
(2004) 12 UK CK 0005
In the Uttarakhand High Court
Case No : Second Appeal No. 18 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

Raghubar Datt

RESPONDENT

Date of Decision : 20-12-2004

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (2005) 1 AWC 294 : (2005) 1 UD 271

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : V.B.S. Negi, S.C, for the Appellant; Pankaj Purohit, for the Respondent

Judgement

Prafulla C. Pant, J.—This second appeal has been preferred by the defendants u/s 100 of Code of Civil Procedure, 1908 and is directed against judgment and order dated 26.7.2001, passed by Shri Chaturbhuj, Addl. District Judge (IVth Fast Track Court), Dehradun, in Civil Appeal No. 101 of 2000.

2. Brief facts of the case are that the plaintiff-respondent, filed Original Suit No. 191 of 1981 for recovery of Rs. 77,682.61 along with F.D.R. No. 71/919798/80-81 for Rs. 6,020. Said suit was filed with the allegations that an auction took place on 8.6.1981 for removing of 289 fallen trees belonging to the defendant-appellant. The plaintiff-respondent offered the highest bid of Rs. 60,200. The said bid was accepted by defendant-respondent No. 2, Range Officer, Landour Cantt , Mussoorie. The plaintiff-respondent, alleged that he has deposited the necessary security of Rs. 6,020 and also the amount of Rs. 60,200 on 8.6.1981. After the bid was accepted, the plaintiff alleged that he spent Rs. 67,202.61 in making the logs of the trees and lifting the same. As part performance of contract truck load of logs were taken out of the forest but later vide letter dated 23.6.1981, plaintiff was intimated that his bid was not approved /accepted. Thereafter also auction took place in which again the plaintiff was the highest bidder with an offer of Rs. 1,75,000 for which he again

deposited the security. The present suit in question pertains to the refund of amount and compensation in respect of the earlier bid. Defendants (appellants) contested the suit, pleading that before the final acceptance of the bid, the plaintiff had no right to start the work as such the defendants were not liable to make any payment to the plaintiff.

3. Learned trial court framed as many as eleven issues and after recording the evidence, dismissed the suit vide its judgment and order dated 24.8.2000. Aggrieved by which Civil Appeal No. 101 of 2000 was preferred before the District Judge, Dehradun, by the plaintiff (present respondent), which was allowed by the learned lower appellate court, vide its judgment and order dated 26.7.2001 and the suit was decreed in favour of the plaintiff. This second appeal has been preferred against said judgment and order of the lower appellate court by the defendants.

4. At the time of admission of this appeal, two substantial questions of law were formulated, which are as under:

(1) Whether the learned appellate court was not justified in holding the offer to purchase in auction as a final contract without its being completed in accordance with Article 299 of the Constitution of India?

(2) Whether the plaintiff/ respondent was estopped from raising the plea as to the damages in view of the fresh auction, which has admittedly-taken place in respect of the same forest produce.

5. I heard learned counsel for the parties and perused the record.

6. Before further discussions, it is pertinent to mention here the relevant provisions of law, i.e., Article 299 of Constitution of India, which reads as under :

"299. Contracts.-(1) All the contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by President or by the Governor of the State, as the case may be and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purpose of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

In view of the above provision, it is clear that the contract on behalf of Union of India could have been entered only by the persons authorized for that purpose. Learned counsel for the respondent failed to show me if the Range Officer of the Cantt. Board was authorized to accept the contract on behalf of Union of India. Learned counsel for the respondent argued that the defendant-appellant No. 3-

Military Estate Officer, Meerut was the person authorized to enter into contract or to approve the contract on behalf of Union of India in respect of the bid in question. This fact has not been denied by the plaintiff. In the circumstances, this Court has no difficulty in arriving to the conclusion that the contract relating to the bid made in respect of auction dated 8.6.1981 was not complete, as the Military Estate Officer has not approved the same. As such the plaintiff had no right to take the logs of the falling trees before entering into agreement. The substantial question of law stands accordingly answered. However, it is pertinent to mention here that the plaintiff was entitled to receive back the amount of Rs. 60,200 and also Rs. 6,020 (in the form of F.D.R.), deposited by him towards the bid made in the auction dated 8.6.1981.

7. As to the next substantial question of law, it is admitted between the parties that the bid in the next auction was accepted by the defendant-appellant for Rs. 1,75,000 and the earlier auction stood cancelled. But that by itself does not deprive the plaintiff from claiming refund of the security, deposited by him as he was not required to make any performance in respect of the offer, which the defendants themselves claimed they have not accepted. As such the amount of security and the amount relating to bid deposited, cannot be said to be damages and plaintiff was entitled to recover the same. To that extent, learned lower appellate court has not erred in law. Substantial question of law is accordingly answered.

8. However, the defendants-appellants are well within their right to deduct the amount relating to the price of three truck loads of logs, lifted by the plaintiff before he was communicated of non-acceptance of the bid. Therefore, the appeal of the defendants deserves to be allowed only to the extent that they are entitled to deduct the price of the logs lifted by the plaintiff, before he was communicated regarding acceptance/ non-acceptance of the contract by the authorized person. There is categorical finding of the learned trial court that the price of said logs was Rs. 11,505. The finding of the fact is not supposed to be interfered by this Court in the second appeal. Therefore, the second appeal deserves to be allowed partly only to the extent that from the amount decreed by the learned lower appellate court, vide its judgment and order dated 26.7.2001, amount of Rs. 11,505 shall be deducted from the decretal amount. Also, in the absence of agreed rate of interest, the rate of interest, in the facts and circumstances, on the decretal amount, is reduced to 6% per annum instead of 12% per annum for the period of pendency of suit and appeal till the payment is made. Accordingly, the second appeal is partly allowed and decree passed by learned appellate court is modified to the extent as directed above. No order as to costs of this appeal.