

**RSA-92-1998 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-92-1998 (O&M)
Reserved on: 18.08.2025
Pronounced on: 21.08.2025**

Bhakra Beas Management Board

.....Appellant

VERSUS

M/s Baij Nath Ashrfi Lal

.....Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sanjiv Ghai, Advocate for the appellant.

Mr. Manish Jain, Advocate and
Mr. Manan Jain, Advocate for the respondent.**MANDEEP PANNU, J**

1. The present Regular Second Appeal has been filed by the plaintiff/applicant Bhakra Beas Management Board (BBMB) through its Assistant Engineer against defendant M/s Baij Nath Ashrafi Lal, challenging the judgments and decrees passed by the learned lower courts dated 07.03.1996 and 14.08.1997, whereby the suit of the plaintiff for recovery was dismissed.

Brief Facts

2. The facts of the case, in brief, are that the plaintiff BBMB filed a suit for recovery of ₹70,918.80/- against the defendant firm, represented through its Manager. The case set up by the plaintiff was that it required tarpaulins of different sizes, and on the offer made by the defendant, a purchase order dated 19 May 1989 was placed for the supply of tarpaulins of specific numbers as follows: 25M × 25M amounting to ₹48,502/-, 12M × 12M amounting to ₹27,936/-, and 6M × 6M amounting to ₹4,190.40/-, the total value being ₹80,620/-. The tarpaulins were to

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be supplied with specifications and on terms and conditions detailed in the purchase order.

3. As per the agreed terms, 90% of the price was to be paid against the supply of correct material, and the remaining 10% was to be adjusted later. The defendant supplied the goods to the plaintiff vide bill dated 26 July 1989 for ₹76,004.92/- through Goods Receipt No. 000682 dated 26.07.1989. On receipt of the goods, the SDO Stores of the plaintiff found certain defects and addressed a letter dated 26.09.1989 to the Resident Engineer of plaintiff-Board, who in turn informed the defendant about the said defects.

4. In response, the defendant vide letter dated 17.10.1989 admitted the defects in the material supplied and promised to rectify the same. While the defendant rectified the defects in the tarpaulins of smaller sizes, as regards the tarpaulins of bigger size measuring 25M × 25M, the defendant requested that they be allowed to lift them from the stores of the plaintiff at Slapper and take them to their factory at Mohali for repairs. The plaintiff accepted this request, and the defendant lifted the said tarpaulins.

5. Thereafter, the defendant suggested, vide letter dated 11 June 1990, that the large tarpaulins of 25M × 25M be converted into four pieces to avoid the problem of small holes. The plaintiff did not accept this suggestion. The defendant neither supplied the tarpaulins of the requisite size nor removed the defects in those lifted back. The plaintiff called upon the defendant to refund ₹45,720/- in September 1989 vide letter dated 06.06.1991, but the defendant did not comply and rather wrote a letter dated 16.06.1992.

6. Feeling aggrieved, the plaintiff filed the present suit on 02.03.1994 for recovery of ₹45,720/- being 90% of the advance payment made for the defective

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taraulins of size 25M × 25M, along with ₹5,000/- as freight charges and interest at the rate of 12% per annum from September 1989 to February 1994, the total amount claimed being ₹70,918.80/-.

7. The defendant appeared and filed a written statement raising preliminary objections that the suit was barred by limitation as the advance payment had been made in September 1989 regarding which recovery was sought, whereas the suit was filed on 02.03.1994 beyond three years, further that the goods were dispatched at carrier's risk as mentioned in the Goods Receipt, and as such, if the goods were damaged during transit, the transport company was liable but was not impleaded as a party, rendering the suit bad for non-joinder of necessary parties. On merits, it was admitted that the plaintiff had placed the purchase order and that 90% of the price was received, but it was asserted that the goods were dispatched in proper condition on 18.08.1989 and the damage might have occurred due to improper storage or mishandling by the plaintiff. It was further admitted that the defendant deputed an official to rectify the defects as a goodwill gesture but denied the remaining allegations.

8. Replication was filed by the plaintiff denying the allegations in the written statement.

9. The following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to recover the suit amount from defendant? OPP
2. Whether plaintiff is entitled to claim any interest from defendant? If so at what rate? OPP
3. Whether suit is time barred? OPD
4. Whether suit is bad for non-joinder of necessary parties? OPD



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5. Relief.

10. Both the parties led their respective evidence.

Findings of the Trial Court

11. The learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 07.03.1996. It held that the purchasing authority should have promptly taken up the matter with the supplier/defendant and asked him to rectify or replace the defective material forthwith. In the present case, the plaintiff accepted the consignment without verifying its condition. The Court held that if the officials of the plaintiff failed to check the goods at the time of delivery, they could not shift the blame on the defendant. The proper course was to examine the goods at the transporter's place before accepting the consignment, and in that case, the transporter would have been liable. The officials of the plaintiff were held negligent.

12. The trial Court further observed that PW1 could not state the exact date when the defects were detected. It was further observed that after agreeing to the proposal of the defendant to repair the tarpaulins at its premises, the plaintiff treated the agreement as cancelled unilaterally and filed the suit for recovery of 90% of the advance paid. It also relied upon letter Exhibit P11 written by the defendant to the Superintending Engineer of the plaintiff, which requested the plaintiff to lift the tarpaulins and make remaining payment, but the plaintiff did not act and started claiming refund instead.

13. The Court concluded that the defendant had been willing to repair the defects, but the plaintiff failed to cooperate. The proper course for the plaintiff was to lift the repaired tarpaulins and, if aggrieved, to file a suit for damages thereafter.

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14. On the question of limitation, the trial Court held that the cause of action arose on 26.09.1989 when the SDO Stores of BBMB informed the Resident Engineer about defects vide letter Exhibit P5. Even taking that date, the suit should have been filed within three years, i.e., by 26.09.1992, whereas it was filed on 02.03.1994, which is clearly beyond limitation.

Findings of the Appellate Court

15. The plaintiff preferred an appeal, which was dismissed vide impugned judgment and decree dated 14.08.1997. The lower appellate Court mainly gave the finding on limitation and also observed that as per the plaint itself, 90% of the price was to be paid against supply of correct material and 10% was to be adjusted later. If the material supplied was defective, the plaintiff should have refused the consignment at the time of delivery.

16. The Court observed that SDO Stores had reported the defects on 26.09.1989 vide Exhibit P5, and the suggestion made on 11.11.1990 to convert the large tarpaulins into smaller sizes was not accepted. As the material was received on 18.08.1989 and 90% payment made on 17.08.1989, and the suit filed on 02.03.1994, it was held to be barred by limitation. Accordingly, the appeal was dismissed.

17. Feeling aggrieved by the impugned judgments and decrees dated 07.03.1996 and 14.08.1997, present Regular Second Appeal has been filed by the appellant/plaintiff.

Submissions on Behalf of the Appellant

18. It was argued by learned counsel for the appellant/plaintiff that both the courts below erred in recording findings contrary to the evidence on record. It was submitted that they wrongly concluded that the suit was time-barred and that

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the cause of action arose in September 1989. Reliance was placed on the correspondence exchanged between the parties, particularly letter dated 16.11.1992 (Exhibit P11), whereby the respondent finally repudiated the claim of the appellant, thus giving rise to cause of action.

19. It was further contended that the lower appellate Court passed a cryptic order without applying its mind and failed to appreciate that 90% payment was made in advance on 17.08.1989 to the State Bank of India for release of the Railway Receipt, and delivery was taken on 18.08.1989. Clause 10 of the terms and conditions (Exhibit P2) clearly provided that if the material supplied was found substandard or defective at the consignee end, it would not be accepted, and an intimation would be given to the supplier who was bound to rectify the defect forthwith. It was argued that the plaintiff acted as per the contract, promptly intimated the defendant, and the defendant admitted the defects. The findings of the courts below, it was urged, deserved to be set aside.

Submissions on Behalf of the Respondent

20. Learned counsel for the respondent/defendant supported the judgments of the courts below, contending that the suit was clearly barred by limitation as the cause of action arose in 1989 when the defects were detected. It was further argued that the defendant had, as a gesture of goodwill, offered to repair the defects or to cut the large tarpaulins into smaller sizes, but the plaintiff did not cooperate. It was submitted that the plaintiff had accepted the goods without protest at the time of delivery and could not later claim refund after having paid 90% of the price.

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Findings

21 Upon hearing learned counsel for both parties and on perusal of the record, this Court finds that the main issue is whether the suit was filed within limitation.

22. The admitted chronology is that the purchase order was placed on 19.05.1989. The bill for 90% payment was raised on 26 July 1989. Payment was made on 17.08.1989 and delivery taken on 18.08.1989. On 26.09.1989, the SDO Stores of the plaintiff reported the defects vide Exhibit P5, and on 09.10.10.1989, the plaintiff wrote to the defendant to rectify the defects (Exhibit P6). The defendant replied on 17.10.1989 (Exhibit P7) admitting the defects and promising to send representatives for repairs. Smaller tarpaulins were repaired; larger ones were not. On 20.12.1989, BBMB authorised the defendant to take the 25M × 25M tarpaulins for repairs (Exhibit P8). The defendant thereafter, vide letter dated 11 June 1990 (Exhibit P9), suggested converting the large tarpaulins into smaller sizes. The plaintiff, vide letter dated 06.06.1991 (Exhibit P10), refused this proposal and demanded refund. The defendant finally, vide letter dated 16.06.1992 (Exhibit P11), repudiated the claim.

23. In view of this sequence of events, this Court does not agree with the finding of the courts below that the cause of action arose on 26 September 1989. The correspondence between the parties continued till 16 June 1992, and it was only upon final repudiation of the claim that the cause of action arose. The suit filed on 2 March 1994 was, therefore, within the period of limitation. For this, clause 10 of the purchase order (Exhibit P2) is relevant. It provided that material found substandard or defective at the consignee end shall not be accepted, and the supplier would be intimated to rectify or replace the defective material within a

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reasonable period. The plaintiff promptly intimated the defendant, and the defendant admitted the defects and partially repaired the material. Having accepted the defects and having taken back the large tarpaulins, the defendant is now estopped from alleging negligence on part of the plaintiff at the time of delivery.

24. The observation of the trial Court that the plaintiff unilaterally cancelled the agreement is misplaced in view of Exhibit P10, wherein the plaintiff had categorically refused the proposal of converting the large tarpaulins into smaller ones and demanded refund. The findings of both courts suffer from legal infirmity. The suit was within limitation and maintainable.

25. Accordingly, the judgments and decrees of the courts below dated 07.03.1996 and 14.08.1997 are set aside. The present Regular Second Appeal is allowed and the suit of the plaintiff is decreed for recovery of ₹70,918.80/- with interest at the rate of 6% per annum from the date of filing of the suit, i.e.02.03.1994, till realisation.

26 Pending application(s), if any, also stand disposed off.

August 21, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No