

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

**Regular Second Appeal No.3034 of 2014 (O&M)  
Date of decision: 19.08.2015**

**M/s Goindi Machines**

**.....Appellant**

**Versus**

**M/s R.M. Engineers**

**.....Respondent**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. P.K. Kukreja, Advocate,  
for the appellant.

**Ritu Bahri, J.**

**CM Nos.7241-7242-C of 2014**

For the reasons mentioned in the applications, same are allowed and delay in filing and refiling of the appeal is condoned.

**RSA No.3034 of 2014**

Defendant-appellant has come up in regular second appeal against the judgment dated 13.08.2013 passed by the Addl. District Judge, Faridabad, dismissing his appeal against the judgment and decree dated 12.09.2011 passed by the Civil Judge (Junior Division), Faridabad, whereby suit filed by M/s R.M. Engineers-plaintiff (respondent herein) has been decreed entitling the plaintiff for recovery of Rs.8,00,000/- from the defendant-appellant along with interest at the rate of 6% per annum from the date of filing of the suit till its realization.

M/s Goindi Machinees Pvt. Ltd.-defendant (appellant herein) was manufacturer of different types of drilling machines. Plaintiff-respondent

had placed an order No.R.M.E. 2002 dated 17.12.2002 for purchase of one 12 station SPM Drilling Machine (SDM-1200) for a sum of Rs.16,50,000/- from the defendant. Delivery of the said machine was to be made by first week of April, 2003. Plaintiff paid Rs.2,00,000/- vide demand draft No.244587 dated 08.02.2003. However, manufacturing of the machine was delayed by the defendant on one pretext or the other. After April, 2003, several meetings were held between the plaintiff and the defendant on 16.05.2003, 27.06.2003, 04.09.2003 and 28.02.2004, so as to assist the defendant in expediting the manufacturing process. The plaintiff also made 20% of the earnest money, which is detailed as under:-

1. Rs.2,00,000/- vide cheque No.216855 dated 22.03.2003 of Dena Bank, Faridabad drawn on 07.04.2003.
2. Rs.2,00,000/- vide cheque No.723106 dated 11.03.2003 of ICICI Bank, Faridabad drawn on 19.05.2003.
3. Rs.2,00,000/- vide DD No.99316213 dated 03.04.2003 of ICICI Bank, Faridabad.

By way of different cheques and demand drafts, the plaintiff had paid Rs.8,00,000/- to the defendant. Besides that, a sum of Rs.2,00,000/- was paid in cash, but, no receipt in that regard was issued. However, the defendant had failed to make delivery of the aforesaid machine. Thereafter, the plaintiff sent a reminder dated 19.11.2005 calling upon the defendant to deliver the machine. Finally, a legal notice was issued on 13.12.2005, but to no avail.

Upon notice, defendant-appellant filed written statement and admitted that an order was placed by the plaintiff for supply of SPM at the sale price of Rs.16,00,000/-. Payment of Rs.2,00,000/- vide demand draft dated 08.02.2003 was also admitted. It was submitted that the plaintiff did

not supply the design for manufacturing the machine, which led to delay by

the defendant. The machine which was to be supplied was SPM design and the same was not of an ordinary nature. It was not available in open market. Since it was to be specifically designed by the defendant as per requirement of the plaintiff, therefore, finalization of design of the machine took a long time. It was denied that any payment was made without receipt. One employee was sent by the plaintiff to the factory of the defendant. The plaintiff failed to take delivery of the machine prepared by the defendant, which could not be sold in the open market. Even after receipt of letter dated 19.11.2005, the defendant made a request to the plaintiff to supply requisite components/raw casting material for setting of machine, requisite tooling and quality control apparatus, which the plaintiff had failed to supply. It was further stated that the machine was lying ready with the defendant, but the plaintiff had refused to take delivery of the same.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.13,00,000/- from the defendant, if so, at what rate of future interest? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether this Court has no jurisdiction to entertain and try the present suit? OPD
4. Relief.

Trial Court, after going through the evidence led by the parties, came to a conclusion that admittedly, an order was placed by the plaintiff on 17.12.2002 for purchase of one 12 Station SPM Drilling Machine for the price of Rs.16,50,000/-. Plaintiff had paid Rs.2,00,000/- vide demand draft

Dena Bank, Faridabad on 07.04.2003, Rs.2,00,000/- vide cheque No.723106 dated 11.03.2003 of ICICI Bank, Faridabad drawn on 19.05.2003 and Rs.2,00,000/- vide demand draft No.9931613 dated 03.04.2003 of ICICI Bank. Reference was made to a letter dated 28.11.2003 (Ex.P11), which clarified the dispute between plaintiff and defendant. As per this letter, an order for two SPM machines was made by the plaintiff. The defendant had delivered one machine to the plaintiff and delivery of second SPM was pending. The defendant had requested for additional advance of Rs.2,00,000/- to enable it to meet the delivery on schedule. As per letter dated 28.11.2003 (Ex.P11), last trial of the second machine was to be held on 27.01.2004. This fact was duly admitted by the defendant before the trial Court. Further, as per letter dated 27.02.2004, the defendant had informed the plaintiff that the machine was ready for trial and had asked the plaintiff to send 1000 pieces of casting of crank shaft to enable them to carry out the trials and test the machine. With the admission of two letters (Ex.P11 and Ex.P7), letters (Ex.D1, Ex.D2 and Ex.D5) were treated to be sent in routine manner by the defendant. The trial Court, while accepting the contents of letter (Ex.P11), held that the defendant (appellant) had failed to execute the terms of the contract/order 17.12.2002 and delivery of the second machine was not made in time. With these observations, the plaintiff was held entitled for refund of Rs.8,00,000/- along with interest. The claim of damages was rejected by the trial Court as the plaintiff could not prove the receipts (Ex.P15 to Ex.P20) to show that he had deputed two employees for six months in the factory of the defendant for expediting the manufacturing of machine. Ultimately, the suit was decreed in the aforesaid terms.

The lower appellate Court affirmed the findings recorded by the

trial Court. As per minutes of meetings dated 04.09.2013 and 28.02.2004

(Ex.P7 and Ex.PW7/A), there was some problem with the manufacturing model and efforts were made to sort out that problem by 15.03.2004. Letter dated 27.02.2004 issued by the defendant-appellant shows that the machine was ready for trial and the defendant had asked the plaintiff-respondent to sent 1000 pieces of good casting of crank shaft to enable them to carry out trial and test of the machine. The plea of the defendant-appellant was not in consonance with the facts mentioned in the minutes of meeting dated 28.02.2004 (Ex.PW7/A). Though, the plaintiff (respondent) had paid sufficient amount, but chain of events show that the defendant-appellant made no effort to speed up the process of manufacturing the drilling machine.

The terms and conditions of contract/purchase order (Ex.P2) were not in dispute and the defendant-appellant, vide letter dated 28.11.2003 (Ex.P11) had admitted that after the delivery of fist machine, the delivery of second machine was to be made after the trial, which was to be held on 27.01.2004. The defendant-appellant could not be absolved of its own responsibility to refund the amount of Rs.8,00,000/- accepted by it for manufacturing of this machine. It is not the case of the defendant-appellant that the amount, as detailed in the demand draft, had been accepted by it and after delivering one machine, the second machine had not been delivered. The communication sent by the defendant-appellant vide Ex.D1, Ex.D2 and Ex.D5 that the plaintiff-respondent had not sent them the correct model of machine, is liable to be rejected as after admitting the contents of purchase order (Ex.P2), one machine had been delivered and with regard to the second machine, the plaintiff-respondent had been continuously approaching the defendant-appellant by way of number of correspondence and meetings, as discussed above, to enable the defendant to deliver the

second machine.

In view of the above, the suit has been rightly decreed in favour of the plaintiff-respondent as the amount had been received by the defendant-appellant and no evidence was led by the defendant-appellant to show that it was on account of default of the plaintiff-respondent, it was not able to deliver the machine.

After going through the impugned judgments passed by the Courts below, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

19.08.2015  
ajp

**(RITU BAHRI)**  
**JUDGE**