

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9829/2014

ORISSA MINING CORPORATION LTD.
& ORS. .. APPELLANT(S)

VERSUS

SATYASAI MINES AND MINERALS
LTD. & ANR .. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9830/2014

O R D E R

CIVIL APPEAL NO. 9829/2014

The matter raises the question of forfeiture of earnest money deposit which action of the appellants has been struck down in terms of the impugned judgment dated 16.10.2012.

The appellant Orissa Mining Corporation Ltd. (OMC) is a Government company formed for purposes of scientific development of mining resources in the State of Odisha as well as to ensure equitable distribution and supply of minerals and ores to

industries in the State of Odisha and all over the Country. OMC is stated to be involved in excavation, processing and sales of iron Ore, Chrome Ore, Manganese Ore and Limestone from the allotted mining leases of OMC.

The appellant(s) floated a tender on 27.03.2010 for disposal of 15,000 MT (+/-10%) of iron ore of 10-180 mm size (+65% Fe) from Gandhamardan Iron Ore Mine. The respondent No. 1 was required to deposit a sum of Rs.16,10,250/- (Rupees sixteen Lakhs Ten Thousand Two Hundred and fifty only) as earnest money for the same which was duly complied with and the respondent No. 1 was allotted the iron ore for lifting being highest bidder for a total value of Rs.4,87,65,000/- (Rupees 4.87 Crore) approximately.

The respondent No. 1 deposited the value of only 9,500 MT for which sale order was issued by the appellant(s). It may be noticed that the contract period stipulated 3 months for lifting of the iron ore from 03.04.2010 to 30.06.2010.

The relevant clauses of the contract which arises for consideration are set out as under:

"9. Earnest Money Deposit

EMD against the above supply shall be refunded after completion of lifting of entire quantity ore in the stipulated time of lifting time indicated vide Clause-11. In the event of failure of lifting as per Lifting Schedule within the stipulated period,

the Earnest Money deposited by the buyer shall be forfeited."

11. Lifting Schedule

The buyer has to lift the entire allotted cargo by 30.06.2010. In the event of failure of lifting as per the above schedule, Earnest Money deposited by the buyer will be forfeited."

On completion of necessary formalities, respondent No. 1 lifted only 9486.010 MT of Iron ore out of the allocated 15,000 MT and failed to deposit the amount towards the balance 5500 MT. Thus, the lifted quantity is little less than 65%. The appellant thus invoked the forfeiture clause for the earnest money and forfeited the earnest money amount which was duly intimated to the respondent(s) by letter dated 27/28.08.2010.

The aforesaid decision was assailed by the respondents in WP(C) No. 16927/2010 before the High Court of Orissa praying for the quashing of the said letter and in terms of the impugned judgment the letter was quashed and the appellant(s) was directed to refund the amount.

The matter was listed for disposal on 14.12.2021 but none appeared for the respondents. This was despite the fact that hearing in the case was expedited at the request of the respondents. We deferred adverse orders and listed the matter today, but still none represents the respondents.

Thus, we have heard learned counsel for the appellants and perused the record.

We may note that the operation of the impugned order had been stayed on 22.03.2013 and leave was granted on 12.09.2014.

On the factual matrix, learned counsel for the appellants points out that the requirement of lifting of tendered quantity within the stipulated period is insisted upon since the price of the ore is fixed periodically and may vary from quarter to quarter. The objective is to avoid any mischief as the price may go down or up and if it goes down, the contracting party may not lift the ore.

Learned counsel has referred to his synopsis to point out that the price of the graded iron ore in question had gone down by Rs. 399 per MT resulting in a loss of Rs.21.99 lakh to the appellant(s) which is much more than EMD of Rs. 16.10 lakh forfeited. In any case, he submits, this is not an aspect which should have been examined in the nature of the proceedings before the Court and refers to the judgment of this Court in *Satish Batra Vs. Sudhir Rawal*, (2013) 1 SCC 345, which has referred to the earlier judgments too in respect of "Earnest Money" Clauses. It was opined that in case of default by buyer the seller was entitled to forfeit unconditionally the earnest

money paid in terms of the clauses stipulated as it is in the nature of a pre estimate of damages stipulated with the objective of the parties complying with their contractual obligations.

Learned counsel also points out that the price having fallen, respondent No. 1 made excuses for not lifting, including, delay in issuance of form V whereas actually the fact was that it was applied on 05.04.2010 and issued on 07.04.2010. There had been no grievance against the quality of the ore as was sought to be contended in the writ petition and these were clearly after thoughts.

We are in agreement with the submission of the learned counsel for the appellants that the sanctity of the contract must be maintained and when there is clear and unequivocal term in the contract providing for the forfeiture of EMD, the same should be adhered to as otherwise it would amount to giving a licence to the parties to breach the terms of the contract. We also find that the reliance on the other cases had not given rise to similarity and the grievances had been raised post the period within which the contract had to be concluded. Even in the factual matrix, the loss stated to be caused to the appellant is more than the earnest money forfeited.

In view of the aforesaid reasoning, we set

aside the impugned order and dismiss the writ petition filed by the respondents before the High Court.

The appeal is accordingly, allowed leaving the parties to bear their own costs.

CIVIL APPEAL NO. 9830/2014

The matter raises the question of forfeiture of earnest money deposit which action of the appellants has been struck down in terms of the impugned judgment dated 16.10.2012.

The appellant Orissa Mining Corporation Ltd. (OMC) is a Government company formed for purposes of scientific development of mining resources in the State of Odisha as well as to ensure equitable distribution and supply of minerals and ores to industries in the State of Odisha and all over the Country. OMC is stated to be involved in excavation, processing and sales of iron Ore, Chrome Ore, Manganese Ore and Limestone from the allotted mining leases of OMC.

The appellant(s) floated a tender on 27.03.2010 for disposal of 5,000 MT of iron ore of 10-180 mm size (+65% Fe) & 5,000 MT of iron ore of 10-180 mm

size (+63% Fe) from Gandhamardan Iron Ore Mine. The respondent No. 1 was required to deposit a sum of Rs.8,74,000/- (Rupees Eight Lakhs Seventy four Thousand only) as earnest money for the same which was duly complied with and the respondent No. 1 was allotted the iron ore for lifting being highest bidder for a total value of Rs.1,46,80,859.52/- (Rupees 1.46 Crore) approximately.

The respondent No. 1 deposited the value of only 2,495 MT for which sale order was issued by the appellant(s). It may be noticed that the contract period stipulated 3 months for lifting of the iron ore from 03.04.2010 to 30.06.2010.

The relevant clauses of the contract which arises for consideration set out as under:

"9. Earnest Money Deposit

EMD against the above supply shall be refunded after completion of lifting of entire quantity ore in the stipulated time of lifting time indicated vide Clause-11. In the event of failure of lifting as per Lifting Schedule within the stipulated period, the Earnest Money deposited by the buyer shall be forfeited."

11. Lifting Schedule

The buyer has to lift the entire allotted cargo by 30.06.2010. In the event of failure of lifting as per the above schedule, Earnest Money deposited by the buyer will be forfeited."

On completion of necessary formalities, respondent No. 1 lifted only 2486.145 MT of Iron

ore out of the allocated 5,000 MT and failed to deposit the amount towards the balance 2505 MT. Thus, the lifted quantity is little less than 50%. The appellant thus invoked the forfeiture clause for the earnest money and forfeited the earnest money amount which was duly intimated to the respondent(s) by letter dated 27/28.08.2010.

The aforesaid decision was assailed by the respondents in WP(C) No. 16927/2010 before the High Court of Orissa praying for the quashing of the said letter and in terms of the impugned judgment the letter was quashed and the appellant(s) was directed to refund the amount.

The matter was listed for disposal on 14.12.2021 but none appeared for the respondents. This was despite the fact that hearing in the case was expedited at the request of the respondents. We deferred adverse orders and listed the matter today, but still none represents the respondents.

Thus, we have heard learned counsel for the appellants and perused the record.

We may note that the operation of the impugned order had been stayed on 22.03.2013 and leave was granted on 12.09.2014.

On the factual matrix, learned counsel for the appellants points out that the requirement of lifting of tendered quantity within the stipulated

period is insisted upon since the price of the ore is fixed periodically and may vary from quarter to quarter. The objective is to avoid any mischief as the price may go down or up and if it goes down, the contracting party may not lift the ore.

He submits that the aspect of actual loss is not an aspect which should have been examined in the nature of the proceedings before the Court and refers to the judgment of this Court in *Satish Batra Vs. Sudhir Rawal*, (2013) 1 SCC 345, which has referred to the earlier judgments too in respect of "Earnest Money" Clauses. It was opined that in case of default by buyer the seller was entitled to forfeit unconditionally the earnest money paid in terms of the clauses stipulated as it is in the nature of a pre estimate of damages stipulated with the objective of the parties complying with their contractual obligations.

Learned counsel also points out that the price having fallen, respondent No. 1 made excuses for not lifting, including, delay in issuance of form V whereas actually the fact was that it was applied on 05.04.2010 and issued on 07.04.2010. There had been no grievance against the quality of the ore as was sought to be contended in the writ petition and these were clearly after thoughts.

We are in agreement with the submission of the learned counsel for the appellants that the sanctity of the contract must be maintained and when there is clear and unequivocal term in the contract providing for the forfeiture of EMD, the same should be adhered to as otherwise it would amount to giving a licence to the parties to breach the terms of the contract. We also find that the reliance on the other cases had not given rise to similarity and the grievances had been raised post the period within which the contract had to be concluded. Even in the factual matrix, the loss stated to be caused to the appellant is more than the earnest money forfeited.

Learned counsel for the appellants points out that where the very respondent No. 1 had lifted 90% of the amount in respect of another contract, the EMD had been refunded which would establish the bona fides of the appellants.

In view of the aforesaid reasoning, we set aside the impugned order and dismiss the writ petition filed by the respondents before the High Court.

The appeal is accordingly, allowed leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M.M. SUNDRESH]

NEW DELHI,
DECEMBER 16, 2021.

ITEM NO.101

COURT NO.6

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9829/2014

ORISSA MINING CORPORATION LTD. . & ORS.

Appellant(s)

VERSUS

SATYASAI MINES AND MINERALS LTD. . & ANR.

Respondent(s)

([PART-HEARD BY HON'BLE SANJAY KISHAN KAUL AND HON'BLE M.M.
SUNDRESH ,JJ.])

WITH

C.A. No. 9830/2014 (XI-A)

Date : 16-12-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Raj Kumar Mehta, AOR
Ms. Himanshi Andely, Adv.

For Respondent(s) Mr. Nirnimesh Dube, AOR (Not Present/connected)

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the
signed order.

Pending applications, if any, stand disposed
of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

[Signed order is placed on the file]