

# **SUPREME COURT OF INDIA**

Gian Chand

Vs.

York Exports Ltd.

C.A.No.4882 of 2014

(Gyan Sudha Misra and V.Gopala Gowda JJ.)

25.04.2014

## **JUDGMENT**

### **V. GOPALA GOWDA, J.**

1. Leave granted.
2. This Civil Appeal is directed against the judgment and order dated 14.6.2012 passed in Original Side Appeal No.9 of 2005 by the High Court of Himachal Pradesh at Shimla, whereby it has dismissed the appeal of the appellants herein by concurring with the judgment and decree dated 3.10.2005 passed in Civil Suit No. 31 of 1997 by the learned Single Judge in decreeing the suit for payment of money at 39,20,000/- with 6% interest per annum from the date of institution of the suit till the date of payment of decretal amount to the respondents giving its reasons in the impugned judgment though it did not entirely agree with the reasonings provided by the learned single Judge. Correctness of the same with regard to the interest from the institution of the suit till the date of payment is questioned by the appellants, urging various facts and legal contentions.
3. For the sake of brevity and convenience in this judgment, the parties are referred to as per the rank assigned to them in the original suit proceedings.
4. The plaintiffs (the respondents herein) and the defendants (the appellants herein)

executed an agreement to sell 164 bighas, 7 biswas of land in question on 2.8.1995. As pre-condition for sale, permission from the competent authority under Section 118 of the Himachal Pradesh Tenancy & Land Reforms Act (hereinafter referred to as the Land Reforms Act) was necessary. The onus to obtain the relevant permission was cast on the plaintiffs in the agreement to sell. The plaintiffs managed to obtain permission only for 145 bighas of land. As the stipulated time for obtaining permission for the entire area expired, the plaintiffs sought extension of time from the defendants. This extension was denied which eventually led to filing of the suit in question. In the suit, the plaintiffs pleaded frustration of contract and sought refund of the money already paid with interest. The learned single Judge decreed the suit, finding that there was frustration of contract.

5. Aggrieved by the same, the defendants filed an appeal before the Division Bench of the High Court. The Division Bench held that :- (i) the contract in question was not frustrated as understood in Indian law in terms of Section 56 of the Contract Act, 1872; (ii) the plaintiffs were at fault for their failure to obtain the necessary permission for the entire area as the obligation to obtain the permission rested with them. The plaintiffs had committed breach of the agreement, however, the defendants had not committed any breach and (iii) permission having been obtained for at least 145 bighas of land, sale could have been completed with regard to this substantial portion of the suit property. Aggrieved by the same, the defendants have filed this appeal.

6. This Court vide order dated 3.12.2012 passed the following order in the matter:-

We have heard learned counsel for the petitioners and perused the record. In our view, the impugned judgment as also the judgment of the learned Single Judge does not suffer from any legal infirmity insofar as the decree for payment of the principal amount is concerned.

Issue notice only on the question of payment of interest by the petitioners on the amount which they had received from the respondent in furtherance of the main as well as the additional agreement, returnable on 06.02.2013. Dasti, in addition, is permitted.

Issue notice on the petitioners prayer for interim relief, returnable on 06.02.2013. Dasti, in addition, is permitted.

In the meanwhile, operation of the impugned judgment as also the judgment of the learned Single Judge shall remain stayed insofar as they relate to award of interest to the respondent.

The petitioners shall pay the principal amount to the respondent within a period of six weeks from today.

It shall be the petitioners' duty to serve the respondent before the next date of hearing failing which the interim order passed today shall stand automatically vacated.

After service of notice in the Special Leave Petition, the plaintiffs filed the counter affidavit and the defendants also filed additional documents. Thereafter, the matter was listed before this Court for hearing on 31.01.2014. After hearing Mr. Jayant Bhushan, the learned senior counsel appearing on behalf of the defendants and Mr. Deepak Sibal, the learned counsel for the plaintiffs, this Court passed the order by assigning the following reasons.

7. At the time of issuing notice in the Special Leave Petition on 03.12.2012, after hearing the learned counsel on behalf of the defendants, this Court issued notice only on the question of payment of interest by the defendants and the amount which they had received towards the part consideration from the plaintiffs in furtherance of the principal as well as the additional agreement. The learned senior counsel Mr. Jayant Bhushan has questioned the correctness of the impugned judgment of the High Court in affirming the award of interest at the rate of 9% per annum on the part of consideration amount paid to the defendants. The interest was to be paid at the rate of 9% per annum prior to the institution of the suit and 6% on the said amount from the date of decree till the date of payment. The learned senior counsel contended that the defendants are not liable to pay the same as the plaintiffs have committed breach of agreement entered with them in not purchasing the agricultural land to an extent of 145 bighas of land in respect of which the State Government in exercise of its power under Section 118 of the Land Reforms Act granted permission to purchase the same by the plaintiffs for the purpose of establishing their factory, though the agreement of sale was intended to purchase 164 bighas 7 biswas of land in Khata Khatauni No. 98/105, Khasra No. 245, Mauza Beerh Plassi, Pargana Plassi, Tehsil Nalagarh,

District Solan, Himachal Pradesh. The case of the plaintiffs is that as per the agreement between the parties entered on 2.8.1995, the defendants agreed to sell the aforesaid property at the rate of 50,000/- per bigha and further agreed that the sale deed was to be executed on 31.5.1996 but prior to that date, the plaintiffs were required to pay a sum of 15,03,500/- to the defendants. Undisputedly, this amount was also paid to the defendants on 21.8.1995. The sale deed could not be executed by the defendants in favour of the plaintiffs by 31.5.1996 as the State Government granted permission to the plaintiffs for purchase of only 125 bighas of land under Section 118 of the Land Reforms Act. Thereafter the parties renewed the agreement on 31.5.1996. As per the renewed agreement, the plaintiffs were to pay 18,00,000/- more which was also paid on 4.6.1996. As per this agreement, the sale deed was to be got executed by 31.12.1996. The State Government did not grant permission to the full extent of land, which is agreed to be sold in favour of the plaintiffs. On the other hand, the State Government allowed only to the extent of 145 bighas of land in all to be purchased by the plaintiffs. The plaintiffs did not get the sale deed executed. As to the extent of land for which permission was granted by the State Government, according to the plaintiffs, it was not sufficient for establishing the factory. Therefore, the plaintiffs contended that the contract is frustrated and therefore, they filed Civil Suit No. 31 of 1997 before the learned single Judge of the High Court for recovery of the amount paid towards the part consideration along with interest at the rate of 9% per annum up to the date of finalization of the suit and 6% per annum from the date of institution of the civil suit. The said claim was opposed by the defendants traversing plaintiff averments contending that the contract is not frustrated as pleaded by the plaintiffs under Section 56 of the Indian Contract Act, 1872 and the plaintiffs are not entitled for the decree of money including the interest as claimed by them and hence they have prayed for dismissal of the suit.

8. The learned single Judge of the High Court vide order dated 3.10.2005 in Civil Suit No. 31 of 1997 framed 9 issues for his adjudication. After the trial, the contentious issues framed in the civil suit were answered in favour of the plaintiffs and passed the decree to a sum of 39,20,000/- with 6% interest per annum from the date of institution of the suit till the date of payment of money. The correctness of the reasons and findings answered on the contentious issues in the judgment of the learned single Judge was challenged before the Division Bench of High Court urging various legal contentions. The Division Bench of the High Court, on the basis of the rival legal contentions urged on behalf of the parties formulated the following two points for its

adjudication :-

1. Whether the contract stood frustrated by the fact that the plaintiff did not get permission to purchase 164 bighas 7 biswas of land?
2. Whether the defendants were entitled to retain the amount paid to them by the plaintiff and if so, to what amount?

After examining the correctness of reasons recorded by the learned single Judge in holding that the non-grant of permission by the State Government to purchase 164 bighas 7 biswas of land in favour of the plaintiffs in terms of the agreement entered between the parties amounts to frustration of contract as provided under Section 56 of the Contract Act was examined by the Division Bench of the High Court. The Division Bench of the High Court with reference to the reasons recorded by the learned single Judge in the civil suit, on the question of the frustration of the contract between the parties, after adverting to the relevant provisions of Section 56 of the Indian Contract Act, by assigning its own reasons, has answered the same by holding that the decision that the contract between the parties stands frustrated is erroneous in law.

The Division Bench of the High Court held that the finding recorded by the learned single Judge on non-grant of permission to the entire 164 bighas 7 biswas of land as agreed between the parties to sell in favour of the plaintiffs does not amount to the frustration of contract for the reason that the State Government at first granted permission to the plaintiffs for purchase of 125 bighas and thereafter granted permission to purchase 145 bighas of land. Further, the Division Bench of the High Court has held that there is virtually no material on record to show that after the second permission was granted, the plaintiff took further steps to get permission from the State Government for purchasing the remaining land. Even if such permission was not granted and permission was specifically refused, the contract between the parties would not stand frustrated. It is further rightly held by the Division Bench of the High Court that the parties at the time of agreement could not have presumed that the permission must be granted. Further it has observed that supposing the State Government refused to grant permission for purchase of land, then obviously, it would be a case of the contract not being able to be performed. But, when the

State Government grants the permission for a lesser area of land than the agreed upon area in the agreement by the defendants, plaintiffs could not have elected to purchase the lesser area, i.e. 145 bighas, for which the permission was granted. Further, the learned Division Bench of the High Court has rightly rejected the argument of the plaintiffs that permission for purchase of 145 bighas of land granted by the State Government in favour of the plaintiffs, was not sufficient to set up the plant as in this regard no evidence worth the name to support this plea of the plaintiffs has been produced before the Court. Further, the High Court has rightly assigned its reasons on the basis of the project reports of the plaintiffs, the State Government and the Department of Industries, taking all relevant aspects into consideration has decided that permission should be granted in favour of the plaintiffs only for purchase of 145 bighas of land. This fact would clearly indicate that according to the Industries Department, sale of land of 145 bighas in favour of the plaintiffs by the defendants was sufficient to set up the industry for which purpose the plaintiffs have entered into an agreement with the defendants. Further, in the impugned judgment the High Court assigned its reasons stating that the parties may or may not get permission for the purchase of the entire land. However, in the absence of such condition expressed in the agreement, the contract between the parties does not frustrate particularly, when the plaintiffs had alternative to purchase 145 bighas of land from the defendants. The Division Bench of the High Court on the issue of frustration of contract has relied upon the decisions of this Court and various High Courts in support of its reasons which are adverted in the impugned judgment, which need not be referred to in this judgment.

9. The Division Bench of the High Court did not accept the finding of the learned single Judge who had conducted the trial of the suit, who has erroneously held that the contract stands frustrated under Section 56 of the Contract Act.

10. The Division Bench of the High Court has also examined the said aspect of the matter by adverted to the provisions of Sections 73, 74 and 75 in Chapter VI of the Indian Contract Act and also taken into consideration the decisions of various High Courts and this Court has held that the defendants have not proved that they sustained losses on account of the non performance of the contract by the plaintiffs. The Division Bench of the High Court with reference to the allegation made by the defendants in their written statement that they suffered loss in the liquor business is

not relatable to the contract and the same is not supported by material evidence on record. It was further submitted by the learned senior counsel for the defendants that due to the breach of contract on the part of the plaintiffs, the sum of 4,00,000/- in the agreement which is the earnest money and advance of 4,00,000/- shall be forfeited towards loss of compensation. The Division Bench after proper evaluation of the pleadings and evidence on record has rightly rejected the said contention and decreed the suit for sum of 39,20,000/- with 6% interest per annum from the date of institution of the suit till the date of payment of money and it has rightly recorded the concurrent finding for grant of the decree in favour of the plaintiff directing the defendants for repayment of the consideration amount with interest as mentioned above after holding that there is no frustration of contract entered between the parties though the sale of the land could not take place for non grant of permission to the entire extent of 165 bighas 7 biswas of land, the said finding of fact is accepted by this Court at the time of issuing notice and therefore, the correctness of the same has attained finality for the reason that this Court at the time of issuing notice to the plaintiffs has clarified that this appeal is confined on the issue of payment of interest awarded on decretal amount from the date of institution of the civil suit till the payment to be made by the defendants to the plaintiffs. The money being paid as part consideration to the defendants has been utilised by them in its liquor business. Therefore, award of interest in the judgment against the principal amount upto the date of the institution of the suit at 9% and 6% thereafter from the date of institution of case till the date of payment is legal and valid as the said amount has been utilized by the defendants in the liquor business but they have failed to prove not obtaining the sale deed in respect of the land agreed upon to be sold in favour of the plaintiffs to the extent of area for which permission was granted by the State Government. For the reasons stated supra, the award of interest on the principal amount and decretal amount in the impugned judgment is perfectly justifiable on the basis of the facts and circumstances of the case.

11. In view of the reasons stated supra, we do not find any reason whatsoever to interfere with the impugned judgment and decree wherein the award of interest at the rate of 6% per annum on the amount decreed by the learned single Judge from the date of institution of the suit need not be set aside by this Court. Accordingly, the Civil Appeal is dismissed, but with no order as to costs.