

Tej Singh Vs. State of U.P. and ors.

Tej Singh Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/461608

Court : Allahabad

Decided On : Nov-11-1980

Reported in : AIR1981All103

Judge : K.N. Singh and ;N.N. Mithal, JJ.

Acts : [Specific Relief Act, 1963](#) - Sections 8 and 10; [Sale of Goods Act, 1930](#) - Sections 18

Appeal No. : First Appeal No. 299 of 1974

Appellant : Tej Singh

Respondent : State of U.P. and ors.

Disposition : Appeal dismissed

Judgement :

K.N. SINGH, J.

1. This plaintiff's appeal is directed against the judgment and decree of the Second Additional Civil Judge, Aligarh, dated 30-10-1974 dismissing the suit with costs.
2. The appellant filed a suit against the U. P. State Electricity Board and Superintending Engineer and the Executive Engineer, Harduaganj, district Aligarh, for grant of a decree for mandatory injunction. The suit was filed on the allegations

that the U. p. State Electricity Board has a Steam Power Station at Kasimpur, known as Harduaganj Steam Power Station, in the district of Aligarh. In the process of working of the Power Station waste coal ash is discharged which is released by the authorities for sale to public. The appellant carries on business of sale of waste coal ash. On 12-9-1973 he made an application to the Superintending Engineer, defendant No. 2, for purchase of 500 truck load of waste coal ash equivalent to 1.5 lac cubic feet of ash at the rate of 16.25 per 100 cubic feet. The Superintending Engineer who was empowered to effect sale of the coal ash accepted his proposal, whereupon the appellant deposited a sum of Rs. 25,350 on 21-9-1973 towards the price of the coal ash with the defendants and he approached the defendants for delivery of coal ash but the defendants Nos. 2 and 3 did not allow him to remove the waste coal ash. The defendants asked the appellant to pay price at the rate of Rs. 17 per 100 cubic ft. Since the appellant had paid the entire price of waste coal ash at the rate agreed upon between the parties the defendants had no right to stop him from removing the waste coal ash or to refuse permission to the plaintiff to remove the waste coal ash from bunkers of Power Station. On these allegations the plaintiff claimed relief for issue of a permanent injunction against the defendants restraining them from causing any interference in the plaintiff's right to remove the waste coal ash from the premises of Harduaganj Power Station to the extent of 1.5 lacs of cubic feet.

3. The defendants-respondents filed written statement and contested the suit. The main contention raised on behalf of the defendants was that the price of the waste coal ash generally remains fluctuating and an intending purchaser has to pay price at the rate prevailing on the date of issue of the gate pass. The appellant had no doubt deposited the price but he was not entitled to remove the coal ash at the rate of Rs. 16.25, instead he had to pay increased price at the rate prevailing on the date of the removal of waste coal ash. The appellant had refused to pay the price at the rate prevailing on the day of the issue of gate pass, as such he was not entitled to remove the coal ash. They further pleaded that no completed contract had ever been executed between the parties. Lastly, the defendants pleaded that the appellant's suit for permanent injunction was not maintainable.

4. On the pleading of the parties the trial court framed the following four issues;

1. Whether there was no complete contract in respect of 500 trucks of waste coal ash at the rate of Rs. 16,25 per 100 sq. feet between the parties?
2. Whether the plaintiff was to pay at the rate prevailing on the day when the gate pass was to be issued?
3. Whether the suit for mandatory injunction is not maintainable?
4. To what relief, if any, is plaintiff entitled?

The trial court answered the first two issues in appellant's favour, held that the appellant had successfully proved by cogent evidence that his offer for purchase of 500 truck loads of waste coal ash at the rate of Rs. 16.25 per cubic feet had been accepted by the defendants and in pursuance of that acceptance he had deposited the price of the said waste coal ash. The trial court further held that there was a completed contract in respect of sale of 500 truck loads of waste coal ash at the rate of Rs. 16.25. The trial court further held that the appellant was not liable to pay price at the rate prevailing on the date of issue of the gate pass, instead the plaintiff was entitled to remove the waste coal ash at the agreed rate of Rs. 16.25 paise. Even though the trial court answered the two issues in plaintiff's favour but it refused to grant him any relief on the finding recorded on issue No. 3. While discussing issue No. 3, it held that the appellant's suit for the issue of permanent injunction was not maintainable as he could be adequately compensated in terms of money for non-performance of the contract. He could claim compensation and, therefore, no decree for injunction could be granted. On these findings the trial court dismissed the suit with costs. Hence this appeal.

5. Specific performance of contracts and issue of injunction, perpetual and mandatory, are governed by the provisions of the [Specific Relief Act, 1963](#). Under Section 8 of the Act, a suit for possession and control of a particular article of movable property is maintainable at the instance of the person who is owner of the property on the existence of circumstances specified in clauses (a) to (b) of that section. The plaintiff must prove that he is owner of the movable property and that he is entitled to its immediate possession and further that -compensation in terms of money will not be sufficient to afford adequate relief to him for the loss of the

thing claimed. It therefore follows that if the plaintiff can be compensated in terms of money, no decree for possession of the movable property can be passed. The appellant had no doubt deposited the contract money towards the purchase of the waste coal ash but he had not acquired title to the goods as under the terms of the contract the appellant was entitled to remove 500 truck loads of waste coal ash and when the same was discharged in the premises of the power station. The contracted quantity of the coal ash was not in ready stock for supply to the appellant and as such the property which was to be sold to the plaintiff was not specified. In the absence of specified goods no title could pass to the appellant in the waste coal ash.

6. Learned counsel for the appellant urged that the contract entered into between the parties was enforceable and the appellant was entitled to relief under Section 10 of the [Specific Relief Act, 1963](#). We find no merit in the contention. Section 10 sets out circumstances under which specific performance of contract is enforceable. It lays down that except as otherwise provided in Chapter II of the Act specific performance of any contract may be enforced in the discretion of the court when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed upon or when the act agreed to be done is such that compensation in terms of money for its non-performance would not afford adequate relief. The explanation to the section lays down that unless and until the contrary is proved, the court shall presume that the breach of a contract to transfer movable property can be adequately relieved except where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or it consists of goods which are not easily obtainable in the market. Clause (b) of Section 10 lays down a general rule that where compensation in terms of money is adequate no decree for specific performance of contract should be passed. Explanation lays down exception to the general rule. According to the explanation, if the movable property is not an ordinary article of commerce, or if it is of special value or interest to the plaintiff, or if it consists of goods which are not easily obtainable in the market, in that event the court has power to grant decree for the specific performance of the contract. The plaintiff must satisfy these considerations before a decree for specific performance can be passed in respect of a contract for the sale of movable property. The appellant deals in purchase and sale of waste

coal ash. He has not set up any case that he utilises waste coal ash for his own purpose or that the same is of special value or interest to him. It is a matter of common knowledge that the waste coal ash is easily obtainable in the market as huge quantity of waste coal ash is available at the Thermal Power Stations and railway stations. The appellant produced no evidence to show that the coal ash was of special value to him or that it was not easily available in the market, and that compensation in terms of money was not sufficient to give him relief for the breach of contract. No decree for specific performance could therefore be granted.)

7. Section 38 provides for grant of perpetual injunction subject to the provisions of other Chapters including Chapters II and III of the Act. Section 38 lays down that injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, but while exercising this power the court has a discretion not to grant perpetual injunction if the breach of contract can adequately be compensated in terms of money. Section 41(e) lays down that no injunction can be granted to prevent abreach of contract the performance of which would not be specifically enforced. The legislative intent behind enacting Section 41 is that if a contract is not specifically enforced under the provisions of the Act then the court has no jurisdiction to grant the injunction. We have already discussed earlier that under Section 10 of the Act, contract for the supply of waste coal ash was not enforceable, therefore the appellant could not get a decree for injunction.

8. Learned counsel then referred to Section 20 of the [Sale of Goods Act, 1930](#), and urged that since there was an unconditional contract for the sale of waste coal ash, the property in the goods passed to the appellant on the completion of the contract. The defendants could not legally refuse to supply waste coal ash to him and as such the appellant was entitled to the decree of injunction. In our opinion, the contention is wholly misconceived. Section 20 of the Sale of Goods Act refers to contracts for the sale of '^specific goods'. In the instant case, as noted earlier there was no specific goods, instead there wag a contract for the sale of unascertained future goods. Waste coal ash was to be supplied to the appellant which was to be discharged by the Power House. Section 18 of the [Sale of Goods Act, 1930](#), provides that where there is a contract for the sale of unascertained

goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even though there was a concluded contract for the sale of waste coal ash, the goods were not identified or specific as denned by Section 2(14), According to the terms of the contract the defendants were to supply waste coal ash as and when the same was discharged from the bunkers of the Power House. In substance the contract was for the sale of unascertained goods, therefore, no property in the goods could pass to the appellant till the goods were ascertained by appropriation which in this case did not take place at all.

9. Lastly, learned counsel urged that in view of the provisions of Section 58 of the Indian Sale of Goods Act, we should direct the defendants to refund the price of the waste coal ash already deposited by the appellant and also for the payment of damages to him. Section 58 of the Sale of Goods Act is subject to the provisions of Chapter II of the [Specific Relief Act, 1963](#). Section 22 of the Specific Relief Act clearly lays down that a plaintiff may ask for any other relief to which he may be entitled including the refund of earnest money or deposit made by him in case his claim for specific performance is refused Sub-section (2), however, lays down that no such relief shall be granted by the court unless it has been specifically claimed. No doubt, even if the plaintiffs suit for specific performance is dismissed or, if relief for injunction is refused, the court has power to grant relief to the plaintiff for the refund of his earnest money or the price paid by him, but this is permissible only when the plaintiff has made a prayer to that effect in the plaint. In the present case, the appellant has not made any such prayer in the plaint nor he has got the plaint amended even in appeal before this court. In the circumstances it is not possible to direct the refund of the price paid by the appellant although there is no doubt or dispute about his right to get the amount refunded. We hope that the respondent authorities shall act in a fair manner to refund the amount deposited by the appellant if and when he approaches them for the refund of the same. The respondents must bear in mind while considering the question of refund of the amount deposited by the appellant that they are the instrumentalities of a welfare State and they have to conduct themselves in a fair and just manner not obsessed by technicalities.

10. For the reasons stated above, we find no merit in the appeal. It is accordingly dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com