

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on: 28.1.2010

% *Order delivered on: 04.2.2010*

+ **CS(OS)2000/1995**

GURDIAL SINGH & ORS.Plaintiffs
Through: Mr. Raman Kapur with
Mr.Manish Kumar,
Advocates.

Versus

FOOD CORPORATION OF INDIADefendant
Through: Mr.Deepak Dewan,
Advocate.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
Yes
3. Whether the judgment should be reported in the Digest?
Yes

INDERMEET KAUR, J.

1. Plaintiffs are 21 in number. They are residents of Taran Taran, District Amritsar, Punjab. They had entered into an agreement with the defendant i.e. the Food Corporation of India a public sector undertaking of the Government of India for specific performance/damages for breach of their agreement pursuant to which the defendant had agreed to take 20000 metric tons of

space on which godowns were to be constructed by the plaintiff for storage/warehouses purpose of the defendant.

2. It is stated that the defendant has committed a breach of the agreement dated 4.7.1980 extended by the subsequent agreements dated 29.7.1985, 1.11.1985, 3.1.1986. In terms of the agreement dated 4.7.1980 plaintiff had agreed to construct godowns of 20000 metric tons capacity at Taran Taran District, Amritsar possession of which was to be taken by the defendant for the purposes of storage of cement. However, the state government did not allocate the cement to the defendant in time, the godowns also could not be constructed within the stipulated time i.e. upto 30.11.1981. Extension of time was requested on 3.12.1981 which was granted vide letter dated 17.6.1982; on 29.6.1982 a further extension of time was sought by the plaintiffs.

3. Plaintiffs had taken a loan of Rs.20 lakhs from the Oriental Bank of Commerce for the construction of the said godowns. Extension of time was however not granted/communicated in spite of applications to the said effect having been made by the plaintiffs vide communications dated 4.6.1983, 8.8.1983 and 22.3.1984.

4. In July 1985 defendant gave an advertisement in the newspaper asking for covered storage space to be made available for godowns; earnest money of Rs.10,000/- was required to be submitted by 29.7.1985. Plaintiff made his offer of handing over 15000 metric tons capacity of space at Taran Taran District

Amritsar for the purposes of godowns . This offer was accompanied by earnest money i.e. a draft amount of Rs.10,000/-.

5. On 1.11.1985 representatives of the plaintiff met the negotiation committee of the defendant. Plaintiff on the said date filled up the requisite performa for the agreement to hand over possession of 15000 metric tons of godown space by 1.5.1987 at New Delhi. Plaintiff had agreed to the offer of the defendant at the rate of Rs.1 per sq.ft. per month for a period of five years extendable by a further two years for taking the godowns on rent. This was in terms of the letter dated 3.1.1986 issued by the Zonal office at New Delhi addressed to the Senior Regional Manager, FCI, Chandigarh with the copy to the plaintiff and the Manager of the Oriental Bank of Commerce, Taran Taran.

6. On 22.4.1987 godowns of 15000 metric tons capacity were ready for possession; remaining 5000 metric tons with open plinth were also completed which was communicated vide letter of dated 23.4.1987. Plaintiff had asked the senior manager of the defendant to arrange for inspection and to take possession of all the godowns.

7. On 29.4.1987 plaintiff addressed a similar letter to the Zonal Manager, North asking for arrangement for inspection to be made. On 24.6.1987, Assistant Manager, FCI, Chandigarh visited the godowns and found them to be completed. He gave his report dated 30.6.1987 to the District Magistrate, Amritsar.

8. On 5.11.1987, godowns of 15000 metric tons capacity were completed by the plaintiff in all respects and the same had been inspected by their architect. In terms of the architect's report dated 5.11.1987 plaintiff requested the defendant to take immediate possession of the godwon vide his letter dated 10.11.1987.

9. On 3.12.1987 Harmit Singh inspected the godowns constructed by the plaintiffs in terms of the instructions which had been issued to him by the District Manager, FCI which were dated 27.11.1987; report was submitted on 3.12.1987.

10. Defendant in spite of repeated requests has failed to take over the possession of the completed godows. On 18.12.1988, 9.3.1989 and again on 7.4.1989 plaintiff wrote letters to the defendant requesting them to take over possession of the said godowns but to no avail.

11. On 21.4.1989 defendant wrote a letter to the General Manager of the Oriental Bank of Commerce stating that the matter of the taking over possession of the godowns on rent was under consideration.

12. Defendant has committed a breach of the agreement between the parties; in spite of the godowns having been completed in terms of the inspection carried out on 3.12.1987, the possession of the the godowns had not been taken resulting in loss to the plaintiff.

13. Plaintiff has made the following prayers:

(i) A decree be passed in favour of the Plaintiff and against the defendant; directing the specific performance of agreement dated 29.7.90 to take the constructed godowns on lease for a period of five years on market rates existing at the time of passing of the decree.

(ii) That the plaintiffs be awarded interest at the rate of 18% per annum on the rent payable by the defendant from 3.12.1987 to the passing of the decree.

14. Written statement has been filed by the defendant. The claim of the plaintiff has been denied. The first preliminary objection is on the territorial jurisdiction of this court; it is stated that godowns had to be constructed at Taran Taran District Amritsar and no cause of action has arisen at Delhi ousting the jurisdiction of this court. It is stated that the specific performance of the agreements dated 29.7.1985, 1.11.1985 and 3.1.1986 cannot be gone into in a suit which has been filed on 29.11.1990 as specific performance in terms of the aforesaid agreement would be time barred.

15. On merits it is stated that no cause of action has arisen against defendant as the plaintiff has not been able to substantiate his claim in any manner.

16. Time was the essence of the contract between the parties. The godowns in terms of the earlier agreement dated 4.7.1980

were to be completed within seven months which admittedly had not been adhered to. There was a complete failure on the part of the plaintiff in the completion of the godowns.

17. The offer dated July 1985 was a fresh offer as it had no link with the agreement dated 4.7.1980. It is denied that the godowns were fit for occupation on 3.12.1987 or that the defendant has failed to take the possession of the same in spite of the same having been completed in all respects. Suit of the plaintiff is liable to be dismissed.

18. Replication has been filed by the plaintiff reiterating the averments made in the plaint and denying the submission and defence as set up by the defendant in its written statement.

19. On 30.7.1998 on the pleading of the parties the following issues were framed:

1. Whether the suit is maintainable in its present form?
2. Whether this Court has territorial jurisdiction to try the suit?
3. Whether the defendant has in any manner breached the agreement dated 4.7.1980 as extended by agreement dated 29.7.1985, 1.11.1985, 3.1.1986 and 29.7.1990? If so, its effect?
4. Whether the plaintiffs are entitled to for specific performance of the agreement dated 29.7.1990?
5. Whether the plaintiffs are entitled to any compensation? If so, for what amount?
6. Relief.

20. On 17.11.2005, an application to bring on record the legal representative of plaintiff no.17 was disposed of; his legal

representatives were already on record in their capacity as plaintiff no.19 to 21. Plaintiff no.17 was deleted from the array of the parties.

21. On 24.4.2008 an application to bring on record the legal representative of deceased plaintiff no.7 was disposed of; his legal representatives were already on record as plaintiff no. 2 to 6.

22. Counsel for the plaintiff does not press issue no.4. The disputed premises i.e. godowns had been taken on rent by the plaintiff pursuant to the filing of the suit i.e. on 1.5.1991; they have since been vacated; the godowns have also been sold to clear the dues of the Oriental Bank of Commerce in terms of the laon which the plaintiff has taken. Issue no.4 no longer survives and is accordingly not pressed.

23. Plaintiff in support of his claim has examined one witness namely Gurdeep Singh PW-1; he has not been cross-examined. The defendant has also examined one witness in defence i.e. M.S.Dashrath, DW-1the District Manager of the defendant corporation.

24. Arguments have been heard. Record has been perused.

25. Issue-wise findings are as follows:

ISSUE NO.1:

26. In the written statement the defendant has stated that the suit is not maintainable in the present form as 21 persons cannot

be joined in as plaintiffs; there was no privity of contract with each of the said plaintiffs.

27. PW-1 has on oath deposed that he is the seventh plaintiff in the suit and the lawful attorney holder of the other co-plaintiffs; he is aware of the facts of the case. The power of attorney has been placed on record. On oath it has been deposed that the plaintiffs were joint owners of the land in Taran Taran District Amritsar and had jointly entered into the agreements with the defendant for the construction of the godowns were to be leased out to the defendant. PW-1 has not been cross-examined.

28. Plaintiff has proved that he was the lawful attorney holder of the other co-plaintiffs. They were the joint owners of the subject matter of the suit i.e. the godowns; in terms of the agreement between the parties the said godowns had to be leased out to the defendant. The suit is maintainable in the present form.

29. Issue no.1 is decided in favour of the plaintiff and against the defendant.

ISSUE NO.2

30. An application under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code') is also pending disposal questioning the territorial jurisdiction of this court. Vide order dated 9.11.2001, it had been observed that since the matter is already listed for final hearing, the said application would also be taken up at the time of the final disposal of the suit.

31. On behalf of the defendant it is stated that the go-downs which had to be taken on lease by the defendant are admittedly situated in Taran Taran District Amritsar, Punjab. No part of cause of action had arisen at Delhi qua the agreement for which the specific performance had been sought by the plaintiffs. The rent of the godowns was also payable at Amritsar; the same were to be used by the defendant at Amritsar. The territorial jurisdiction of this court is ousted.

32. Reliance has been placed upon M/s Patel Roadways Ltd., Bombay v. M/s Tropical Agro Systems Pvt. Ltd. and Anr. AIR 1992 Supreme Court 1514 as also another judgment reported in Jabalpur Cable Network Pvt. Ltd. vs. E.S.P.N. Software India Pvt. Ltd. and Ors. AIR 1999 Madhya Pradesh 271 to substantiate this argument.

33. Both these judgments do not come to the aid of the defendant. The ratio of the first judgment i.e. M/s Patel Roadways (supra) was that the parties cannot confer jurisdiction on a court by agreement. Merely because the Corporation has its principal office at a particular place for the purposes of clause (a) of Section 20 of the Code would not confer the jurisdiction; location of the subordinate office, within the local limits of which a cause of action had arisen would in fact be the relevant place for filing of the suit. In the second judgment i.e. Jabalpur Cable Network (supra) there was a clause in the agreement relied upon between

the parties that the jurisdiction for the disputes is Delhi; where the agreement has been signed and executed; the agreement not having been signed at Delhi but at place (J) and (M), courts at Delhi would not have the exclusive jurisdiction and party could also file a suit at the place where cause of action had wholly or partly arisen.

34. In the instant case the tender notice inviting space for covered storage godowns for the defendant corporation was admittedly issued from the head office at New Delhi; DW1 in his cross-examination has admitted that the head office of the defendant corporation is in New Delhi. The tender had specified that the application could be obtained from the defendant's Zonal Manager office at Kasturba Gandhi Marg, New Delhi on cash payment of Rs.15/-; offer should be accompanied by a demand draft of Rs.10,000/- towards earnest money in favour of the Zonal Manager of New Delhi and reached the office by 29.7.1985. The receipt of Rs.15/- received in the New Delhi Office is Ex.14/-; demand draft of Rs.10,000/- is Ex.P-15 addressed to the Zonal Manager, FCI, prepared by the Oriental Bank of Commerce, Connaught Place, New Delhi. All the aforesaid documents are admitted documents. The telegram sent by the defendant to the plaintiff for negotiations at Delhi is Mark A-8; the receipt of this document is admitted and although its contents were denied but after PW-1 had proved this document in his evidence by way of

affidavit; he has not been cross-examined. The meetings between the plaintiff and the Negotiation Committee of the defendant wherein the plaintiff had filled in a performa offering 15000 metric tons of godown space is Ex.P-16. These meetings also took place at New Delhi.

35. In Burn Standard Co. Ltd. v. Oil and Natural Gas Corporation Limited AIR 200 Calcutta 283 it has been held that the place where the tender was floated would be the place where the courts would have the exclusive jurisdiction to try the suit.

36. In Continental and Eastern Agencies vs. Coal India Limited & Ors. 1906 (2003) DLT 340 a Bench of this court had held that under Section 20 (c) of the Code the courts would have the jurisdiction where part of the cause of action has arisen; in the said case part of the cause of action had arisen at Delhi as the contract had been communicated at New Delhi and the payment of the commission was also payable at Delhi.

37. In M/s Progressive Constructions Ltd. vs. Bharat Hydro Power Corporation Ltd. AIR 1996 Delhi 92 it has been held that a concluded contract had come into existence despite there being no written formal contract and the place of acceptance would be the place where part of the cause of action had arisen.

38. In ABC Laminart Pvt. Ltd. & Anr. vs. A.P.Agencies, Salem (1989) 2 SCC 163 it has been held that under Section 20 (c) of the Code in a suit for damages for breach of contract, making of a

contract is part of the cause of action and a suit on a contract can therefore be filed at the place where it is made.

39. Applying the ratio of the aforesaid enunciations, it is clear that a large part of cause of action in the instant case had arisen in Delhi. Tenders were floated from the New Delhi office; application form was to be obtained from the New Delhi office; the application fee money and the accompanying demand draft was submitted in Delhi; the Negotiation Committee meetings between the parties were held at the New Delhi office where requisite performa was filled in by the plaintiff offering godown space to the defendant.

40. This court has the territorial jurisdiction to entertain the present suit.

41. Issue no.2 is decided in favour of the plaintiff and against the defendant.

ISSUE NO.3 & ISSUE NO.5

42. The plaintiff has claimed compensation/damages for the breach of agreement by the defendant; it has been contended by the plaintiff that in spite of his godowns being ready for possession by 3.12.1987, the defendant did not take them on lease resulting in the consequential losses suffered by the plaintiff.

43. Both these issues will be decided by a common discussion.

44. The case of the plaintiff is that the plaintiff had entered into an agreement with the defendant on 4.7.1980 for the construction of godowns of 20000 metric tons capacity at Taran Taran District

Amritsar under the ARDC scheme. These godowns were to be constructed within seven months. Plaintiff had deposited a sum of Rs.40,000/- as a security. These godowns were required for storage of cement by the defendant. Due to shortage of supply of cement as also due to financial constraints suffered by the plaintiff the plaintiffs had sought extension of time from the defendant which had been extended from time to time. The extension of time was first extended from 4.2.1981 to 30.11.1981; thereafter on the application of the plaintiff dated 3.12.1981 further extension of time was granted vide communication of the defendant dated 17.6.1982 and time was extended up to 30.6.1982; further extension of time was sought by the plaintiff on 29.6.1982; thereafter vide communications dated 4.6.1983, 8.8.1983 and 22.3.1984 plaintiff sought further extensions of time.

45. In July 1985 defendant had given an advertisement in the newspaper asking for covered storage space for godowns to be made available. The space should not be less than 10000 metric tons. Plaintiff had submitted his offer. The said offer was accepted. The contention of the plaintiff is that this offer was a continuation of the earlier agreement dated 4.7.1980 which was extended by subsequent agreements dated 29.7.1985, 1.11.1985, 3.1.1986 and lastly on 29.7.1990.

46. Ex.P-1 to Ex.P-18 are admitted documents. These documents are communications between the plaintiff and the defendant

commencing from 4.7.1980. They reflect that the plaintiff had agreed to give covered space to the defendant for the purpose of godowns for their storage of cement; 15000 metric tons storage space was to be for a covered warehouse; 5000 metric tons of space area would be a built up area up to the plinth level.

47. Ex.P-4 is the letter dated 25.7.1980 i.e. from the senior Regional Manager, Chandigarh to the Joint Secretary, Government of Punjab wherein reference is made to the agreement dated 4.7.1980 pursuant to which the plaintiff was to construct godowns of the capacity of 20000 metric tons at Taran Taran District Amritsar. Ex.P-1 is the letter dated 3.1.1981 addressed by the senior Regional Manager of the defendant to the plaintiff whereby the plaintiff has been informed that in terms of the agreement between the parties the plaintiff was to construct godowns of the capacity of 20000 metric tons which period has been extended from 4.2.1981 up to 30.11.1981. Ex.P-5 is the letter dated 17.6.1982 addressed by the Deputy Manager of the defendant corporation to the plaintiff granting further extension of time. To the same effect is Ex.P-6 which is also a letter of even date. Ex.P-7 is a communication dated 8.4.1983 by the defendant to the plaintiff again on the point of the extension of time; Ex.P-9 is a communication dated 24.3.1983 from the Assistant Manager of the defendant to the Oriental Bank of Commerce wherein the progress

report of the construction of godowns by the plaintiff has been detailed; this letter shows that the construction is under progress. Ex.P-10 is a letter dated 23.4.1983 addressed by the defendant to the plaintiff wherein it has been pointed out that the construction of the godowns is still incomplete; further from the construction work at site pursuant to an inspection it appears that the godowns would not be completed even up to 30.4.1983. P-8 is a communication dated 1.8.1983 granting further extension of time. P-11 is a communication dated 8.8.1983 addressed by the plaintiff to the defendant seeking extension of time.

48. These are all admitted documents. From this documentary evidence it has been established that an agreement had in fact been entered between the parties on 4.7.1980 whereby the plaintiff had agreed to construct godowns of the capacity of 20000 metric tons for the cement storage purposes of the defendant. For this purpose loan had been taken from Oriental Bank of Commerce. However, these godowns in spite of repeated extensions by the defendant, could not be completed in time by the plaintiff.

49. On 29.7.1985, a tender was floated by way of an advertisement in the newspaper. This document is Ex.P-13. It clearly recites that storage godowns was required by the defendant corporation and tenders are invited for the purpose. The godown space offered should not be less than 10000 metric tons

capacity and as per specifications; further the godowns should be made available to the defendant by 1.5.1986, 1.11.1986 and 1.5.1987. Ex.P-13 shows that this was a fresh offer which was made by the defendant to the public at large; the godown space required was different i.e. not less than 10,000 metric tons which was a distinct requirement from the earlier agreement dated 4.7.1980. This was an offer to the public at large and was not specifically directed to the plaintiff. As such by no stretch of this offer dated 29.7.1985 imagination can be held to be a continuation of the earlier agreement dated 4.7.1980. This was a fresh and new offer made by the defendant.

50. The plaintiff had submitted to this proposal/offer and had deposited the application fee of Rs.15/- vide Ex.P-14. The accompanying bank draft Ex.P-15 was also submitted to the defendant corporation. These documents are admitted.

51. Mark A-8 is a telegram addressed by the defendant to the plaintiff asking for personal attendance of the plaintiff for the purposes of negotiation in response to this press advertisement. Negotiations were to be held in Delhi. Receipt of this document has been admitted and although contents have been denied; it is relevant to state that Pw-1 has proved this document in his evidence; he has not been cross-examined.

52. P-16 (admitted document) is a form which has been filled in by the plaintiff wherein it has been stated that the plaintiff has

agreed to accept Rs.1.08 paisa per square feet as rent for the godown space offered by him subject to the condition that there will be no further cut. In Ex.P-16, it is recited this space had to be made available by 1.5.1987; it has been signed by the plaintiff. From this document it is apparent that the rate agreed between the parties was Rs.1.08 naya paisa as rate of rent per month for the covered space which the plaintiff was to make available to the defendant.

53. Letter dated 3.1.1986 Ex.P-17 is another letter addressed by the Assistant Manager of the defendant corporation to its senior Regional Manager at Chandigarh. A copy of this letter has been endorsed to three persons which includes the manager of the Oriental Bank of Commerce. Vide this document it has been informed that the godowns are to be taken by the defendant under the general hiring scheme for an initial rate of Rs.1 per month per square foot for two years for rural areas and 1.15 for urban areas; negotiations with the party on this rate have also been made by the negotiation committee, a copy of this letter has also been endorsed to the plaintiff. This document is again an admitted document; it is written by the defendant himself.

54. From these documents i.e. Ex.P-16 and Ex.P-17, plaintiff has been able to establish that Rs.1 per square foot per month would be charged as rent for rural areas and Ex.P-17 being an admitted document of the defendant himself, even while ignoring the rent as

offered by the plaintiff of Rs.1.08 naya paisa per month, Ex.P-17 conclusively established that the parties had agreed that the defendant will pay rent at Rs.1 per square foot per month for 15000 metric tons of space offered by him to the defendant. The plaintiff was clearly entitled to rent at this rate.

55. Plaintiff has contended that his godowns were ready with effect from 3.12.1987 and he is entitled to rent at the aforementioned rate from 3.12.1987 up to the date of filing of the suit up to 29.11.1990. These godowns had been taken on rent by the defendant on 1.5.1991; the plaint had however not been amended and as such the plaintiff is not claiming rent beyond the period of filing of the suit. This period works out to 2856 days.

56. Attention has been drawn to Mark A-10 a letter dated 23.4.1987 addressed by the plaintiff to the senior regional manager of the defendant corporation. In this letter it is stated that 15000 metric tons capacity of godowns have been covered and are ready for inspection and possession; the District Manager Amritsar may kindly be directed to do the inspection. Mark A-11 is the letter dated 29.4.1987 addressed by the plaintiff to the Zonal Manager, North with the same request. It is stated that the District Manager, Amritsar may take possession of the godowns as 15000 metric tons of covered space has been constructed. On 29.4.1987 the plaintiff vide mark A-12 addressed another letter to the Chairman of the defendant reiterating this request.

57. Vide Ex.P-2 dated 30.6.1987 Assistant Manager of the defendant wrote to the District Manager of the defendant corporation at Amritsar inter alia stating as follows:

1. 15000 MT Cap. godown completed except very minor defects.
2.
3. Office block 95% completed only. White/colour washing and sanitary fitting work still remains to be completed.
4. Labour Lav.block 75% completed but sanitary fitting still remains to be done.
5.
6. Boundary wall 90% completed. White/colour washing work still remains to be completed.
7. Road works only brick soiling has been done.
8. Electrification works 80% completed.

58. On 5.11.1987 vide Ex.P-3 Mr. Narinderjeet Singh, Architect & Interior Designer after inspection of the godowns wrote to the Zonal Manager of the defendant; the later part of his letter inter alia reads as follows:

“.....Only minor works like painting and steel trusses is in progress, which is expected to complete within weeks time. The electrical wiring of the above units have also be completed at site.”

59. Admittedly till this time i.e. upto 5.11.1987 some work in the godowns was still to be completed by the plaintiff. Submission of the defendant that upto this period even as per the case of the plaintiff the godowns were not ready for handing over is clearly established; they were not storage worthy as some minor works were yet required to be completed.

60. Letter dated 3.12.1987 written by the plaintiff to the defendant corporation was denied by the defendant. This document has not been proved in the evidence of the plaintiff.

Even otherwise this letter clearly recites that inspection of the godowns had been conducted on 27.11.1987 and the following observations had been made:

1. The construction of 15000 MT cap. covered godowns in three units of 5000 MT is practically complete except some minor repairs and shortcomings in finishing items such as incomplete painting wash and white wash, cleaning of doors, windows and floors.

2.

3. Minor defects/..... are observed in the office block, lav. block, sanitary block and road work, since the buildings are not in use. The party assured that they will be attending of these defects and final finishing to these works in case these are to be taken over.

61. This document of the plaintiff which has been heavily relied upon by him as the cutoff date from which date the damages are being claimed, recites that the godowns are yet to be completed and there are minor repairs and shortcomings which are still to be completed. It is clear that the godowns were not possession worthy on 3.12.1987.

62. Communication dated 18.12.1988 A-13 is relevant. This is a letter addressed by the plaintiff to the defendant. In this letter the plaintiff has informed the defendant that godowns had been constructed after taking a loan from the Oriental Bank of Commerce. Letter inter alia reads as follows:

“..... The bank has called us and informed that they are going to file the case in the Court against us since we have not paid any amount against the loan. The bank informed that in case we are able to give a letter to them indicated that our godowns shall be taken on hire w.e.f. April, 1989, the bank may not file the suit against us.”

63. From this letter it becomes apparent that the plaintiff had acquiesced and even at this point of time was requesting the defendant to take their godowns with effect from April 1989 and to inform the Oriental Bank of Commerce about their aforesaid intention. In this intervening period from 3.12.1987 which is the cutoff date pressed by the plaintiff right up to 18.12.1988 there is not a single communication filed by the plaintiff to substantiate his submission that his godowns were 100% ready for storage use by 3.12.1987 and the defendant by not taking immediate possession of the same from the said date is liable for the damages as now claimed by the plaintiff. It was for the plaintiff to conclusively establish this fact.

64. Plaintiff has heavily relied upon the report of the architect Ex.P-3 dated 5.11.1987. It is stated that at this point of time as per the architect it was only minor works which were to be completed; these minor works had stood completed by 3.12.1987.

65. There is little force in this submission of the plaintiff; plaintiff has failed to prove that by 3.12.1987 his godowns were 100% storage worthy. In terms of his communication dated 18.12.1988 he was ready and willing to give his godowns on rent with effect from April 1989 and he wanted this endorsement from the defendant to be addressed to his borrowing bank i.e. Oriental Bank of Commerce. Thereafter on 9.3.1989 vide Mark-14 plaintiff had informed the Zonal Manager of the defendant that the

godowns are ready for possession but in spite of that the defendant has not taken possession of the same; defendant is liable for the losses accruing thereafter. This was reiterated in the subsequent letter dated 7.4.1989 mark A-15.

66. From this documentary evidence i.e. Marks A-13, 14 and 15 it has been borne out that the plaintiff has established that the defendant by not taking his godowns even after April 1989 caused a loss to the plaintiff as godowns had become ready for possession by the said date; this is evident from this letter dated 18.12.1988 mark A-13.

67. PW-1 has proved his documentary evidence on oath. Mark A-13 to A-15 have admittedly been received by the defendant but their contents have been denied. PW-1 has however not been cross-examined at all; neither on the contents of the said documents or in fact on any count whatsoever.

68. Defendant has come into the witness box as DW-1. In his cross-examination he has stated that Architect in his report dated 5.11.1987 admitted that the godowns were not fit for storage; he denied the suggestion that the Assistant Manager, FCI had certified that godowns were fit for storage on 3.12.1987.

69. Plaintiff had relied upon the principle of promissory estoppel as contained in Section 115 of the Evidence Act to advance his submission on his claim of damages. It is contended that the defendant had in terms of the aforestated communications given

repeated assurances to the plaintiff that their godowns would be taken on rent as and when they stood completed. For this purpose a loan of Rs.20 lakhs had been taken by the plaintiff from Oriental Bank of Commerce. In spite of the godowns being ready for possession on 3.12.1987 the defendant choose not to honour his promise; he is now estopped from retreating; he is liable for the damages/losses suffered by the plaintiff.

70. In Food Corporation of India, Bhopal and Ors. vs. Babulal Agarwal, Bhopal AIR 1998 MP 23 in similar facts where the defendant in the said case was also the Food Corporation of India, on the question of the breach of contract , damages and the plea of the applicability of the doctrine of promissory estoppel; the court had inter alia held :

“The principle of promissory estoppels is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party, to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do, having regard to the dealings which have taken place between the parties.”

71. This judgment was the subject matter of an appeal before the Supreme Court in the judgment reported in Food Corporation of India vs. Babulal Agarwal 2004 2 SCC 712. These principles were reiterated; it was held that in case one who holds out a promise, backs out, he will have to compensate the party who

acted bona fide on the basis of the promise made. The defendant in the said case was held liable for damages.

72. Principle of promissory estoppel has been evolved by the courts on the principles of equity in order to avoid injustice; its object being to interpose equity shorn of its form to mitigate the rigour of strict law.

73. Plaintiff has been able to establish that he is entitled to damages at the rate of Rs.1 per square foot per month for 15000 metric tons of space which he had constructed for the godowns of the defendant and which were ready for possession by April, 1989. In spite of repeated requests and reminders by the plaintiff to the defendant the defendant did not take them on rent. Defendant is liable to pay damages at this rate to the plaintiff from April 1989 upto the date of filing of the suit i.e. upto 29.11.1990 which would be 19 months calculated at 569 days. 15000 metric tons would be equivalent to 85680 square feet. This measurement has not been disputed by the defendant.

74. Plaintiff is accordingly entitled for Rs.85680/- per month (Rs.2856 per day) as damages for a period of 569 days which is calculated in the sum of Rs.16,25,064/-

75. Issue no.3 and 5 are decided accordingly.

ISSUE NO.4

76. Issue no.4 is not pressed; it has become infructuous and this has also been reiterated by the plaintiff in his written submissions.

ISSUE NO.6:

77. Suit of the plaintiff is decreed in the sum of Rs.16,25,064/- with future interest at the rate of 9% i.e. from the date of decree till realization. Cost also be awarded. Decree sheet be drawn. All the pending applications are disposed of. File be consigned to record Room.

**(INDERMEET KAUR)
JUDGE**

FEBRUARY 4, 2010.
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