Mohd. Salamatullah And Ors. vs Government Of Andhra Pradesh on 19 January, 1977

Equivalent citations: AIR1977SC1481, (1977)3SCC590, AIR 1977 SUPREME COURT 1481, 1977 3 SCC 590

Author: V.R. Krishna Iyer

Bench: A.C. Gupta, V.R. Krishna Iyer

JUDGMENT

v.R. Krishna Iyer, J.

1. This appeal, by certificate, turns on the quantum of damages to be awarded for a breach of contract for manufacture of guns to be supplied to the Nizam's Hyderabad Government, a story before the Police Action, way back in 1947.

2. The facts of the case are that the then Hyderabad Government had placed orders with the plaintiffs-appellants for manufacture of certain number of guns, the price per gun being put at Rs. 125/-. Although some of the guns were manufactured the contract could not be completed and it is now concurrently found that there was a breach of contract on the part of the State. The plaintiffs claimed as damages for breach of contract a huge sum under various heads. The trial Court awarded a decree in a sum of Rs. 5,42,704-14-6. The aggrieved State took up the matter in appeal to the High Court which granted a decree in a sum of Rs. 4,73,847-6-1. Substantially, both the courts agreed on most of the heads of claim. The only major difference was in the rate of damages for breach of contract based on estimated profits. The trial Court put this figure at Rupees 1,87,500-0-0. Although the plaintiffs had claimed a much larger sum, the State, through its counsel pointed out that as per Ex. 62/29 the plaintiffs themselves had estimated the margin of profit at a sum of Rupees 1,87,500/- which worked out to 15 per cent of the total amount invested in the gun-making In short based on this argument of Government Counsel, the trial Court awarded the aforesaid sum of Rs. 1,87,500/-. Of course, it must be said at this stage that P.W. 1, the first plaintiff, had deposed to the effect that Rupees 25/- per gun was the agreed profit and there was no cross-examination on this point by the State-defendant. Even so the trial Court chose to reduce the claim under the head of damages for breach of contract to 15 per cent for the reasons mentioned above.

3. In the grounds of appeal there is nothing seen to indicate why the 15% awarded by the trial Court should not have been granted. There is only a general ground (ground No. 6) in the memorandum of appeal which does not make any specific point at all regarding the quantum of damages. It is true that Shri Parmeshwararao appearing for the State has attempted to draw our attention to certain

facts lying dormant in the record warranting the reduction of the quantum of damages, but we are not inclined to investigate into the matter de novo when no ground has been raised in the memorandum of appeal to the High Court.

4. However, the High Court, after setting out the facts bearing on the quantification of the damages, stated, without any convincing reasoning:

> We think that it will be just and reasonable to put this profit at 10 per cent of the contract price which works out to Rs. 1,25.000/-.
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> We are not able to discern any tangible material on the strength of which the High Court reduced the damages from 15% of the contract price to 10% of the contract price. If the first was a guess, it was at least a better guess than the second one. We see no justification for the appellate court to interfere with a finding of fact given by the trial Court unless some reason, based on some fact is traceable on the record. There being none we are constrained to set aside the judgment of the High Court in regard to the assessment of damages for breach of contract. We restore the award of Rs. 1,87,500 made by the trial Court on account of estimated profits (it transpires that when the trial Court passed the decree the amount was recovered by the appellants with the result that there was nothing more to be paid by the State to the respondents herein). Of course, having regard to all the circumstances of the case we direct the parties to bear the costs in this Court. We may make it further clear that in regard to other items of claim we uphold what the High Court has awarded. In view of the fact that shortly after the decree was passed by the trial Court the decree amount appears to have been recovered by the respondents, we do not award any interest under the decree.

5. By the time we reached the concluding part of the judgment, counsel on both sides agreed that instead of making complicated calculations over small amounts, it would be better to leave the parties be quits : neither party will have to pay the other any amount (inclusive of court fee).