

RAJASTHAN HIGH COURT

Municipal Board Khumber

Vs.

Yadu Nath Singh

C.R.F.A. No. 26 of 1988

(A.C. Goyal, J.)

03.12.2003

JUDGEMENT

A.C. Goyal, J.

1. This civil first appeal under Section 96 of the Civil Procedure Code has been preferred by the plaintiff-appellant against the judgment and decree dated 22-9-1987 whereby learned Additional District Judge No. 2, *Bharatpur* dismissed the suit for recovery of Rs. 11,914/-.
2. The relevant facts in brief are that the plaintiff filed a suit for recovery of Rs. 11,914/- with the facts that the defendant-respondent participated in a public auction for holding a cattle fair in July, 1982. Highest bid of Rs. 30,000/- made by the defendant was accepted by the plaintiff and in pursuance thereof the defendant deposited a sum of Rs. 7,000/- as earnest money and managed the fair held during the period commencing from 20-7-1982 to 26-7-1982. The total collection of income during this period came to Rs. 12,646/-. A total sum of Rs. 19,646/- (Rs. 12,646/- + Rs. 7000/-) was adjusted against the bid amount of Rs. 30,000/- and thus a sum of Rs. 10,354/- in balance was to be paid by the defendant to the plaintiff, which he failed to pay in spite of demands and notice. The plaintiff claimed a decree of total sum of Rs. 11,914/- including a sum of Rs. 1560/- as interest @ rupee 1 per month.
3. The defendant in his written statement while admitting the facts relating to bid and deposit of advance money denied other allegations that he managed the fair and collection the amount as pleaded in para 5 of the point. He raised certain objections with regard to maintainability of this suit.
4. Following issues were framed on the basis of the pleadings of the parties.

(Vernacular matter omitted)

5. The evidence of the parties was recorded and thereafter learned trial Judge vide judgment dated 22-9-1987 dismissed the suit. Issue No. 1 was decided against the plaintiff that the Chairman of the plaintiff-Board is not entitled to file the suit. Issues No. 2 and 4 were jointly decided against the plaintiff that no concluded contract took place between the parties. Issue No. 3 was decided in favor of the plaintiff that all the terms and conditions of the bid were explained to the defendant. Issues Nos. 5 and 7 were decided together against the plaintiff that the defendant did not manage the affairs of the cattle fair and to income accrued to the defendant. Issues Nos. 6 and 11 relate to the relief. Issues No. 8 to 10 being legal issues were decided in favor of the plaintiff i.e. against the defendant. Consequently, the suit was dismissed.

6. On the basis of the submissions made by learned counsel for the parties, following points for determination arise in this appeal.

7. First point for determination arises is as to whether the plaintiff-Board through its Chairman was authorized to file the suit? P.W.1 Sh. Arvind Singh was the Chairman and he signed the plaint on behalf of the plaintiff i.e. Municipal Board Khumber. As per statement of P.W.1 Arvind Singh he was the Chairman of the plaintiff-Board from 1982 to 1986 and he instituted the present suit as Chairman of the Board. He admitted in his statement that he was not separately authorized by any letter of authority or Board's resolution to file the suit.

8. Learned trial Judge held that Chairman of the Board in absence of the resolution of the Board, was not authorized to institute the suit and Section 67 of Rajasthan Municipalities Act, 1959 (in short the Act) does not authorize the Chairman to do so.

9. Learned counsel for the appellant submitted that sub-clause (d) of Section 67 of the Act authorizes the Chairman to perform all the functions of the Board including the power of filing the suit. Section 67 provides for functions of Chairman. As per Section 67(c)(d) of the Act, it shall be the duty of the Chairman of a Board to perform all the duties and exercise all the powers specifically imposed or conferred upon him by or delegated to him under and in accordance with this Act and subject to the provision of Section 78 and of the Rules for the time being in force, to perform such other executive functions as may be performed by or on behalf of Board over which he presides. Learned counsel for the respondent supported the decision of the trial Court on this issue.

10. Section 7 of the Act deals with the establishment and incorporation of municipal boards. It provides that there shall be established municipal board and every such board shall be a body corporate by the name of the municipal board and shall have perpetual succession and a common seal and may sue or be sued in its corporate name. Thus as per Section 7 of the Act, the board may sue or be sued in its corporate name. The present suit was instituted in the name of Municipal Board, Khumber through its Chairman. Sub-clause (d) of Section 67 of the Act provides that subject to the provision of Section 78 and of the rules the Chairman shall perform such other executive functions as may be performed by or on behalf of the board over which he presides. Section 78 of the Act provides for powers, duties and functions which may be delegated. No such rule has been referred by either side providing for institution of the suits by or against the Board. As stated hereinabove, the present suit was filed in the name of the Municipal Board, Khumber and it was signed by its Chairman i.e. P.W.1 Sh. Arvind Singh. Thus this suit was instituted in the name of the Board and as provided under Section 67(d) of the Act, the Chairman was competent to sign it on behalf of the Board. Otherwise also, at the worst it is merely a defect of form and not of substance and thus on such a technical error, if any, the suit cannot be thrown out. Therefore, the decision on the issue no. 1 is liable to be set aside, hence is set aside.

11. Second point for consideration arises is as to whether there was a contract concluded between the parties? It is not disputed that the respondent participated in bid proceedings and bid given by him being the highest was accepted and the respondent deposited a sum of Rs. 7,000/- as earnest money. Learned counsel for the appellant contended that Ex.2 is the document containing the proceedings of the bid and the Chairman of the plaintiff-Board accepted the respondent's bid for Rs. 30,000/- and Ex.2 was signed by both i.e. respondent as well as the Chairman of the Board and the defendant- respondent deposited a sum of Rs. 7,000/- as earnest money and thus it was not a case of simple offer, rather it was a case of complete contract and thus enforceable in law. Per contra, learned counsel for the respondent contended that no agreement/contract was executed between the parties and acceptance of the bid only amounts to acceptance of the offer made by the respondent. Mr. Gupta referred condition No. 5 of Ex.1 containing the terms and conditions of the bid. Condition No. 5 provides that in case of acceptance of the bid, one agreement on stamp papers would be executed, but no such agreement on the stamp papers was executed between the parties. It was also submitted that Section 80 of the Act consists of only three sub-sections, therefore, reference to sub-section (7) of Section 80 of the Act in the impugned judgment seems to be a mistake and the relevant provisions with regard to

contract are contained in sub-rule (2) of Rule 14 of Rajasthan Municipalities (Purchase of Materials and Contracts) Rules, 1974. Sub-rule (2) of Rule 14 provides that every contract entered into by or on behalf of a board shall be in writing and shall be signed by the Chairman and Executive Officer and shall be sealed with common seal of the Board. In view of the said provisions and condition No. 5 of Ex. 1 the contention made by learned counsel for the respondent appears to be acceptable that after acceptance of the bid a contract in writing was necessary bearing the signature of the Chairman and Executive Officer of the Board. Admittedly Ex.2 document bears only the signature of the Chairman. In *Union of India v. M/s. Uttam Singh Dugal & Co. (Pvt.) Ltd.*,¹ it was held that in absence of execution of formal agreement, there was no concluded contract between the parties. In *State of Uttar Pradesh v. Kishori Lal Minocha*,² it was held that to make a party liable concluded contract between the parties must be there. Thus, in view of the above discussion, the decision of the trial Court on this point appears to be justified, hence does not call for any interference.

12. Next point arises for consideration is as to whether the respondent managed the fair and collected the amount and thus requirement of the written contract was a mere formality? Learned counsel Mr. Chaudhary appearing for the appellant submitted that there was ample evidence to prove this fact that the respondent organized and managed the fair and he collected a sum of Rs. 12,646/-, but the trial Court did not consider the evidence properly. Mr. Gupta learned counsel appearing for the respondent supported the findings of the trial Court on this issue on the basis of the entries Ex.4 to 10 in a register Ex.3.

13. I have considered the rival submissions, evidence-oral as well as documentary and the impugned judgment. Entries of income of this fair were made in a register Ex.3 maintained by the plaintiff-Board. On the basis of the entries Ex.4 to 10 made in this register the learned trial Judge rightly came to this conclusion that income of Rs. 12,646/- from this fair is well proved. The learned Judge on the basis of other evidence came to this conclusion and rightly so that it was not the defendant who managed the affairs of the fair, rather the fair was managed by the officials of the plaintiff-Board. A perusal of conditions No. 12 and 13 goes to show that management and control of the fair was retained by the plaintiff-Board and entries of the income from this fair were also made in the register Ex.3 maintained by the plaintiff-Board. P.W.1 Sh. Arvind Singh himself admitted in examination-in-chief that day to day income of the fair was collected by the officials of the Board, though in presence of the defendant and the register containing the accounts of the income was also

produced by the Board and this account was prepared by Sh. Phool Chand-cashier of the Board. He did not give evidence to this effect that the management and control of the fair was with the defendant. P.W.2 Sh. Phool Chand while corroborating the statement of P.W.1 stated that register of income was maintained by the plaintiff-Board and signature of the defendant on entries of income were obtained in this register. In cross-examination, he clearly admitted this fact that the entire control in recovery of fees in the fair was that of plaintiff-Board. The defendant in his statement stated that he was not allowed to manage the affairs of the fair. His statement was corroborated by D.W.2 Sahab Singh, D.W.3 Bacchu Singh and D.W.4 Kallan. Thus, in view of the entire discussion made hereinabove, the decision of the trial Court on this issue also does not call for any interference in this appeal.

14. Consequently, this appeal is hereby dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1972 Delhi 110
2. AIR 1980 SC 680: (1980 All LJ 278)