

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA Nos.212 of 2002 & 104 of 2003.

Judgment reserved on:29.7.2008.

Decided on: August 29, 2008

1. RFA No.212 of 2002:

H.P.State Forest Corp.Ltd.

.....Appellant.

VERSUS

Bir Singh

.....Respondent.

2. RFA No.104 of 2003:

H.P.State Forest Corp.Ltd.

.....Appellant.

VERSUS

Bir Singh

.....Respondent.

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The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?¹No

For the Appellant : Mr.Neel Kamal Sood, Advocate.

For the Respondent : Ms Bindiya Sharma, Advocate.

Kuldip Singh, Judge

This judgment shall dispose of RFA No.212 of 2002 and RFA No.104 of 2003 having arisen out of judgment, decree passed by learned District Judge,

¹ *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

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Hamirpur in Civil Suit No.2 of 1998 and Civil Suit (Cross Case) No.1 of 2001 respectively decided on 3.8.2002.

2. The facts, in brief, are that Himachal Pradesh Forest Corporation (for short 'Corporation') filed a suit for recovery of Rs.2,24,872 along with 18% interest per annum against Bir Singh respondent on the grounds that Corporation had entered into an agreement with respondent on 31.3.1995 for extraction of resin, he was allotted resin extraction work for Plot No.56/R/95 of Forest Working Division, Hamirpur. As per agreement, Bir Singh was to extract resin from 9957 blazes from different forests situated in Forest Range, Swarghat. He was to extract 42 quintals of resin per 1000 blazes in all 418.20 quintals at the rate of Rs.300 per quintal as per agreement. He could extract only 296.56 quintals and thus extracted 121.64 quintals less resin. As per agreement, he was to pay Rs.2500 per quintal for less quantity of resin extracted. Thus, for 121.64 quintals less resin extracted he became liable to pay Rs.3,04,100 to Corporation at the rate of Rs.2500 per quintal. He damaged 200 blazes at the time of tapping and caused loss of Rs.400 at the rate of Rs.2 per blaze. The respondent was entitled to Rs.88,968 for extracting 296.56 quintals at the rate of Rs.300 per quintal

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besides Rs.15000 security deposit. In this way, amount payable to respondent comes to Rs.1,03,968. Out of this amount, he had already been paid Rs.24,340 i.e. Rs.19,000 towards the cost of work done, Rs.1993 income tax at the rate of 2.24%, Rs.3347 towards store charges. According to Corporation, by adding Rs.24,340 in the amount of Rs.3,04,100 the recoverable amount from respondent comes to Rs.3,28,840 but after deducting the amount of Rs.1,03,968 to which Bir Singh is entitled towards the charges of extraction of 296.56 quintals of resin at the rate of Rs.300 per quintal, the net amount recoverable from respondent comes to Rs.2,24,872. Hence, the Corporation filed suit for recovery of Rs.2,24,872 along with interest against Bir Singh.

3. The suit was contested by the respondent, he also filed counter claim which was separately registered as a suit. In the written statement he took preliminary objections of maintainability of the suit, competency of the Director to file the suit, estoppel, suppression of material facts, limitation, jurisdiction of the Court to try the suit. On merits, he admitted the agreement dated 31.3.1995. He has admitted that he extracted only 296.56 quintals resin as against 418.20 quintals resin mentioned in the agreement. He has attributed shortage in extraction of resin to the fire

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which burnt 2191 blazes. He has also alleged that heavy rains had also affected the extraction of resin. He has denied that Rs.24,340 were paid to him. He has, however, admitted that Rs.19,000 were paid to him as against the total extracted resin of 296.56 quintals. He has submitted that Corporation is liable to pay Rs.84,968 to him on account of extraction charges of 296.56 quintals resin and also refund of Rs.15,000 security amount. The Corporation filed replication to the written statement and denied the case set up by respondent.

4. The respondent by way of counter claim claimed Rs.84,968 from the Corporation on account of extraction charges of 296.56 quintals resin at the rate of Rs.300 per quintal along with refund of security Rs.15,000 after deducting Rs.19,000 paid by Corporation to him. The counter claim of the respondent was contested by Corporation by taking preliminary objections of maintainability, Court fee, estoppel, *locus standi*. On merits, the Corporation also took the plea of limitation.

5. On the pleadings of the parties, the following issues were framed:-

- i) *Whether the defendant violated the terms and conditions of the*

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agreement dated 31.3.1995? If so, what are the terms and conditions which have been violated? OPP

- ii) If issue No.1 is proved, whether the plaintiff is entitled to recover the amount of Rs.2,24,872 from the defendant? OPP*
- iii) If issues No.1 and 2 are proved, whether the plaintiff is entitled to interest at the rate of 18% per annum. If so, from which date? OPP*
- iv) Whether the suit is within time? OPP*
- v) Whether the plaintiff is estopped to file the suit by the act and conduct of its employee? OPD*
- vi) Whether the Director Forest Corporation (North) has no authority to file the suit? OPD*
- vii) Whether the defendant is entitled to recover Rs.84,968 from the plaintiff as per the agreement with interest at the rate of 18% per annum with effect from the date of institution of the suit? OPD*

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viii) Whether the counter claim is time barred and not maintainable? OPP

ix) Whether the defendant is estopped by his act and conduct to file the counter claim? OPP

x) Whether the defendant has no locus standi to file counter claim? OPP

xi) Relief.

The learned District Judge dismissed the suit of the Corporation and decreed the counter claim of respondent for recovery of Rs.84,968 along with interest at the rate of 9% per annum by common judgment, decree dated 3.8.2002, hence, the Corporation has filed the two appeals.

6. I have heard Mr.Neel Kamal Sood, learned counsel for the appellant, Ms.Bindiya Sharma, learned counsel for respondent and gone through the record.

7. The learned counsel for the appellant in each appeal has submitted that learned District Judge has misconstrued various clauses of agreement Ext.PB (Ext.D-1) along with its annexures. It has been proved on record that respondent had extracted 296.56 quintals of resin, there is shortage of 121.64 quintals of resin and, therefore, as per agreement respondent is liable to pay to the

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appellant at the rate of Rs.2500 per quintal for 121.64 quintals less resin extracted. Learned counsel for the appellant has relied Clause 42 of the agreement. It has also been submitted that the counter claim of the respondent is time barred and, therefore, learned District Judge has erred in allowing counter claim of Rs.84,968 of respondent along with interest. He has prayed for acceptance of both the appeals. The learned counsel for the respondent in each appeal has supported the impugned judgment, decree.

8. The objection that the counter claim of the respondent was barred by time is taken first. As per Clause-3 of the agreement Ext.PB, the contract period was from 31.3.1995 to 31.12.1995. The extracted resin was to be cleared from the forest and delivered at the road side depot by 31.12.1995. In other words, the respondent was to execute the work under the agreement up to 31.12.1995 unless the agreement was extended up to 31.1.1996 by the competent authority. The period of limitation for recovery of amount in view of the agreement Ext.PB is three years. In view of the agreement, the cause of action for recovery of amount against appellant would start from 1.1.1996. The appellant vide letter dated 18.3.1997

Ext.PAA has admitted /acknowledged its liability to pay Rs.88,968 to respondent of 296.56 quintals resin at the rate of Rs.300 per quintal. This admission / acknowledgement has been repeated by the appellant in plaint dated 18.3.1998. The counter claim was filed by the respondent on 27.9.1998. Thus, taken from any angle the counter claim filed by the respondent against the appellant is within limitation and, therefore, the submission of learned counsel for the appellant that claim of the respondent by way of counter claim was time barred is rejected.

9. The learned counsel for the appellant has submitted that in fact as per Annexure II of agreement Ext.PB the number of blazes were 9957 from which resin was to be extracted by respondent. He has also submitted that minimum quantity of resin as per Annexure II was fixed 418.20 quintals. The learned counsel for the appellant has also submitted that respondent was to extract 42 quintals resin per thousand blazes, he has also submitted that respondent as per clause 8C was required to extract minimum 42 quintals resin per section and there were in all 10 sections. The learned counsel for the respondent has submitted that respondent in the written statement has stated that 418.20 quintals resin was to be supplied by respondent, this was stated in view of Annexure II of the agreement where 418.20 quintals resin quantity has been mentioned but she has submitted 418.20 quintals resin

mentioned in Annexure II of agreement Ext.PB is not in consonance with Clause 8C of the agreement. She has submitted that as per Clause 8C minimum quantity of resin 42 quintals per section as per Annexure II has been fixed. In Annexure II there are only eight sections and, therefore, the minimum quantity of resin comes at 336 quintals as against 418.20 quintals mentioned in Annexure II. She has submitted that in view of clause 8C of the agreement, the respondent was liable to supply minimum 336 quintals resin and not minimum 418.20 quintals resin as mentioned in Annexure II of the agreement. She has also submitted that in addition to this, it has come on record that 2191 blazes were burnt in fire and out of them 1071 blazes were rendered totally unfit for extraction of resin. In these circumstances, respondent is not liable to pay any amount to the appellant.

10. The clause 42 of the agreement deals with consequences of less extraction of resin than the agreed quantity. It is admitted case of the respondent that he has supplied only 296.56 quintals resin to the appellant. The connected question is whether the minimum quantity of agreed supply was 336 quintals as submitted by learned counsel for the respondent or 418.20 quintals as claimed

by learned counsel for the appellant. There is force in the submission of learned counsel for the respondent that in view of Clause 8C of the agreement read with number of sections mentioned in Annexure II of the agreement, the minimum quantity of resin comes to $42 \times 8 = 336$ quintals and not 418.20 quintals mentioned in Annexure II. There are no basis of fixing 418.20 quintals of minimum resin in Annexure II whereas the minimum quantity of resin as per Clause 8C comes to 336 quintals. The learned counsel for appellant in each appeal could not explain how 418.20 quintals of minimum quantity of resin was fixed in the agreement. He has submitted that respondent was to extract 42 quintals of resin per 1000 blazes as per clause 29 of the agreement. The clause 29 deals with employment of labour and it has nothing to do with the minimum quantity of resin to be extracted under the agreement. PW-12 Sita Ram, Senior Assistant, Office of Divisional Manager, Forest Working Division, Hamirpur has stated that out of the trees which were given to respondent for extraction of resin 2191 were burnt in fire. PW-9 J.S.Pathania, Retired Regional Manager, Forest Corporation, Hamirpur, has stated that 2191 blazes which were given to respondent were burnt in fire, out of them

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1071 blazes were rendered unfit. PW-8 Jeet Ram, Forest Range Officer, has stated that 1071 blazes were burnt absolutely and were rendered not fit for extraction of resin. He has also stated that average extraction of resin is taken 3.5 Kgs per blaze. Therefore, what emerges from the evidence is that the respondent was to supply minimum 336 quintals of resin to the appellant under the agreement at the rate of Rs.300 per quintal. The respondent supplied 296.56 quintals resin to the appellant and extraction cost as per agreement at the rate of Rs.300 per quintal of 296.56 quintals resin comes to Rs.88,968. It has come in evidence that 1071 blazes were totally destroyed in fire. It is not the case of the appellant that the fire took place due to the negligence of respondent or he was in any way otherwise instrumental in causing the fire. Therefore, the appellant is also entitled to exclusion of quantity of resin which was to be taken out from 1071 blazes. The appellant in the plaint itself projected that from 1000 blazes 42 quintals resin could be extracted. Therefore, the respondent is further entitled to exclude at least 42 quintals of resin which could have been extracted from 1071 blazes which were burnt in fire. Thus, the minimum quantity of resin which was to be supplied to appellant by

respondent comes to 294 quintals (336-42). The respondent had already supplied 296.56 quintals resin to the appellant. There is no dispute that security amount of Rs.15,000 of respondent is lying with the appellant. Therefore, the due amount of respondent from appellant comes to Rs.1,03,969 (88,968+15,000). The appellant had already paid Rs.24,340 to the respondent. Therefore, net amount payable by appellant to respondent comes to Rs.79,628 (Rs.1,03,969-Rs.24,340) on account of extraction of resin under the agreement. In these circumstances, judgment and decree in Civil Suit No.2 of 1998 requires no interference whereas judgment and decree in Civil Suit (Cross case) No.1 of 2001 is to be modified in terms of the findings recorded above.

11. No other point was urged.

12. The result of the above discussion, RFA No.212 of 2002 is dismissed, RFA No.104 of 2003 is partly allowed and judgment and decree dated 3.8.2002 passed by learned District Judge, Hamirpur in Civil Suit (Cross Case) No.1 of 2001 is modified. A decree of Rs.79,628 is passed in favour of respondent and against the appellant along with 9% interest with effect from 3.8.2002 (the date of judgment of learned District Judge) till realization of the

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decretal amount along with proportionate costs of the trial Court as well as of this Court.

August 29, 2008
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(Kuldip Singh)
Judge.