submit an application for withdrawal of the amount already in deposit in the Court.

17. Appeal dismissed.