(2016) 06 SHI CK 0114

High Court of Himachal Pradesh

Case No: RSA No. 311 of 2006.

H.P. State Forest Corporation and another - Appellants @HASH Shri Kahan Singh (since dead), through LRs		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: June 28, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2016) ILRHP 2221

Hon'ble Judges: Chander Bhusan Barowalia, J.

Bench: Single Bench

Advocate: Mr. Bhupinder Pathania, Advocate, for the Appellants; Ms. Leena Guleria, Advocate, vice Mr. G.R. Palsra, Advocate, for the LRs of deceased respondent, for the Respondents/LRs

Final Decision: Disposed Off

Judgement

Mr. Chander Bhusan Barowalia, J. - The present regular second appeal arises out of concurrent findings of fact returned by both the courts below viz. Civil Judge (Senior Division) Mandi, District Mandi, H.P. and District Judge, Mandi, H.P, whereby the suit for recovery of Rs. 93, 520/- (rupees ninety three thousand five hundred twenty) filed by the respondent herein (hereinafter referred to as "the plaintiff") against the appellants herein (hereinafter referred to as "the defendants") was decreed by the learned trial Court vide judgment and decree dated 01.07.2005, which has been affirmed by the learned First Appellate Court vide judgment and decree dated 22.05.2006.

2. Brief facts of the case, as stated by the parties, can be summed up as follows:

3. According to the plaintiff (since dead through LRs), he was registered labour supply mate of Himachal Pradesh State Forest Corporation and was awarded the work of extraction of resin from Forest Sieuri-II in Tehsil Jogindernagar, District Mandi, H.P. Lot No. 7/2000, vide agreement dated 30.03.2000 and the rate of resin was fixed at Rs. 700/- per quintal and the target of extraction of resin from the said lot was fixed at 374.952 quintals, by the defendants. As per the agreement in question, one of the conditions in the above said agreement was that ''in case the plaintiff would extract resin more than the fixed target above 5% then he would be made the payment on percentage basis on the whole extraction''.

4. The plaintiff has averred that clause 18 of the agreement, which was in existence at the time of execution of the agreement, was intentionally deleted with mala fide intention by the defendants and they wrote the word "deleted" over the said clause that too behind the back of the plaintiff. Even the plaintiff was not informed by the defendants about the said deletion. The plaintiff requested the defendants for payment as per Clause 18 of the agreement, but they refused, hence he was compelled to file Civil Suit in the Court of Civil Judge (Sr. Division) Mandi, H.P.

5. The plaintiff has averred that as per the condition in the agreement, in case he would extract resin more than the fixed target above 5% then he would be paid on percentage basis on the whole extraction. Following tabulated chart clearly depict the exact claim of the plaintiff:

1. Fixed Target of Resin.	2. Tins.	3. Rate fixed per quintal.	4. Resin extracted.	5. Excess Resin.	6. Percentage.
374.951 Quintals.	2846	Rs. 700/-	479.590 Quintals.	104.64	27.90%

(a) Fixed rate upto target of 374.952 quintals. Rs. 700/- per quintal.

In excess of fixed target i.e. 479. 590: (374.952 - 479-590 = 104.638, of which value on percentage basis comes to 27.90% which comes to 700 + 195.30 = Rs. 895/-. The net value of the extracted resin of 479.590 quintals at the above rate comes to Rs. 4,29,233.5 paise.

(b) Amount already paid by the Corporation Rs. 3,35,713/-.

(c) Amount still recoverable from the defendants Rs. 95,520/-.

6. Admittedly, the amount paid by the defendant-Corporation is Rs. 3,35,713/- (rupees three lac thirty five thousand seven hundred thirteen) and the plaintiff claims Rs. 4,29,233.05paise (rupees four lac twenty nine thousand two hundred thirty three and five paise), therefore, the balance amount, which the plaintiff is claiming by filing the Civil Suit, comes to Rs. 95,520/- (rupees ninety five thousand five hundred twenty).

7. On the other hand, defendants-Corporation resisted the claim of the plaintiff on the grounds of maintainability, estoppel by the act and conduct of the plaintiff and locus standi. On merits, the defendants admitted that a contract was awarded to the plaintiff for extraction of resin. Defendants have denied the existence of any clause and stated that the bonus clause stands deleted from 1999 in the meeting of the Board of Director held on 07.08.1999. It is further averred by the defendants that they have made due and admissible payment to the plaintiff and no more payment is due in favour of the plaintiff. Defendants have also prayed for dismissal of the suit.

8. On 27.03.2004, the learned Trial Court framed the following issues:

1. Whether the plaintiff is entitled to recover the suit amount. If so to what extent? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiff is estopped by their act and conduct to file suit? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD.

5. Relief.

9. The learned Civil Judge (Sr. Division) Mandi, decreed the suit of the plaintiff by deciding Issue No. 1 in favour of the plaintiff and issues No. 2 to 4 against the defendants. Feeling aggrieved by the judgment and decree of learned Civil Judge (Sr. Division) Mandi, the appellants (defendants-Corporation) filed appeal before the learned District Judge, Mandi, District Mandi, H.P., which was dismissed, vide impugned judgment dated 22.05.2006, hence the present regular second appeal, which were admitted on 17.04.2007, on the following substantial question of law:

"Whether the findings of the courts below are vitiated in concluding that Clause No. 18 of the agreement exhibit PW-1/A was in existence at the time of the execution of agreement. Whether the courts below failed to construe and interpret the terms and conditions of the agreement Ex. PW-1/A properly."

10. After going through the record in detail, this Court finds that this is the only question of law involved in the present appeal, which requires to be answered.

11. The plaintiff himself stepped into the witness-box as PW-1 and it is clear from his testimony that he has given maximum production of resin in order to get payment

on percentage basis in the form of bonus. The plaintiff has averred that Clause 18 was not deleted by the defendants. Marginal witnesses, i.e., PW-3 Om Parkash, stated that an agreement, Ex. PW-1/A, was executed inter se the plaintiff and the defendants and Shri Ramesh Chand has also signed the same and there was no cutting in any clause, including Clause 18. The plaintiff was subjected to exhaustive cross-examination, but he has not divulged anything which is helpful to the defendants.

12. Shri Kundan Lal, Divisional Manager was examined as PW-2. He has stated that during his stint tender for extracting resin was invited and the plaintiff was allotted the work. The target was fixed at 374.952 quintals and the rate was agreed at Rs. 700/-, per quintal however, the plaintiff extracted 479.592 quintals of resin, which is 104.638 quintals more.

13. PW-3 Om Parkash, in his cross-examination, denied the suggestion that Clause 18 had already been deleted at the time of signing the agreement. PW-2 Thakur Singh has also denied the suggestion of the defendants that Clause 18 has been deleted at the time of signing the agreement.

14. Admittedly, the plaintiff and the defendants entered into agreements. The copy of agreement shows that extraction of resin @ Rs. 700/-, per quintal, was decided and as per Clause 18 of the agreement, which reads as under, in case the target is achieved, then the plaintiff was entitled to bonus:

18. Incentive for giving higher net resin that the prescribed one will be given to the L.S.M.(s) in direct proportion to the increase in yield viz:

"No incentive will be given for increase in yield of resin upto 5%, 6% increase over targeted yield 6% bonus on total earnings, 7% increase over targeted yield, 7% bonus on total earning and so on".

15. It is not disputed that in case Clause 18 was in existence, the plaintiff is entitled for the incentive for more yield. The perusal of agreement, Ex. PW-1/A, shows that Clause 18 was existing therein. The stand of the defendants is that Clause 18 stood deleted from the agreement. However, each page of the agreement has been duly signed by the parties, so the only inference is that Clause 18 was a term of the agreement entered inter se the plaintiff and the defendants.

16. It is on record that the plaintiff has extracted resin more than the fixed target. The agreement is proved on record by the plaintiff. The defendants have examined DW-1, Shri R.S. Patyal, D.M. Forest Corporation Division, Mandi, and this witness has merely stated that after 1999, bonus clause has been deleted and decision qua deletion of this clause was taken in a meeting of Board of Directors at Shimla. In his cross-examination, he has stated that during his stint neither agreement, Ex. PW-1/A, was executed inter se the parties, nor any party has signed in his presence. Therefore, testimony of this witness is of limited value as to prove that Clause 18

was deleted at the time of execution of the agreement, Ex. PW-1/A. This witness, being official of the defendant-corporation, has taken the stand akin to that of the defendants. This witness has stated that the plaintiff extracted 104.638 quintals more resin than the target and the department made the payment accordingly. He has admitted that there is no record available with the department that the plaintiff was ever informed about the cutting made in the agreement.

17. DW-2, Shri S.K. Musafir, was posted as DFO from February, 1999 till February, 2002. He has deposed that a contract for extraction of resin was allotted to the plaintiff vide agreement, Ex. PW-1/A. He put his signatures beneath the cutting of Clause 18. This witness has further deposed that Clause 18 was deleted on the recommendations of High Power Committee, vide its report dated 07.08.1999. DW-2 has stated that the plaintiff signed the agreement, Ex. PW-1/A, after it was read over and explained to him and the plaintiff raised no objection to the deletion of Clause 18. This witness in his cross-examination has admitted that payment made to the plaintiff was on the basis of approved tender and it is also admitted that marginal witnesses were also present at the time of execution of the agreement. He has admitted that he had put his signatures on the cutting of Clause 18, however, no date was mentioned. He has further stated that the plaintiff was not informed about this cutting, as the condition had already been deleted in the tender itself. Conversely, defendants have averred in their written statement that they have informed the plaintiff qua Clause 18. Circulation of letter No. H.P.S.F.C/R-18/7876-83, dated 18.09.1999, finds mention in the written statement.

18. It can easily be construed from the testimony of above two witnesses that they did not produce any record pertaining to the letter No. H.P.S.F.C/R-18/7876-83, dated 18.09.1999. The onus lies on the shoulders of the defendants to prove that Clause 18 stood deleted when agreement, Ex. PW-1/A, was entered inter se the plaintiff and the defendants, especially when they specifically pleaded in their written statement that Clause 18 stood deleted in the meeting at Shimla. The marginal witnesses did not support the stand of the defendants. No independent witness has been examined to prove that Clause 18 stood deleted at the time when agreement, Ex. PW-1/A, was executed inter se the parties and moreover as per the official of defendant-corporation, the plaintiff was not informed of the cutting of Clause 18.

19. In the instant appeal, the defendants (applicants) have also maintained application under Order 41, Rule 27 CPC read with Section 151 CPC, for producing additional evidence. It is averred therein that the crucial issue involved in the present controversy inter se the parties is that Clause 18 was in operation at the time of execution of agreement, Ex. PW-1/A, or it was deleted prior to the execution of the agreement. The defendants further averred that the plaintiff, taking advantage of Clause 18 of the agreement, are claiming payment on percentage basis, which is an incentive given in the said clause. The defendants have reiterated

that plaintiff avers that Clause 18 was in existence at the time of execution of the agreement and defendants with mala fide intentions deleted the same without his knowledge. The defendants (applicants) in their written statement have clearly taken the stand that Clause 18 was not in existence at the time of execution of the agreement and the same was deleted from 1999 in a meeting of Board of Directors held on 07.08.1999 at Shimla. The defendants have averred in the application that the learned Courts below non-suited them, as they did not produce on record the copy of the proceedings which could demonstrate their case that the bonus clause, i.e., Clause 18 no more exists after 18.09.1999 and both the Courts have also drawn untoward inference against the defendants (applicants) for withholding the said document. It is further averred that in case the defendants place on record the said document, then the plaintiff (non-applicant) could have been out of the Court. The Courts have held that in case the said document was placed on record, it would have thrown light on the issue in controversy inter se the parties. With these averments, the application under Order 41, Rule 27 read with Section 151 CPC has been preferred before this Court.

20. Reply to the application has been filed and the respondent (plaintiff) has denied the contents of the application. This Court finds that the document, which the defendants (applicants) now wanted to place on record, is dated 18.09.1999, but the agreement was entered a year thereafter. If this letter was essential, the defendants (applicants) should have reflected this in the agreement or they should have not added Clause 18 while entering into agreement with the plaintiff. Had this document been in existence at the time of filing of the written statement or at the time of evidence, the defendants could have produced the same in the Court. Now, even if it is presumed that this document was in existence at that time, the defendants have failed to take care and due diligence to place the same on record and now, at this stage, the same cannot be allowed to be produced before the Court. The learned counsel for the defendants (applicants) has argued this piece of evidence is relevant for the adjudication of the issue involved in the appeal and this Court may allow the application to produce on record this evidence.

21. There is no merit in the arguments of the learned counsel for the defendants for the simple reason that it is the parties, including the defendants, who have executed the agreement and both of them signed the agreement, including Clause 18 thereof, which is specifically typed and which provides that the plaintiff is entitled for additional amount after achieving the target at the higher rates, which the plaintiff is now claiming. In the opinion of this Court, this document is not required for proper adjudication of the case and cannot be allowed to be produced at this belated stage. So, the application is devoid of merit and is accordingly dismissed.

22. For the reasons discussed herein above, there is no merit in the appeal and the learned Courts below have rightly appreciated Clause 18 of agreements, Ex. PW-1/A, in its true sense and the findings of the Courts below are in accordance with law.

The terms of the agreement are properly interpreted by both the learned Courts below. Therefore, the substantial question of law is answered accordingly.

23. In view of the above, the present appeal is dismissed. Pending application(s), if any, shall also stand(s) disposed of.