



**RSA-2734-2024 (O&M) and
RSA-2224-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**Reserved on:-05.09.2025
Date of Decision : 09.09.2025**

1. RSA-2734-2024 (O&M)

M/s Modular Infratech Pvt. Ltd.

....Appellant

VERSUS

M/s Bitureks Fire Solutions and Another

....Respondents

2. RSA-2224-2025 (O&M)

Capital Vehicles Sales Ltd.

....Appellant

VERSUS

M/s Bitureks Fire Solutions and Another

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sudhir Aggarwal, Advocate and
Mr. Ishan Aggarwal, Advocate for the appellant.

Mr. Vipin Pal Yadav, Advocate with
Mr. J.S.Sohal, Advocate for respondent No.1.

Mr. Sarthak Gupta and Ms. Sanya Shangari, Advocates
for respondent No.2.

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MANDEEP PANNU,J.

1. The above-mentioned two Regular Second Appeals i.e. **RSA-2734-2024 and RSA-2224-2025** shall stand dispose of by this common judgment.

2. **RSA-2734-2024** has been filed by the appellant/defendant No.1-M/s Modular Infratech Pvt. Ltd. against the respondents/plaintiff-M/s Bitureks Fire Solutions, a proprietary concern through its sole proprietor Jatinder Chauhan, and



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defendant No.2-M/s MGF Toyota Pvt. Ltd., and **RSA-2224-2025** has been filed by the appellant/defendant No.2-Capital Vehicles Sales Ltd. (alleged to be wrongly mentioned as M/s MGF Toyota Showroom) against respondents/plaintiff-M/s Bitureks Fire Solutions, a proprietary concern through its sole proprietor Jatinder Chauhan, and defendant No.1-M/s Modular Infratech Pvt. Ltd., challenging the concurrent findings of the learned trial Court and the Lower Appellate Court whereby the suit of the plaintiff – M/s Bitureks Fire Solutions for mandatory injunction was decreed and the appeal preferred by M/s Modular Infratech Pvt. Ltd. was dismissed.

Brief Facts

3. The case of the plaintiff, as set out in the plaint, is that defendant No.1, after mutual discussions, allotted job work to the plaintiff for installation of fire suppression systems and plumbing and sanitary works at the premises of defendant No.2 vide work order dated 26.05.2012. The value of the work was fixed at ₹37,35,404/- for fire suppression systems and ₹36,88,225/- for plumbing and sanitary works.

4. It was alleged that while the work was in progress, the defendants required certain changes, including installation of Jaguar make fixtures in place of Hindware and provision of additional flexible sprinkler drops which were not part of the original BOQ. After reminders, the revised rates for the changed items were approved through emails dated 10.12.2012 and 14.12.2012.

5. The plaintiff completed the work and raised a final bill dated 19.03.2013 for ₹82,05,964.28, comprising ₹51,99,988/- towards fire-fighting system and ₹30,05,975/- towards plumbing and sanitary works. Out of this, the defendants paid a total of ₹58,34,000/-, leaving a balance of ₹27,71,964/-



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outstanding. The plaintiff further claimed ₹5,00,000/- as compensation for financial loss caused due to non-release of payment.

6. It was pleaded that despite repeated demands, including legal notice dated 19.07.2013, the defendants failed to pay. Instead, defendant No.1 issued a baseless penalty notice dated 28.03.2013 and thereafter proposed a “Memorandum of Final Bill Settlement” dated 16.04.2013, which was wholly unfair and unreasonable and was rejected. The delay in execution of the job, according to the plaintiff, was entirely attributable to the defendants, who had failed to hand over the premises in time, altered specifications midway, and took time in finalising new rates. The plaintiff, therefore, prayed for a decree of mandatory injunction directing the defendants to pay ₹28,71,964/- (balance plus compensation) with interest at 24% per annum from the date of submission of the final bill till realization.

7. Defendant no.1 filed written statement raising preliminary objections that the suit was not maintainable in the form of mandatory injunction and that the proper remedy was a suit for recovery. It was also contended that the plaint was liable to be rejected under Order 7 Rule 11 CPC for non-payment of proper court fee.

8. It was further pleaded that the plaintiff was negligent in execution, failed to complete the job within the stipulated 90 days, and caused heavy losses of about ₹98 lakhs to defendant no.1, including penalties imposed by defendant no.2. The plaintiff was alleged to have inadequate resources and manpower, failed to supply materials in time, and repeatedly defaulted despite meetings and reminders.

9. Defendant no.1 relied upon correspondence between the parties, including minutes of meeting dated 28.12.2012, wherein the plaintiff undertook to



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complete jobs by 10.01.2013, but failed to do so. It is further submitted that defendant No.2 also addressed communication dated 18.01.2013 pointing out more than 60 unfinished jobs. It was further pleaded that due to lapses of the plaintiff, defendant No.2 procured certain items directly and deducted amounts from the bills, while restricting the plaintiff at places only to labour charges. Defendant No.1 also pleaded that it had to pay a penalty of ₹77 lakhs to defendant no.2 (₹30 lakhs on account of incomplete job and ₹47 lakhs for delay), which loss was caused solely by the plaintiff's defaults. Dismissal of the suit with costs was accordingly prayed for.

10. Defendant No.2, namely M/s MGF Toyota Pvt. Ltd., did not contest the proceedings despite service of notice and was proceeded against ex parte.

11. Replication was filed by the plaintiff reiterating the averments of the plaint and denying the allegations made in the written statement of defendant No.1.

12. From the pleadings of the parties, the learned trial court framed the following issues:

1. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Relief.

13. Both the parties led the evidence in support of their case.

Findings of the Trial Court:

14. The learned trial Court, after hearing the parties and examining the oral as well as documentary evidence, came to the conclusion that the plaintiff firm had duly carried out the installation of the fire-fighting system and plumbing and sanitary works in the premises of defendant no.2 on the instructions of defendant



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no.1. It was observed that after completion of the work, the plaintiff submitted its final bill dated 19.03.2013 (Ex. P14). On appreciation of the record, the court held that the plaintiff was entitled to recover a sum of ₹23,71,864/- from the defendants on account of the said final bill.

15. It was further noticed that the execution of the works by the plaintiff stood admitted, and the defendants had in fact benefited from such works. Therefore, the court held that the plaintiff had successfully proved its claim to the extent of the amount claimed towards the final bill, and accordingly decreed the suit against defendants.

Findings of the Lower Appellate Court:

16. The learned Additional District Judge, while deciding the appeal preferred by appellant/defendant no.1, examined in detail the grounds raised. The principal contention of the appellant was that the suit filed by the plaintiff for mandatory injunction was not maintainable and that the proper remedy was a suit for recovery. The appellate court, however, held that the court is not bound by the nomenclature of the relief claimed and is required to decide the matter on the basis of pleadings and evidence. With regard to the objection that the plaintiff ought to have filed a suit for recovery and paid ad valorem court fee, the appellate court held that although in practice suits for injunction are sometimes filed to save court fees, in the present case the plaintiff had paid court fees, and in any event, the defendants had not raised any such plea of non-payment of court fees. It was clarified that the court is not bound by mere nomenclature and may mould relief based on facts proved.

17. On appraisal of the record, it was found that the plaintiff had been allotted the work vide job order dated 26.05.2012 (Ex. P1) valuing ₹37.35 lakhs



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for fire suppression and ₹36.88 lakhs for plumbing and sanitary works. The defendants had delayed handing over the premises in a fit condition for execution, and thereafter introduced changes in specifications, including replacing Hindware with Jaguar fixtures. Emails and communications placed on record (Exs. P2, P3, P5, P9, P10, P11, etc.) showed that such changes and delays were attributable to the defendants and not the plaintiff. It was also noticed that the plaintiff had completed the installation work and raised the final bill dated 19.03.2013 (Ex. P14) for ₹82,05,964.28, supported by legal notice Ex. P17, but the same remained unpaid.

18. The Appellate Court rejected the plea that the plaintiff was negligent or that the CVSL company was responsible, holding that no such agreement regarding CVSL had ever been initiated by either party. It was also noticed that the defendants themselves had acknowledged impediments caused due to unfit condition of the premises and had even tendered apology (Ex. P9). The changes in brand from Hindware to Jaguar, and the subsequent approvals, were proved by emails, and delay caused thereby could not be attributed to the plaintiff.

19. The Court also disbelieved reliance placed on the “Memorandum of Final Bill Settlement” dated 16.04.2013 (Ex. P16) by the defendants, noting that the same was never accepted by the plaintiff and did not explain the breakup of the total claim. It was further observed that defendant no.1, in cross-examination, admitted having made payments of only about ₹60 lakhs, but could not explain how this amount was adjusted against the total claim.

20. Consequently, the appellate court found no irregularity or illegality in the findings of the trial court. The appeal was held to be devoid of merit and



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dismissed. The judgment and decree of the trial court dated 22.03.2018 were affirmed.

21. Feeling aggrieved, the above-numbered Regular Second Appeals have been preferred.

22. Upon notice, respondents have contested the appeals.

Submissions on behalf of the Appellant:

23. Learned counsel for the appellant has argued that the suit filed by the plaintiff for mandatory injunction was not maintainable in law. It was contended that the plaintiff's claim was essentially for recovery of money, and under Section 41(h) of the Specific Relief Act, 1963, a suit for injunction cannot be maintained when an equally efficacious remedy of recovery is available. Reliance was placed on the judgment of the Hon'ble Supreme Court in *State of U.P. and another v. Tara Singh Jaiswal, 2012 SCC OnLine All 1876*, wherein it was held that where the claim is for recovery of contractual dues, the remedy of injunction is barred. It was argued that therefore, irrespective of court fee paid, the suit as framed was incompetent and the learned courts below erred in decreeing the same.

24. It was next contended that the suit was bad for non-joinder of necessary parties. The plaintiff failed to implead CVSL, which was the master contractor and the principal party to the transaction. Instead, the plaintiff wrongly impleaded M/s MGF Toyota Showroom, which was neither a real nor juristic entity. It was urged that CVSL being the main contractor was a necessary party, without whom no effective decree could be passed. Reliance was placed on the law laid down in *Kasturi v. Iyyamperumal and others, (2005) 6 SCC 733*, and further reiterated by the Hon'ble Supreme Court in *Moresnar S/o Yadaorao Mahajan v.*



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Vyankatesh Sitaram Bhedi (D) C.A No.5755/5756 of 2011, decided on 27.09.2011.

Submissions on behalf of the Respondents:

25. Learned counsel for the respondents/plaintiffs argued that the objection of maintainability raised by the appellant is without merit. It was contended that once the plaintiff had duly affixed ad valorem court fee on the amount claimed, the mere description of the relief as one of “mandatory injunction” instead of “recovery” could not defeat the rights of the plaintiff. The law is well settled that the court is not to be guided merely by the form of the relief but by the substance of the pleadings and cause of action.

26. Reliance was placed on the judgment of the Hon’ble Punjab and Haryana High Court in ***Food Corporation of India and others v. Kaka Ram and another, RSA No. 3297 of 2017, decided on 31.08.2018***, wherein it was held that although technically a suit for recovery would be the proper remedy, yet where the plaintiff has affixed ad valorem court fee, the mere nomenclature of the suit as one for injunction does not render it incompetent. It was observed that once the court fee has been paid, a technical misdescription cannot defeat substantive rights.

27. Counsel further relied on ***Sant Lal Jain v. Avtar Singh, (1985) 2 SCC 332 and Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58***, to contend that the court has wide discretion to mould relief to do complete justice, and misdescription of the relief cannot nullify an otherwise valid claim.

28. It was further submitted that since the plaintiff had established through evidence that work was executed and the final bill remained unpaid, the decree granted by the courts below was just and proper, and could not be set aside on the hyper-technical ground of maintainability.



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Findings of this Court

29. After hearing learned counsel for the parties, the following points arise for determination in this RSA:

Maintainability of the Suit (Injunction v. Recovery):

30. The appellant's strongest objection rests upon the contention that the suit was not maintainable as framed, since an injunction cannot be granted where an equally efficacious remedy of recovery exists, in view of Section 41(h) of the Specific Relief Act. Reliance was placed on *State of U.P. v. Tara Singh Jaiswal, 2012 SCC OnLine All 1876*, where the Allahabad High Court held that a plaintiff seeking recovery of contractual dues cannot disguise such relief as one for injunction. That judgment indeed laid down that where the real relief is recovery of money under a contract, injunction is barred under Section 41(h) of the Specific Relief Act, as the plaintiff has an equally efficacious remedy of a recovery suit.

31. However, the reliance on this judgment is misplaced in the present case. The plaintiff herein did not attempt to evade his obligation of court fee or disguise the claim. Rather, he affixed full ad valorem court fee on the claim amount of ₹23,71,964/-, which is precisely the fee payable for a recovery suit. The Punjab & Haryana High Court, in *Food Corporation of India v. Kaka Ram (RSA 3297 of 2017)*, has dealt with an identical objection and held that once proper court fee is paid, a mere misdescription of the relief as "mandatory injunction" does not render the suit non-maintainable. The coordinate bench emphasized that the Court is not shackled by nomenclature, but must mould relief in accordance with the pleadings and evidence.

32. Therefore, while the principle in *Tara Singh Jaiswal's case (supra)* governs cases where injunction is invoked to bypass recovery proceedings, in the



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facts at hand the plaintiff has complied with all substantive requirements, including payment of the requisite court fee. The ratio of *Kaka Ram's case (supra)*, being a direct decision of this Court, is fully applicable. Hence, the suit is maintainable.

33. In the present case, the pleadings, the evidence led, and the documents produced all clearly establish that the plaintiff executed the works, raised its bill, and remained unpaid for the balance. Thus, even if the relief could have been styled differently, the courts below rightly moulded the relief to do complete justice. The objection of maintainability therefore fails.

2. Exhibit P-14 (Final Bill or Summary):

34. Regarding Bill Ex.P-14 not to be relied upon as contended by learned counsel for the appellant, Ex.P-14, dated 19.03.2013 records the total contract value as follows:-

- Fire-fighting system: ₹51,99,988.78
- Plumbing & sanitary works: ₹30,05,975.50
- Total: ₹82,05,964.28
- Less paid: ₹58,34,000.00
- Balance due: ₹23,71,964.28

35. The appellant contends that Ex.P14 was only a “summary of bill amount” and thus cannot be relied upon to direct appellant to make payment. This Court finds no force in that plea. Ex. P14 was duly served on the defendants and bears acknowledgment of receipt. Substantial payments (₹58–60 lakhs) were admittedly made by the defendants with direct reference to Ex. P14. In cross-examination, DW-1 conceded that these amounts had been released. Once the defendants have acted upon Ex. P14 by releasing major payments, they are estopped from disputing its character as the final operative bill.



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36. Also an attempt to rely on Ex. P16 (“Memorandum of Final Bill Settlement”) is futile, as it was never signed or accepted by the plaintiff, and thus carries no legal force. On the contrary, the culmination of Ex. P14 coupled with part payments demonstrates beyond doubt that the balance of ₹23,71,964.28 remained due. There is no illegality in the impugned judgments and decrees passed by the learned Lower Courts on the admissibility of Ex.P/14.

3. Liability of Defendant No.2:

37. The learned trial Court decreed the suit against both defendant no.1 and defendant no.2. However, on a careful perusal of the record, this Court finds that the liability cannot be extended to defendant no.2. The work order (Ex. P1) was admittedly issued by defendant no.1 to the plaintiff. All negotiations, correspondence, and payments were made by defendant no.1 alone. There is no privity of contract between the plaintiff and defendant no.2. Merely because the works were executed at the premises of defendant no.2 and for its benefit, defendant no.2 cannot be saddled with direct liability in the absence of any contractual undertaking. The principle of contractual privity requires that payment liability rests solely on the party with whom the plaintiff contracted, namely defendant No.1. It is relevant to mention here that defendant No.2 by mentioning its name as Capital Vehicles Sales Ltd. filed RSA No.2224-2025 challenging the impugned judgments and decrees of both the Courts below making him liable to pay the decretal amount along with defendant No.1. It is further submitted on behalf of the appellant-Capital Vehicles Sales Ltd. that its name has been wrongly mentioned as M/s MGF Toyota Showroom instead of Capital Vehicles Sales Ltd.

38. Without commenting upon the correctness of the name of defendant No.2, this Court concludes that defendant No.2 cannot be made liable to pay the



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decretal amount along with defendant No.1. Accordingly, while the decree against defendant no.1 for the balance sum of ₹23,71,964/- is upheld, the decree insofar as it fastens liability upon defendant no.2 cannot be sustained and is set aside.

Conclusion:

39. The suit, though styled as one for mandatory injunction, was maintainable in substance as a recovery suit since ad valorem court fee was affixed.

40. Ex.P14 constituted the operative final bill, acknowledged by defendants and acted upon by releasing part payments, the balance of ₹23,71,964/- is due.

41. Defendant no.1 alone is liable for the decretal amount. The decree against defendant no.2 is unsustainable and is set aside.

42. With these observations both the above-numbered Regular Second Appeals are partly allowed to the extent that the impugned judgments and decrees dated 22.03.2018 and 24.04.2024 against defendant No.2 are set aside. However, the same against defendant no.1-M/s Bitureks Fire Solutions, are maintained for the sum of ₹23,71,964/- with interest as awarded by the courts below.

43. Pending application(s), if any, also stands disposed off.

September 09, 2025
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(MANDEEP PANNU)
JUDGE

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