

(2005) 04 CAL CK 0036
Calcutta High Court
Case No: F.A. No. 219 of 2000

Jalpaiguri Zilla Parishad and
Another

APPELLANT

Vs

Shankar Prasad Halder

RESPONDENT

Date of Decision: April 8, 2005

Acts Referred:

- Contract Act, 1872 - Section 73

Citation: AIR 2006 Cal 1

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Nayan Chand Bihani, for the Appellant; Bhabani Prosad Mondal, for the Respondent

Final Decision: Allowed

Judgement

Asok Kumar Ganguly, J.

This appeal is directed against a judgment and decree dated 14-1-2000 passed in Money Suit No. 7 of 1997 by a learned Civil Judge (Senior Division) at Jalpaiguri.

2. The said suit, being a Money Suit No. 7 of 1997, was filed by the Plaintiff/respondent/Cross-objector praying for a decree for a sum of Rs. 3,60,677/- against: the Defendant/Appellant for loss of profits, damages and compensation.

3. The case of the Plaintiff/respondent is that, as a grower and supplier of small plants of different varieties of trees under the name and style of "Sankar Narayan Nursery", the Plaintiff/respondent agreed to supply seed coconut and seed aricanut of East-Coast Tall Variety pursuant to a Notice Inviting Quotation/Tender No. 16/94/95.

4. It is the plaint ease that such quotation was issued by the Appellant for supply of the aforesaid items in Malbazar, Moinaguri, Falacata, Majirahat and Alipurduar.

5. The plaint case is that the offer of the Plaintiff/respondent was accepted by the Appellant and such acceptance is communicated by a Memo dated 10-10-1994 and the Plaintiff was requested to supply 62500 numbers of seed-coconut of East-Coast Tall Variety within fifteen days.

6. It is also the plaint case that an agreement was executed which was kept in the office of the Appellant Npo.2 and the Plaintiff/respondent was informed by the Appellant that the security would be deducted from his bill @ 5 per cent as guarantee for 80% germination of the seed-coconut. The said order of supply was subsequently modified and the Plaintiff/respondent was requested to supply 37500 numbers of seed-coconut to Alipurduar and 25000 numbers of seed-coconut to the Sub-Assistant Engineer, Moinaguri.

7. The plaint case is that in compliance with the said direction, the plaintiff supplied 37500 numbers of seed-coconut to Alipurduar along with 2500 numbers of seed-coconut to the Sub-Assistant Engineer, Moinaguri. But, the said Sub-Assistant Engineer, Moinaguri received only 20250 numbers of seed-coconut and returned 4750 number of seeds stating that the Defendants have no space for plantation of the seeds and, accordingly, the Plaintiff had to take back 4750 numbers of seeds to his Nursery and those seeds were ultimately damaged and became unusable.

8. The plaint case is that a bill was submitted to the Appellant for the supply of 37500 number of seed-coconut, which were supplied at Alipurduar and the said bill was received on 16-11-1994 by the Sub-Assistant Engineer, Alipurduar.

9. It is also admitted that against the said bill, the plaintiff was paid an amount of Rs. 2,67,000/- after deducting 5 per cent of the bill amounting to Rs. 14,062/- as security for germination.

10. The plaint case is that the Plaintiff/ respondent submitted a further bill for Rs. 1,31,625/- against delivery of 20250 seed-coconut for Maynaguri. But, against that, the Defendant paid a sum of Rs. 75,895/- leaving a balance of Rs. 55,730/-.

11. The further plaint case is that such deduction of the bill amount is without any basis and that if the Plaintiff/respondent was allowed to supply the contracted quantity of seed-coconut and seed-aricanut, the total value of the supplies would have been Rs. 20,30,000/-. Out of that, the Plaintiff/ respondent could only supply seeds worth Rs. 3,98,800/- at Alipurduar and Maynaguri and seeds worth Rs. 30,875/- were, lost and damaged due to carelessness and negligence of the Appellant.

12. The Plaintiff/respondent further alleged that it suffered a loss of Rs. 16,00,312/- and also suffered a loss of damage @ 15 per cent of the value of the balance supply. The Plaintiff suffered a loss of profit @ 15 per cent of the aforesaid amount. 15 per cent of the aforesaid amount of Rs. 16,00,312/- comes to Rs. 2,40,000/- and the Plaintiff is entitled to be paid the said amount from the Appellant.

13. It is also the plaint case that the Appellants did not terminate the contract nor did they refund the security deposit amount of Rs. 20,000/- despite repeated requests made by the Plaintiff/respondent.

14. The Defendants have filed a written statement and all the material allegations in the plaint have been denied.

15. According to the case made out in the written statement, it was alleged that the Plaintiff/respondent has no cause of action to file the suit. The case of the defendant/appellant is that the said Notice Inviting Tender is simply an invitation for quotation and the same docs not contain any guarantee to the Plaintiff/respondent for supply of any quantity of seeds.

16. The case of the Appellant is that the only offer of the Plaintiff, which was accepted. was an order of supply of 62.500 quantity of seed-coconut of East-Coast Tall Variety at the rate quoted by the Plaintiff.

17. It is the specific case in the written statement that the Plaintiff was required to supply 37,500 seed-coconut at Alipurduar and Maynaguri.

18. It is also the case of the Defendant/ Appellant that the security money has remained unpaid, as the Plaintiff did not claim the same. The bill of the Plaintiff/respondent for supply of 20,250 of seed-coconut at Maynaguri was paid and the Plaintiff is not entitled to receive payment of the balance amount of Rs. 55,750/- as the seed-coconut supplied at Maynaguri was of inferior quality and producing only 62 per cent germination. Out: of 20,250 coconut seeds, only 12,201 seeds were got germinated and, as such, the payment to the Plaintiff/respondent was reduced proportionately and the Plaintiff/respondent agreed to take the said amount by its letter dated 5-7-1995 and, accordingly, the said amount for 62 per cent germination was paid to the Plaintiff on 21-7-1995. As the Plaintiff/respondent failed to secure 80 per cent germination, the Plaintiff/respondent has rendered himself liable for forfeiture of 5 per cent security money as per the terms of supply between the parties. It was clearly stated that the Defendant/Appellant was under no obligation to place an order upon the plaintiff/respondent for supply of entire quantity mentioned in the Notice inviting Tender. The price for quantity of seeds, which were supplied by the plaintiff/resplendent has been paid and there is nothing outstanding except the earnest money of Rs. 20,000/- and the appellants/defendants are prepared to return this amount and the security money of 5 per cent of the bill. These amounts were not returned as they are not claimed.

19. On the aforesaid case, being made by the parties, the learned trial Judge framed the following issues :◆

1. is the suit maintainable in its present form ?

2. Has this Court jurisdiction to try the present suit ?

3. Is the suit barred by limitation ?

4. Is the suit barred by principle of estoppel, waiver and acquiescence ?

5. Has the plaintiff any cause of action to file the present suit ?

6. Is the suit barred by the provision of Or. 23, R. 1 and Or. 11, R. 2 of the C.P. Code ?

7. Is the suit bad for defect of parties ?

8. Is the plaintiff entitled to a decree as prayed for ?

9. What other relief/reliefs, if any, is the plaintiff entitled to ?

20. The learned Judge in his judgment under appeal, came to a finding that the plaintiff/respondent has a cause of action to file the suit and also came to a finding that the plaintiff/respondent requested the defendant appellant No. 2 for payment of the amount, which is due and payable and since the amount has not been paid, the plaintiff is entitled to file the suit in support of his claim.

21. With regard to issue No. 8, the learned Judge found that insofar as the Claim Nos. 1 and 5 have been mentioned in the Schedule to the plaint, there is no dispute, but with regard to claim in respect of Item No. 2, the learned Judge found that the plaintiff is entitled to get the amount as prayed for in terms of Item No. 2 in the Schedule to the plaint. According to the learned Judge, the evidence which has been laid in this case by the defendant, is not sufficient to disprove the claim of the plaintiff. Insofar as the claim under Item No. 4 of the Schedule to the plaint, the learned Judge also came to the finding that the claim of the plaintiff is sustainable and the learned Judge granted a claim of Rs. 1 lakh against that. As such, the learned Judge ultimately decreed the suit and in all with a decree for a sum of Rs. 2,20,667/- to be paid by the defendant /appellant.

22. The learned counsel for the appellant submitted that the Notice inviting Tender, which was issued by the Jalpaiguri Zila Parishad, the appellant herein, is merely a Notice Inviting Tender. The said notice cannot be equated with an agreement or contract between the parties. Actual supply order, which was issued by the appellant, was issued on a much later date on 10-10-1994 asking the plaintiff/respondent to supply 62,500 numbers of seed coconut of East Coast Tali Variety on the condition that the germination of 80% of the supply will have to be ensured and 50% of the cost will be deducted from the bill and will be retained for 3 months as security. The security will be released if 80% guaranteed germination is attained. The said condition of Guaranteed 80% germination was also slated separately by the appellant/Jalpaiguri Zilla Parishad by its letter dated 24-10-1994. It was also stated that a formal agreement will have to be executed within 7 days from the date of issue of the letter otherwise, appropriate measures will be taken against the supplier including forfeiture of the earnest money without any further correspondence. The attention of this Court was also drawn by the learned counsel

for the appellant to an undertaking given by the claimant/respondent to the effect that the plaintiff will abide by the tender conditions and all the conditions mentioned in the said Notice Inviting Tender and in default, the earnest money might be forfeited, Ultimately, the order for supply of 62500 numbers of seed coconuts was modified by a subsequent order dated 3-11-1994. By the said order, it was made clear that the plaintiff is to supply 37,500 numbers of seed coconuts of Tall Variety to Alipurduar and 25000 numbers of seed coconuts of the above variety to Maynaguri.

23. It is common ground that It is the final order for supply. It is also the case of the appellant that pursuant to such supply bills were raised by the respondent for supply of seeds to Alipurduar for Rs. 2,81,250/-and the same was paid after deducting 5% as security for germination. Another bill was also raised by the plaintiff/respondent for supply of seeds to Maynaguri for Rs. 1,31,625/- and out of which an amount of Rs. 75,895/- was paid since out of 20,250 seeds supplied, only 12,201 seeds were germinated. Thus only 62% of germination was achieved. A report was also submitted from the Sub-Assistant Engineer, Jalpalguri Zila Parishad, Maynaguri stating that out of 20,250 seeds only 12, 201 seeds were germinated.

24. The learned counsel for the appellant drew that attention of this Court: to a letter dated 5th July. 1995. Relying on the said letter it was submitted by the learned Counsel for the appellant that from the said letter it was clear that the respondent has admitted the payment of the bill on the basis of 62% germination and the respondent agreed to receive the payment after deducting the amount for 18% less germination. The learned Counsel has also taken us through evidence adduced in this case.

25. The learned counsel for the appellant also pointed out that insofar as the claims of the plaintiff/respondent as against Item Nos. 1 and 5 in the Schedule of claim is concerned, the plaintiff/respondent has deposed in cross-examination that he did not ask the defendant (the appellant herein) for return of earnest money of Rs. 20,000/-as deposited by him with the defendant. He also slated that he did not ask the defendant (appellant herein) to pay the security deposit of 5%, which was deducted by the appellant, because the tender has not yet been completed. The learned counsel submitted that in view of this clear evidence of the plaintiff himself, the learned Judge committed an error by holding that the aforesaid two claims should be paid to the plaintiff/respondent as demand was made in respect of those claims.

26. Insofar as the claim for supply of seeds to Jalpaiguri is concerned, the learned counsel for the appellant submitted that as against this claim, the respondent has admitted by his letter dated 5-7-1995 that 18% of the seeds have not germinated and he was prepared to accept the amount of this Rs. 55,730/- which would be the price for supply of 62% of the seeds. The learned counsel submitted that this part of the letter, written by the plaintiff/respondent and which is an exhibit in the case

being "Ext. A", was not considered by the learned Judge of the First Court in coming to his finding. In this connection the attention of this Court was also drawn to the evidence of D.W. 1. D.W. 1 is a Sub-Assistant Engineer attached to Dhoopguri block. He has submitted a report dated 30th June, 1995. The said report is a report of germination and marked "Ex. U". From the said report it appears that out of 20,250 coconut seeds only 12,220 seeds were germinated. This report was submitted by the said Sub-Assistant Engineer after verifying the seeds on the spot. Even though it has been stated by the said witness that he does not hold any qualification as an agriculturist and there was no agricultural expert for plantation of the coconut seeds in the Duck bungalow. However, in his cross-examination the said witness clearly deposed that the plaintiff/respondent did not supply 20,000 coconut seeds or that for want of space, 4750 coconut seeds were returned to the plaintiff/respondent. In this connection the attention of this Court was also drawn to the Chalan issued by D.W. 1, which is made "Ext. J" in this case. From "Ext. J", which is a Chalan issued by the plaintiff/respondent, it is clear that they have supplied only 20,250 numbers of coconut seeds of East Coast, Tall Variety. There is no other document to show that anything more was supplied or anything was returned, The evidence of D.W. 1 is consistent with the said Chalan. It was also submitted that while inviting quotation of tender no guarantee was given to any supplier, the same is merely an invitation and not an agreement. The actual agreement which is executed in this case was on 25-10-1994 with regard to the supply of seeds by the respondents/plaintiff to Alipurduar and Maynaguri. Therefore, there is no reason for the learned Judge for awarding the plaintiff/respondent a claim of Rs. 1 lakh by way of damages. The learned counsel for the appellant submitted that there was no basis for awarding damages on that basis.

27. The learned counsel for the respondent on the other hand, placed reliance on the Notice inviting tender issued by the Executive Engineer, Jalpaiguri Zila Parishad dated 15th September, 1994 as also on paragraph 3 of the plaint in order to contend that the offer of the plaintiff/respondent was accepted by the Zilla Parishad and was communicated to the plaintiff by a Memo dated 10th October, 1994. The learned counsel placed great reliance on these facts to the effect that despite his request to supply the agreement, the agreement was not supplied to him. In support of such contention the learned counsel relied on Exts. 19 and 20. On the question of germination of seeds the learned counsel, relying on the evidence of Pratap Moitra, submitted that Shri Moitra has no knowledge about germination and that he is not an expert. Therefore, reliance on his evidence is of no avail. The learned counsel also relying on Section 61 of Interest Act urged that the learned Judge of the Court below should have granted the interest and in support of the said contention the learned counsel relied on the Lawyer's Notice dated 4-1-1996 for grant of interest. The learned counsel relied on ground IV and V in its cross-objection in order to contend that by filing this Cross-objection the plaintiff/respondent has prayed for interest. Both sides have cited a few decisions.

28. Judging the rival contentions this Court finds that the learned Judge of the first Court has not considered the most relevant documents while coming to the finding. In fact, from Ext. J. it is clear that the plaintiff/respondent supplied only 20,250 seeds of East Coast Tall Variety and it is not in dispute that the price for the same was not received by the plaintiff/respondent. It also appears that the plaintiff/respondent, by its letter dated 5th September, 1995, agreed to accept payment of his bill on the basis of 62% germination. In that view of the matter the judgment and decree passed by the Court below cannot be sustained. The learned Judge should have held that only places where goods were agreed to be supplied are at Alipurduar and Maynaguri and there was no agreement between the parties for supply of goods at any other place. In that view of the matter the learned Judge of the Court below should have held that the plaint case has not been made out. The learned Judge was not right in passing a money decree to the extent of Rs. 2,20,667/-. This Court is of the opinion that when the amount has been paid as per the agreement between the parties, the amount for the goods supplied was paid. So there can be no question of grant of any damages. The question of damages or compensation comes into existence when the party, claiming damages, has succeeded in establishing before the Court that he has suffered actual loss. The damages as has been provided u/s 73 of the Contract Act, can only be given for any loss actually suffered and not for any remote or indirect loss or damages. In the facts of this case the decree of damages of Rs. 1 lakh, given by the learned Judge, is contrary to the principles contained u/s 73 of the Contract Act. Reliance in this connection is placed on the judgment in the case of [Jado Prasad and Others Vs. Jamuna Prasad Singh and Others](#), . In the opinion of the Court reliance was rightly placed on the said judgment by the learned counsel for the appellant.

29. In the facts and circumstances of this case no case of payment of interest has been made out inasmuch as the Court is of the view that the plaintiff/respondent has not suffered any damages or loss and therefore is not entitled to money decree which has been given in his favour. Therefore, the decision in the case of [A.K. Srinivasa Naidu Vs. S. Jayarama Reddiar Firm](#), cited by the learned counsel for the respondent is of no assistance for the facts of the present case. This Court is also of the opinion that Section 61 of the Interest Act also has no application.

30. Considering all these aspects of this matter, this Court is of the view that the appeal should be allowed and judgment and Order passed by the Court below, is set aside. Interim order, if any, is vacated and undertaking, if any, given by the appellant, is discharged. In view of this judgment the cross-objection is accordingly dismissed.

31. There will be no order as to costs.

Tapan Kumar Dutt, J.

32. I agree