

High Court Form No. 2
Heading of Judgment in original suit
**IN THE COURT OF THE CIVIL JUDGE AT
DIBRUGARH**

District : Dibrugarh

Present : *Smti. Jharna Saikia,*
Civil Judge, Dibrugarh

Title Suit No. 72 of 2016

Tuesday, the 12th day of July, 2022



- 1. Sri Pavan Changmai**
Proprietor of M/S Pavan Changmai
Resident of Mancutta Road,
P.O. and P.S. Dibrugarh,
District Dibrugarh Assam.

.....PLAINTIFF

-Vs-

- 1. State Bank of India**

a body corporate, constituted under
the State Bank of India Act, 1955,
carrying on the business of banking,
having its Central Office at State Bank

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Bhavan, P.B.No.12, Madame Came Road, New Administrative Building, Nariman Point, Mumbai-400021, having its branches amongst others at Dibrugarh Thana Chariali, P.O. Dibrugarh, District Dibrugarh, Assam.

..... Defendant

2. Metal Scrap Trade Corporation Limited

A Government of India Company incorporated under the Companies Act, 1956 engaged in domestic and international trading activity, having its Head Office at 225-C, A.J.S. Bose Road, Kolkata-20.

3. Brahmaputra Valley Fertilizer Corporation Limited.

A Government of India Undertakings incorporated under the Companies Act, 1956, engaged in production, sale and supply of nitrogenous fertilizer, having its Corporate Office at Namrup, P.O. Parbatpur, District Dibrugarh, Assam

..... PROFORMA DEFENDANTS



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This suit coming on for final hearing on this 13th day of June, 2022 in the presence of :

Advocate for the Plaintiff : Mr. R.K. Borthakur

Advocate for Defendants : Mr. J. Ahmed

And having stood for consideration on this 12th day of July, 2022 this Court delivered the following judgment.

J U D G M E N T

This is a suit for declararion and recovery of

Rs.4,00,00,000./-

Case of the Plaintiff : Sri Pavan Changmai.

1. The facts leading to the filing of the suit is that the Proforma Defendant No. 3, in order to dispose the remaining unusable assets, as a whole lot, of its closed Namrup - I Unit published an online Auction notice inviting prospective bidders to deposit the Pre Bid Earnest Money Deposit amounting to Rs. 22,00,000/- by way of RTGS / NEFT in the Account No.ZMSKOL0000083292 of IndusInd Bank, Savitri tower, 3 Upper wood, Kolkata on or before 18.07.2016 at 4.30pm positively . It was also notified by the Proforma Defendant



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No. 3 that the prospective bidders may inspect the lot of assets in its campus.

2. The plaintiff being one of such prospective bidders offered his bid in response to the said Auction notice and inspected the lot of assets at the site of the Proforma Defendant No. 3. During the inspection, the Plaintiff observed that the said lot of assets comprised of huge quantities of copper, silver, brass, steel, iron and other materials, etc and the Plaintiff estimated that the bid for the said lot of assets may be offered at Rs. 8,00,00,000/- and that the total assets may be disposed of at Rs. 12,00,00,000/- thereby expecting a gross income of Rs. 4,00,00,000/- from the sale proceeds of the said assets in case, the Plaintiff succeeds the bid.



3. The Plaintiff therefore, applied to transfer the amount of Rs. 22,00,000/- through the Dibrugarh Branch of the Defendant No. 1 via online mode by debiting from his account maintained in the said Dibrugarh Branch and crediting in the account of the Proforma Defendant No. 3. However, the Defendant No. 1 sent a letter dated 19-7-2016 to the Plaintiff

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addressed to the Proforma Defendant No. 2 informing it about the RTGS transaction of Rs. 22,00,000/- favouring MSTC Limited, Account No. ZMSKOL0000083292 of IndusInd Bank, Kolkata was reversed back on 18-7-2016 due to invalid number. It was also stated in the said letter that the account number in the said transaction was ZMSKDL0000083292 instead of ZMSKOL0000083292.



4. The Plaintiff further stated that due to the negligence and reckless act of the defendant no.1 in remitting the said money to a wrong account, the plaintiff missed the opportunity to take part in the proposed bid and earn a substantial income out of the deal. Hence, the Plaintiff had filed the instant suit praying for the following reliefs:

a). Declaration that the action of the Defendant No. 1 in remitting the amount of Rs. 22,00,000/- to the Defendant No. 2 by way of RTGS putting the wrong account number is careless, reckless, negligent and irresponsible;

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b). Recovery of the amount of Rs. 4,00,00,000/- as damage from the Defendant No. 1;

c). Cost of the suit;

d). Any other relief (s) to which the Plaintiff may be found entitled to under law and equity.



5. Summons was issued to the defendants. The Defendant No. 1 has although appeared on receipt of summons but failed to file his written statement on time and as such, the Defendant No. 1 was debarred from filing its Written Statement vide order dated 15.02.2017. However, on perusal of the case record it was seen that the Defendant No. 1 filed its written statement and a copy of the same was also furnished to the Plaintiff.

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6. On perusal of the record it was also found that the summons were duly served upon the Defendant Nos. 2 and 3 but they failed to make their appearance and file their written statement and as such, the suit proceeded ex-parte against them vide orders dated 21-7-2017. After further perusal and on being

satisfied that there was no scope of settlement between the parties, the court proceeded with the trial.

7. The court did not frame any formal issue as none of the Defendants filed any written statement. However, the following points for determinations are formulated by the Court for proper disposal of the case:

a). Whether the Plaintiff suffered loss due to the mistake on the part of the Defendant?

b). Whether the Plaintiff is entitled to any relief as claimed for in the suit. If so, then what relief(s) is the Plaintiff entitled to.

8. During the trial the Plaintiff adduced the evidence of 1 (one) witness viz., Sri Paban Changmai who was cross examined by the Defendant. No witnesses came from the side of the Defendant to adduce any evidence. The Plaintiff also exhibited 6 nos. of documents before this Court. The Defendant did not exhibit any documents.



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9. I have gone through the entire case record and heard the submissions of the Learned counsels of both the parties at length and accordingly, now proceed to discuss both the points together and decide the suit with reasons as follows:
10. The P.W.1 in his evidence-in-affidavit has reiterated his statements mentioned in the plaint of the instant suit and for the sake of brevity I refrain from reproducing the same.
11. During his cross examination, the PW 1 stated that the Pre-Bid EMD money could not be sent due to the technical mistake of the bank. It was also stated that he came to know that his money has not been received as on the day of the tender i.e., on 20-7-2016, he could not open his ID due to non-credit of the Pre-Bid EMD money. Further it was also stated that he did not submit any estimate file relating to the alleged loss of Rs. 4 crores incurred by the Plaintiff. The suggestion given by the Ld. Counsel of the Defendant that the Plaintiff did not have the authority to claim a sum of Rs. 4 crores from the Defendant was denied by the PW1/Plaintiff.



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12. Now an analysis of the documents submitted by the Plaintiff reveals that Ext 1 is the Auction details with the Special Terms and Conditions wherein the terms and conditions for the payment of the Pre-Bid EMD were mentioned. In the said document, against the Point 'PRE-BID EMD' it was written that "The buyer has to submit a Pre-Bid EMD as Table below by way of ONLINE PAYMENT (RTGS/NEFT) on or before 18.07.2016 at 4:30 pm positively without any condition". It was also stated therein that "EMD through RTGS must be routed through our website only with an intimation to MSTC, ERO indicating the buyer's id and UTR No. as provided by the benefactor bank". The details of the Bank of the MSTC Limited, ERO Kolkata was provided in the said Ext 1 wherein the name of the bank was IndusInd Bank.



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13. It was further stated in Page No. 2 of the said Terms and Conditions that "Pre-Bid by means of DD / PO shall not be acceptable" and that "No Pre-Bid EMD will be accepted beyond this date and time". In the said Ext 1 (Page No. 2) it was also mentioned that "only the

registered customers who will be submitting their Pre-Bid amount within the aforesaid period will be eligible to participate against the abqve mentioned lot.”

14. The Ext 2 contains the list of the assets (73 nos. of pages) which were supposed to be auctioned by the Brahmaputra Valley Fertilizers Corporation Limited, Namrup Plant-I.
15. Ext 3 is the Application made by the Plaintiff whereby he had requested the State Bank of India, i.e., the Defendant to Debit his account bearing no. '30328208369' and credit the said amount in the name of the beneficiary i.e., MSTC Limited having account in IndusInd Bank, Kolkata bearing account no. ZMSKOL0000083292 for an amount of Rs. 22,00,000/- (Rupees Twenty Two Lakhs).
16. The aforesaid documents have not been disputed by the Defendants in any way and therefore, it can be said that the Defendant has admitted the said documents to be correct. In such a case, it can be said that the fact that the Plaintiff had applied for the Auction Sale of the Assets intended to be sold



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by the Brahmaputra Valley Fertilizers Corporation Limited and have proceeded to pay the Pre-Bid EMD as per the requirement is proved.

- 17.** Ext 4 is the copy of the Transaction Enquiry Statement dated 19-7-2022 wherein the transaction relating to the Pre-Bid EMD was made. From the said document it can be seen that vide Journal Entry no. 31357112 the amount of Rs. 22,00,000/- was debited from the account of the Plaintiff and vide Journal No. 36853336 the said amount was again credited to the account of the Plaintiff. It needs to be mentioned herein that the printout date of the said document was 19-7-2016. Furthermore, the signature of the authorised signatory in the said document bears the date 19-7-2016.



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- 18.** Now in such a scenario, it can be said that the Plaintiff had the knowledge of the remittance of the money on 19-7-2016 and not on 20-07-2016.
- 19.** Ext 5 is the copy of the letter which was sent to the Plaintiff by the Defendant no. 1 addressing the MSTC Limited about the fact

that due to invalid entry of the account number from the end of the Defendant, the amount of Rs. 22,00,000/- could not be credited in the account of MSTC Limited and therefore, the Deputy Manager (SME) requested the authorities of MSTC Limited to do the needful at their end as after perusing the records it was found by the authorities of the Defendant that the account number was typed as 'ZMSKDL0000083292' instead of 'ZMSKOL0000083292'. Ext 6 which is the RTGS Message Type details reveals that the account number of the beneficiary was typed as 'ZMSKDL0000083292'.



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- 20.** This very fact describes that the Defendant had accepted that there was wrong entry in the account number of the MSTC Limited due to which the sum of Rs. 22,00,000/- could not be sent to the account number of MSTC.
- 21.** The Plaintiff in his argument has stated that as the plaintiff being engaged in contract works under the Central and State Government, Semi Government and Corporate sectors etc., was interested to offer the bid in response to the Auction notice of the

Brahmaputra Valley Fertilizer Corporation Limited and inspected the assets in the site of the establishment of the Proforma Defendant No. 3. it was also argued that while thoroughly inspecting the lot as well as, the list of assets, he observed that the said lot of assets comprised of huge quantities of copper, silver, brass, steel, iron and other materials, etc. And came to the conclusion that the bid may be offered at Rs. 8,00,00,000/- (Rupees Eight Crores) and the plaintiff was satisfied that in case he succeeds in the bid, the total asset may be disposed at Rs. 12,00,00,000/- (Rupees Twelve Crores) thereby expecting a gross income of Rs. 4,00,00,000/- (Rupees Four Crores).

- 22.** Vide this very fact and from the evidence-in-affidavit of the plaintiff one thing which is certain is that the Plaintiff has not furnished any cogent and sufficient material to provide that firstly, he would have won the bid and secondly, that in case he won the bid, the gross income would exactly be Rs. 4,00,00,000/- (Rupees Four Crores). The plaintiff, as stated in his cross examination, did not provide any document to show that



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the amount of loss which he sustained, or in other words, his income after disposing of the assets would be Rs. 4,00,00,000/-. Everything which was stated by the Plaintiff was based on a future anticipation and the Plaintiff did not have any reasonable ground to hold had he been participated in the bid, it was he who would have won the bid and none else. In such a situation, the fact that the Plaintiff sustained huge losses for non payment of the Pre-Bid EMD cannot hold ground. The only thing which would have happened is that the Plaintiff would have got a chance to participate in the bid. However, this does not entitle him to win the bid and earn a gross income of Rs. 4,00,00,000/- as stated above in any way. Furthermore, the figures quoted by the Plaintiff relating to the sale price of the assets alleged to be Rs. 8,00,00,000/- and disposal of the assets at around Rs. 12,00,00,000/- are all based on mere assumptions and the Plaintiff has not provided any reliable and cogent reason or explanation of arriving at such a conclusion. The Plaintiff did not submit any document by which the Court even could assess the sale price of the



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assets and the profit / loss that the Plaintiff would have incurred through the sale of the assets had he been given an opportunity to participate in the bidding process.

23. The Plaintiff has further argued that it was due to the unwarranted, careless and negligent discharge of the duties by the Defendant No. 1 which caused huge financial loss to the Plaintiff's by around Rs. 4,00,00,000/-. In this regard, the fact that the loss was to the tune of Rs. 4,00,00,000/- cannot be said with full conviction that the bank was responsible for causing loss to the Plaintiff to the extent of such an amount.

24. It was also argued that the Plaintiff met with an accident due to which he sustained grievous injuries and he became physically incapacitated to move. It was also argued that as he did not recover and became permanently disabled and as such, the plaintiff manages all his businesses and contract works through his staff and employees but due to the reckless and irresponsible acts of the Defendant no. 1 in wrongly quoting the account no. Of the



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proforma defendant no. 2 in the RTGS transaction, the plaintiff was deprived from taking part in the proposed bid for auction of the assets of the proforma defendant no. 3 and thus his expectation of earning a substantial income therefrom has been frustrated.



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25. The fact that the Plaintiff has met with an accident is unfortunate but the Plaintiff cannot be allowed to make the Defendant bank shoulder the responsibility under the garb of certain assumptions of loss of income.
26. Another point which was argued by the Plaintiff was that as the defendants were debarred from filing their written statement, the cross examination of the Plaintiff by the Defendant should not be considered. In this context the observation of the Hon'ble Supreme Court in the case of **Modula India v. Kamashya Singh Deo [1988 SCC (4) 619]** can be taken into consideration which states that:

".....But while it is true that, in a broad sense, the right of defence takes in all aspects including the demolition of the

plaintiff's case by cross examination of his witnesses, it is equally correct that the cross examination of the plaintiff's witnesses really constitutes a finishing touch which completes the plaintiff's case. No oral testimony can be considered satisfactory or valid unless it is tested by cross examination. The mere statement of plaintiff's witnesses cannot constitute plaintiff's evidence unless and until it is tested by cross-examination. The right to defence to cross examine plaintiff's witnesses' can be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon.....the basic principle that where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears.....for after all, the court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the court in pointing out the defects, weaknesses, errors and



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inconsistencies of the plaintiff's case. We therefore, think that the defendant should be allowed his right of cross examination and arguments."

- 27.** Hence, in the light of the above discussion, the right of cross examination by the Defendant is not illegal and therefore, can be considered in the eyes of law.
- 28.** Now, considering all the above, it can be said that the Plaintiff might have suffered a loss but the fact that he actually would have incurred a loss of Rs. 4,00,00,000/- (Rupees Four Crores) cannot be taken into account as the same is based on a contingent event and the Plaintiff has merely given certain figures based on his anticipation of his future sales and income which could not be considered in the present circumstances. Further the Plaintiff also failed to furnish any cogent evidence to prove that he would have won the bid with certainty and as a result of such win, he would have earned an income of Rupees Four Crores. In such a case, it cannot be said that the Plaintiff has suffered any loss. Even though from Ext 5 and Ext 6 it can be seen



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that the account number of the beneficiary was wrongly typed, the same cannot be held to have made the Plaintiff incur such a huge loss but at best, would have entitled the Plaintiff to participate in the bid process. In such a scenario, it cannot be said that the Plaintiff suffered severe loss due to the mistake on the part of the Defendant. This point is answered in favour of the Defendant and against the Plaintiff.



29. From the above discussion it can be seen that the Plaintiff lost an opportunity to bid for the auction of the assets of the Brahmaputra Valley Fertilizer Corporation Limited, due to the mistake on the part of the Defendant. Considering the same, the Defendant is liable to pay as a sum of Rs. 50,000/- (Rupees Fifty Thousand) on account of compensation along with cost of the suit to be calculated as per the law. This point is answered in favour of the Plaintiff and against the Defendant.

30. Thus in view of the aforesaid discussions and reasons the suit is disposed off on contest with the following reliefs in favour of the plaintiff.

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ORDER

A). The Plaintiff is entitled to a sum of Rs. 50,000/- as compensation from the defendant no.1 i.e. State Bank of India along with the cost of the suit.

B). The cost of the suit is to be calculated as per the law.

31. The suit is disposed off on contest with cost.

32. Prepare a decree accordingly.

Given under my hand and seal of this Court on this the 12th day of July, 2022 in the Court of the Civil Judge, Dibrugarh.

Dictated & corrected by me,

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APPENDIX

Plaintiff's witnesses :

P.W.1 : Sri Paban Changmai

Plaintiff's Exhibits :

Ext.1 : On line print out of the auction details with the Special Terms and Conditions .

Ext.2 : On line print out list of assets containing 73 pages.


Ext.3 : On line print out office copy of the application dated 18.07.2016.

Ext.4 : Online print out of the transaction Enquiry Statement.

Ext.5 : Letter dated 19.07.2016.

Ext.6 : RTGS Message Type Details.




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