

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

**S.B. CIVIL FIRST APPEAL NO. 24/1986
S.B. CIVIL FIRST APPEAL NO. 25/1986**

Date of judgment : 30.01.2009

HON'BLE MR. C.M. TOTLA, J.

Mr. Vijay Agarwal for the appellant.
Mr. R.K. Singhal for the respondent.

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In both the appeals, the parties and alleged facts are of same nature, law and procedure to be applied is also same, so both are being decided this common judgment.

Respondent's suit No. 32/83 and 33/83 is decreed for Rs. 11550/- with cost and interest from the date of decree vide decree of 20.11.05 by the court of Additional District Judge, Sriganganagar. Challenged are the decrees by defendant.

Respondent plaintiff is registered partnership firm also dealing in sugar and appellant is a sugar manufacturing unit. Appellant auctioned sugar in lots on 10.09.79. As per respondent plaintiff (Civil suit No. 33/83) respondent purchased 250 bags of lot no.8 at the rate of Rs. 282 per quintal and excise Rs. 40.67 per bag separately payable – Central Government under Section 3 of the Essential Commodities Act, 1955 issued an order on 12.0.75 fixing the sale value of sugar as Rs. 268 per quintal , so the respondents asked appellant defendant to charge according to this fixed rate and also requested Government authorities to direct appellant accordingly – on 25.9.79 Accounts officer of appellant company came at respondent's shop and asked part consideration money

towards purchase value assuring that such payment made, sugar shall be delivered at the rate of Rs. 268 per quintal and plaintiff believing and acting on this assurance issued a cheque of Rs. 7500 on 25.9.79 to appellants which encashed on 27.9.79 but despite several reminders and notice dt.29.9.79 and requests company did not deliver sugar and issued notice to respondent regarding forfeiture of Rs. 7500/-.

Same are allegations of Civil suit No. 32/83 except that of two different lots total 50 bags at Rs. 280 per quintal and 200 bags at a rate of Rs. 281.75 purchased.

Appellants in their written statement accepting auction averred that Sugar price control Order 1979 became applicable only on sale and purchases of 12.09.79 and onwards- on 25.9.79 or any other date no officer of plaintiff visited plaintiff. Appellants averred that as per bid conditions, earnest money at the rate of Rs. 30 per bag was to be deposited on 10.09.79 or soon after and sugar was to be taken and lifted by 16.9.75 but on request of plaintiff and also some directive of concerned authorities, this time was extended upto 30.09.79 and plaintiff paid this Rs. 7500 as earnest money. Appellants submitted that company always ready to deliver and supply but respondent did not so free sale sugar quota also lapsed and left became entitled to earnest money, information of which given to plaintiffs on 29.9.79. Further averred that plaintiff company instituted civil suit (for damages) about three year earlier but plaintiff did not set up any counter claim nor claimed set off.

Appropriate issues were framed and evidence laid. Learned Judge arrived at conclusions (i) earnest money Rs. 30 per bag was

payable and was to be deposited immediately (ii) this amount paid was by way of cheque given only on 25.9.79 – so not earnest money - paid on assurance of sale of sugar at the rate of Rs. 268 per quintal (iii) since Rs. 7500 not earnest money not liable of forfeiture. Learned Judge apparently also held that for this contract of 10.09.79, Control order dated 12.09.79 was not applicable. On above findings, allowing Rs. 4050 as interest, suit decreed for Rs. 11,550 with cost and future interest at the rate of 6%.

Learned counsel for the appellant argued that basic finding of amount not being earnest money is erroneous. Argued that only because cheque was tendered on 25.09.79, it cannot be inferred that it is not earnest money – for contract of 250 bags for about Rs. 280 per bag plus 40.67, there was no reason to take as part payment of purchase price only Rs. 7500. Also argued that when sugar was sold in open auction in different lots, clearly it was ready for delivery and were specified articles, so sale became complete the moment bid was accepted and after 15 days, no reason or occasion to take part sale price only at the rate of Rs. 30. Inviting attention towards provisions of Sale of Goods Act and also Contract Act and placing reliance on judgment dated 14.03.91 in First Appeal No. 80/88 strongly argued that amount is earnest money and as plaintiffs not completed their part of agreement, so the money being earnest money rightly forfeited and decree deserves to be set aside.

Learned counsel for the respondent argued that as per plaintiff themselves and as per also circulated terms of auction, earnest money was to be deposited on the same day or soon after but in this case

for amount Rs. 7500/- cheque issued and received only on 25.9.79 and that too after promulgation of sugar Control Order on 12.09.79 - by which prices were reduced - clearly establish that this payment cannot be and not was earnest money. Argued that this fact by itself establishes that the amount was paid as part consideration money on assurance of sale at then statutory fixed rate of Rs. 268 per quintal.

Considered rival submissions. It is an admitted position that auction was held on September 10 – bids of plaintiff respondent for 250 bags of sugar (in each case) accepted. Price of about Rs. 281 per quintal as above plus excise about Rs. 40 i.e. totalling about Rs. 322 per quintal. As per Control Order, maximum price fixed Rs. 268 included basic duty, additional excise duty in lieu of sales tax or any such charges, so difference was about Rs. 54-55 per bag. Clearly is averred in the plaint that auction was for sale of 2 lots and of the two different lots, 250 bags of sugar sold. It was a finished product and articles clearly specified and this sale was essential. As per provisions of Section 64 of Sale of Goods Act, 1930 reads as under :-

64. Auction sale – In the case of sale by auction -

- (1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale ;
- (2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner ; and, until such announcement is made, any bidder may retract his bid ;
- (3)
- (4)

(5)

(6)

As per above provision, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner .

In the instant case, it is clear and is also averred in the plaint that sugar sold was in lots – out of lots given number of bags were purchased so very clearly goods sold were ascertained and in deliverable state. As provided in Section 18 of the Act, goods are transferrable when the same are ascertained. As per other provisions, when sale is specific or ascertained goods, the property is transferred as per intention of the parties. According to other provisions, if sale is of specific goods and unconditional one and no contrary stipulation or intention, the goods sold passes to buyers with the completion of contract.

As above, as per Section 64 auction sale completes the moment such is declared. Regarding these sales made on September 10th, earnest money at the rate of 30 per bag was payable on same day or soon after. Admittedly, the money Rs. 4500 paid vide cheque dated 25.9.79. In absence of any other stipulation - if for want of earnest money - the contract was terminable it primarily was at the choice of seller i.e company. But company has not retracted accepting this money Rs. 4500. Though the amount is paid on 25.9.79, but earnest money too is also exactly equal to Rs.4500, the earnest money. There is nothing to show and no averment to the effect that earnest money could not have been some time later, of the same amount. This earnest money comes

about to little less than 10%. No specific reason is for accepting such a low part of total sale value. Considering these circumstances in toto, only because amount was paid on 25.9.79, it cannot be that the amount was anything different than the earnest money.

As per Sugar Control Order, 1979, maximum price fixed is Rs. 268 per quintal but this promulgated and came into effect only on 12.09.79. This auction sale was complete on 10.09.79 so the provisions of Order were not applicable for the sale price of this sale contract completed on 10.09.79.

As per plaintiff respondents, clearly they were ready to take it only at the rate of Rs. 268 per quintal whereas, the appellant not willing. Thus, the contract is breached by plaintiff respondent.

On breach of contract, the seller in this case, appellants are entitled to forfeiture of earnest money with or without any damages, they may or may not claim.

Similar civil suit of some other dealers are dismissed vide judgment dated 14.3.91.

Considering all above findings, accepting appeal the decree impugned is to be set aside.

Consequently, both the appeals are allowed with cost. The decree in favour of respondent in Civil Suit No. 32/83 and 33/83 are set aside. The amount paid to respondents, if any, by appellants shall be repaid to them with 12% interest per annum as per order dated 15.4.86. If the amount is deposited in court, the same shall be refunded to them.

(C.M. TOTLA), J.