

(2003) 08 GAU CK 0009

Gauhati High Court (Agartala Bench)

Case No: Writ Petition No. 87 of 2003

State of Tripura and Another

APPELLANT

Vs

Bhowmik and Company

RESPONDENT

Date of Decision: Aug. 1, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 30 Rule 1, Order 30 Rule 2
- Contract Act, 1872 - Section 2

Citation: AIR 2004 Guw 19 : (2004) 1 CTLJ 523 : (2004) 1 GLR 489

Hon'ble Judges: T. Vaiphei, J

Bench: Single Bench

Advocate: S. Chakraborty, for the Appellant; A. Lodh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Vaiphei, J.

Heard Mr. S. Chakraborty, learned counsel appearing on behalf of the petitioners and Mr. A. Lodh, learned counsel appearing on behalf of the respondent.

2. By this application under Article 227 of the Constitution of India the petitioners have challenged the Judgment and decree dated 29-4-2002 passed by the learned Additional District Judge, Dharmanagar, North Tripura in Money Appeal No. 01/2002 affirming the Judgment and Decree dated 20-9-2001 passed by the learned Civil Judge (Senior Division), Dharmanagar, North Tripura in Money Suit No. 10/1999 decreeing the suit in favour of the plaintiff-respondent herein.

3. The brief facts of the case are as follows :--

The respondent is a registered Partnership Firm in which Shri Tapan Kumar Bhowmik is one of the partners. The business of the partnership firm was to execute

contract and also to carry materials of various departments of the State from one place to another. By a Notice Inviting Tender (for short "NIT") dated 27-2-1998, the Food & Civil Supplies Department of the Government of Tripura had invited tender for carrying food grains and edible oils from Dharmanagar Godown to Manu Crossing Godown for the year 1998-99. In response to the said NIT, the respondent submitted a tender against Job No. 6 of the NIT for carrying food grains and quoted his rate at the rate of Rs. 15"95P per quintal and also submitted his tender on 18-3-1998. Along with his tender the respondent also deposited Rs. 12,500/- by way of S.T.D.R. as earnest money. It is the case of the respondent that it was obligatory on the part of the petitioner, i.e., the State of Tripura, to inform him within 90 (ninety) days from the date of opening of the tender about acceptance of the same. On 24-7-1998, the respondent requested the Department to refund the earnest money as early as possible for failing to accept his tender within the reasonable period of time. He also informed the Department that he had revoked his tender and requested that the earnest money be refunded to him within seven days along with 18% interest per annum. By his letter dated 21-8-1998, the respondent informed the Department that the tender submitted by him on 18-3-1998 should be treated as cancelled and that the earnest money be refunded as stated above. The Joint Secretary to the Government of Tripura, Food & Civil Supplies Department however, by his letter dated 22-8-1998 informed the respondent that his tender had already been accepted and that he should deposit Rs. 1.00.000/- as a security deposit within 1-9-1998 and the said letter was received by the respondent on 7-9-1998. The respondent again by the letter dated 26-10-1998 had stated that since he has already revoked the tender, the earnest money should be refunded to him along with interest @ 18% per annum. It transpires that the Joint Secretary, Food & Civil Supplies Department thereafter issued a show cause notice on 31-10-1998 requiring the respondent to show cause as to why the contract should not be cancelled and also as to why the earnest money should not be forfeited by the State. The respondent submitted his reply to the show cause on 18-11-1998 and also issued a notice u/s 80 of the CPC on 16-3-1999 to the petitioner to refund the earnest money with interest. The respondent also mentioned therein that though he was the lowest tenderer, the petitioner executed the said contract for carrying food grains through some other agencies at the rate of Rs. 16.59 P per quintal.

4. When the said notice did not evoke any response from the petitioner, the respondent filed a suit before the learned Civil Judge (Senior Division), Dharmanagar, North Tripura for a decree to refund Rs. 12,500/- with interest at the rate of 18% per annum against the petitioner. The learned Civil Judge (Senior Division) after hearing both the parties decreed the suit in favour of the respondent. Aggrieved by the same, the petitioner preferred an appeal before the learned Additional District Judge, Dharmanagar, North Tripura being Money Appeal No. 1/2002 for setting aside the Judgment and Decree dated 20-9-2001. The learned Additional District Judge after hearing the parties, dismissed the appeal and upheld

the findings and decree passed by the learned Civil Judge (Senior Division) on 29-4-2002.

5. This is how the writ petition came up before this Court. Before proceeding further, it is necessary to set out the parameters of writ jurisdiction under Article 227 of the Constitution of India in respect of an order passed by the lower Courts or Tribunals. It is by now a settled law that an interference under Article 226 and 227 of the Constitution of India is not permissible unless the order impugned before the High Court contravenes certain provisions of law or is without jurisdiction or has been passed taking into account extraneous materials or by overlooking relevant materials or has given any finding which could not have been arrived at by any reasonable man. Even wrong decision made by the lower Court cannot be interfered with under Article 227 of the Constitution of India, if such decisions have been made within the jurisdiction of the lower Court. Only errors of law patently on record warrant correction under Article 227 of the Constitution. In other words, the High Court in exercise of its writ jurisdiction is not to act as a Court of appeal. Having thus set out the parameters of Article 227 of the Constitution, let me now proceed to examine the instant case.

6. It is to be noted that both the Courts below have given concurrent findings that the respondent had to execute the work of carrying food grains from Dharmanagar Godown to Manu Crossing Godown for the year 1998-99 and that the work was to commence with effect from 1-4-1998 for a period of one month and that since the work was to commence from 1-4-1998, the petitioner was duty bound to inform the acceptance of the tender of the respondent before 31-3-1999 so that if his tender was accepted, he could start carrying of the food grains with effect from 1-4-1998. Both the Courts below have also given the concurrent finding that Shri Tapan Kumar Bhowmik had the authority of M/s. Bhowmik & Company to submit a tender on behalf of M/s. Bhowmik & Company and further that the respondent on 22-6-1998 had revoked his tender and requested the petitioner to refund the earnest money. Both the Lower Courts have also given a finding that there was no agreement between the petitioner and the respondent inasmuch as the respondent had already revoked his proposal on 21-8-1998 before its acceptance by the Joint Secretary, Food & Civil Supplies Department, Government of Tripura.

7. It is contended by the learned counsel for the petitioner that the learned appellate Court grossly erred in deciding that the suit filed by one Of the partners of the Partnership Firm was valid. In other words, his contention is that the learned Appellate Court misconstrued the provisions of Order XXX, Rule 1 and 2 of the CPC. I have given any anxious consideration to this contention of the learned counsel for the petitioner. In [Firm Vijay Nipani Tobacco House Vs. Sarwan Kumar and Others](#), it was held that the defendants or the defendant, as the case may be, can be sued in the name of firm and when so sued the firm includes and represents defendants/ defendant in their respective personal names, and that the question of non-joinder

of a proprietor or partner by his name does not arise when suit is against the firm. I am in respectful agreement with the proposition of law laid down by the learned single Judge in the aforesaid case. Therefore, the contention of the petitioner on this count fails.

8. It is next contended that the learned Appellate Court cannot direct the petitioner to return the earnest money when there is no stipulation to finalise the tender Within three months. The point to be determined is not whether there is any stipulation to finalise the tender within three months. Rather, the crucial point is whether the petitioner has the right to retain or to forfeit the earnest money. Both the Courts below have given a categorical findings that there being no agreement, there was no breach of contract committed by the respondent and also that since there was no breach of contract, the petitioner cannot retain or forfeit the earnest money deposited by the respondent by way of penalty.

9. I have carefully considered the findings of the Courts below and I am of the view that the findings recorded by the Courts below do not suffer from any perversity. On examination of the judgment of the learned Appellate Court, the conclusions recorded by both the Courts below are reasonable and based on evidence and no interference is called for.

10. For the reasons stated above, the writ petition stands dismissed. There shall be no order as to costs.