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**(1985) 08 P&H CK 0001**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 486 of 1977**

The Punjab State

APPELLANT

Vs

Mehar Singh and another

RESPONDENT

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**Date of Decision : 24-08-1985**

**Acts Referred:**

Arbitration Act, 1940 — Section 34

**Citation : (1985) 08 P&H CK 0001**

**Hon'ble Judges : J.V. Gupta, J**

**Bench : Single Bench**

**Advocate : D.S. Brar, A.A.G. Punjab, for the Appellant; H.L. Sarin and Mr. Sukhdev Singh, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

J.V. Gupta, J.—This is Defendant's second appeal against whom the suit for the grant of the permanent injunction was dismissed by the trial Court, but decreed in appeal.

2. The Plaintiffs filed the suit for the grant of the permanent injunction against the State of Punjab on the allegations that vide agreement to sell dated December 9, 1970, Exhibit P 1, the Defendant-State sold certain species of trees totalling 1,597 for a consideration of Rs. 60,000/- to them in a public auction. The State received the entire sale price. The felling of these trees was to be completed by July 31, 1971. They completed the formalities under the agreement aforesaid Some of those trees were felled by March 31, 1971 under the supervision of the Defendant's men. The tree felling work had to be suspended temporarily from April 1, 1974 to May 14, 1971. On account of the nonavailability of labour The tree felling work was again started. Trees numbering 251 to 290 were cut and were lying on the spot while trees numbering 1 to 2:0 were still to be felled. The Plaintiffs received the letter dated July 1, 1971, from the Defendant charging them with liability for the alleged felling of 29 trees unlawfully and restraining them from removing the felled trees and also from

cutting further trees. The Plaintiffs denied these allegations, but in spite of that, they were not allowed to cut the remaining trees. Not only that, later on, the Defendant tried to recover Rs. 5,159,93 on account of the alleged illegal felling of the trees and Rs. 12,100/- as penalty; hence the present suit. The suit was resisted on the ground that it was liable to be stayed u/s 34 of the Arbitration Act (hereinafter called "the Act"). However, this plea was negatived by the trial Court. On merits, the allegations made in the plaint were controverted and it was pleaded that while the staff of the department was busy in planting the trees, the Plaintiffs taking advantage of their absence, violated the terms of the agreement by illegally cutting 38 trees. So, Rs. 5,159,93, as the price of those trees and Rs. 12,00/- as penalty was claimed rightly. The trial Court found that as per the terms of the agreement. Exhibit P 1, the Plaintiffs were liable to pay the price as well as the penalty. It was further held that no discretionary relief of permanent injunction could be granted to them. Consequently, their suit was dismissed. In appeal, the learned Additional District Judge reversed the said findings of the trial Court and decreed the Plaintiffs' suit. Dissatisfied with the same, the State of Punjab has filed this appeal in this Court.

3. At the time of the motion hearing, this appeal, was admitted on the question as to whether the suit for permanent injunction was maintainable in view of the arbitration agreement between the parties.

4. Admittedly, the trial Court did not accept this contention raised on behalf of the Defendant State and proceeded with the suit. Once the suit was proceeded with and decided by both the Courts below, the objection that the suit was not maintainable in view of the provisions of Section 34 of the Act, was not available to the Defendant. Since the appeal was admitted on that ground alone, no other question arises.

5. Consequently, this appeal fails and is dismissed with costs.