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Court : Rajasthan

Decided On : Apr-18-1970

Reported in : 1970WLN231

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 307 of 1963

Appellant : Malchand

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. This is a second appeal by the plaintiff whose suit for refund of Rs. 482.99 paise alleged to have been charged in excess as price of coal supplied to him and Rs. 30/- on account of interest, total Rs 512. 99 paise was dismissed by the Munsiff, Bikaner and whose appeal from the judgment and decree of the trial court was also dismissed by the Civil Judge, Bikaner.

2. The facts giving rise to this appeal are short and simple The plaintiff made an application dated 2-5-1961 to the Mines Manager, Palana Colliery Mines. Falana for purchase of 108 Tons of coal on which the Mines Manager, D.W. 1 Shri M.C

Fell ordered that a challan be issued for 108 Tons at the rate of Rs. 20/-per Ton. A copy of this order has been placed on the record and marked Ex. 1. The plaintiff deposited Cs. 2160/-being the cost of 108 Tons of coal at the rate of Rs. 20/-per Ton at pits' amouth vide each challan dated 2-5-1961 marked Ex. 4. It appears that mean while the Government of Rajasthan had revised the rate of coel from, Rs. 20/- to Rs. 24/-per tone with effect from 27-4-1961 and on having received information to that effect by telegram a copy of which has been placed on the record, and marked Ex. A. 1, the Mines Manager demanded price of the coal from the plaintiff at the revised rate of Rs. 24/-per tone, and the plaintiff deposited the difference on 12-6-61. The stipulated quantity of coal was delivered to the plaintiff but his grievance is that he was charged Rs. 482 99 paise more than the stipulated price. He, therefore, filed the present suit for refund of this amount along with Rs. 30/-as interest, The suit was resisted by the State of Rajasthan.

3 After recording the evidence produced by the parties the learned Munsiff, Bikaner dismissed the plaintiff's suit and as already stated above an appeal by the plaintiff the judgment and decree of the trial court were upheld by the Civil Judge, Bikaner. Hence this second appeal by the plaintiff.

4. Learned counsel for the appellant has urged that the finding of the learned Civil Judge that the plaintiff had not deposited the difference in the price under protest is incorrect as it has been clearly stated by the Mines Manager, D.W. 1 M.G. Fell that he could have refused to supply the stipulated quantity of coal to the plaintiff, if the latter had not deposited the difference in price. He has also contended that no such plea has been taken by the defendant in the written statement that the difference in the price was paid by the plaintiff voluntarily. It has also been argued that Sectoin 20 of the Indian Contract Act which has been pressed into service by the courts below has no application to the facts and circumstances of the present case as there was no mis-take as to a matter of fact essential to the agreement in the present case.

5. It appears from the evidence produced by the parties that the plaintiff had applied for supply of 108 Tons of coal, and on that application the Mines Manager ordered that the supply may be made to him on his depositing the price at the rate

of Rs. 20/- per ton. In this connection it is important to note that there was no fixation of price of coal by an agreement between the Mines Manager and the plaintiff. The price of coal was being fixed by the Government under whose instructions the Mines Manager used to supply coal to the applicants. None of the parties has cared to put on record a copy of the application filed by the plaintiff for supply of coal. However, it appears from the statement of D.W. 1 M.G, Fell. Manager of the Palana Colliery that whenever an application for coal was presented to him, he used to issue order for depositing the amount at the prevailing rate. It further appears from the copy of the letter dated 20-4-1961 from the Director of Mines and Geology, Rajasthan to the Secretary to the Government, Industries Mines Department that a proposal was made to the Government that the price of coal may be fixed at Palana Colliery at Rs. 24/-per tonne at pits mouth. The proposal having been approved by the Government a telegram to that effect dated 4-5-1961 was sent to the Mines Manager. Palana Colliery for immediate compliance. A copy of that telegram has also been put on the record, and marked Ex. A 1. The Mines Manager sought clarification as to from which date the revised rate was to be charged and he was informed by the Director, Mines and Geology vide the latter's letter dated 1-6-1961 that the revised rate of coal would be effective from the date of the Government's order, namely, 27-4-1961 but orders received prior to that date and accepted by the management may be executed on the previous scheduled price. A copy of the letter dated 1-6-1961 has also been placed on the record and marked Ex A 3. The aforesaid correspondence coupled with the statement of D. W. 1 Shri Fell Mines Manager make it amply clear that no separate contracts for supply of coal at particular rate were being made by the Mines Manager, but that there was a scheduled price fixed by the Government and it was in the discretion of the Mines Manager to make supply of coal at the scheduled price to different applicants within the prescribed limits. Both the lower courts have completely lost sight of this aspect of the case, and have misdirected themselves on points which are not relevant for the decision of the dispute between the parties. The finding that the difference in the amount had been voluntarily deposited by the plaintiff and not under protest, and, therefore, the plaintiff is not entitled to any relief is, in my opinion, not correct. It is more than clear from the statement of Shri M.G. Fell Mines Manager that if the difference in

the amount had not been deposited by the plaintiff the stipulated quantity of coal would have not been supplied to him. It is also clear from the conduct of the plaintiff in serving a notice on the defendant dated 23-11-1961 that he had not paid the difference in the amount voluntarily with a view not to raise any objection later on. Similarly I am also of opinion that no case of mistake as to matter of fact essential to the agreement has occurred in the present case. Section 20 of the Indian Contract Act has no application to the facts and circumstances of the present case and it cannot be said that the agreement is void on account of any mistake of fact, but inspite of all this the fact remains that the plaintiff is not entitled to get any refund as the difference in the amount cannot be said to have been charged from him illegally.

6. On the other hand, I am of the opinion that the real nature of the contract between the parties was that the plaintiff would be supplied 108 Tons of coal at the prevalent rate, that is, the scheduled rate fixed by the Government. In this view of the matter, there is no alternative but to uphold the decision of dismissal of the suit by the two lower courts, though on different grounds.

7. In the result, I dismiss this appeal, but in the circumstances of the case I leave the parties to bear their own costs.