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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4274-2009

Date of decision : 10.11.2016

Market Committee Chabhal, Amritsar

... Appellant

Versus

M/s Achint Constructions

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Bains, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking following relief:-

“Declaration to the effect that the agreement dated 25.08.1995 entered into between the parties in pursuance to the submission of quotations of the defendant dated 14.08.1995 as accepted by the plaintiff vide its office No.355 dated 22.08.1995 stands cancelled/determined and rescinded, be determined and descended as it stands by the act and conduct of the defendant as well as, service of registered AD Notice dated 30.08.1997 by the plaintiff on the defendant and the defendants is bough to return the amount of ₹ 55,794/- and ₹ 21,943/- due to the loss of the plff. As per agreement along with interest 15% P.A. and for recover of ₹ 77,737/- is principal amount and ₹ 14577/- as

interest upto dated in p.a. w.e.f.) 1.5.1995 amounting to a total of ₹ 92314/- with future interest till the realization of the as created amount.”

has been dismissed by both the Courts below by holding that the appellant-plaintiff has not been able to prove the case by bringing on record the original bills or original files. All are the photocopies and the aforementioned documents were exhibited vide order dated 08.01.2002. The appeal filed against the aforementioned order also met with the same fate.

Earlier the respondent was being represented through the counsel but there after stopped appearing and for the last three hearings, there is no representation on his behalf.

I have heard the learned counsel for the appellant-plaintiff and seen the original records particularly the statement of PW-1 Harminder Singh, Secretary, Market Committee and of the view that all the documents were also brought in original but the photocopies were exhibited. This fact has not been taken care of by the Courts below, even the order of the trial Court was also assailed in the appeal by taking the aid of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure. I am of the view that the lower Appellate Court has also abdicated in not performing its duty by examining the record and reiterated the findings of the trial Court in the most atrocious and mechanical manner particularly being the last court of fact and law.

Without commenting upon the merits and demerits of the matter but on this point only, I am of the view that the judgment and decree of the lower Appellate Court requires to be reconsidered and accordingly,

the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court to decide the same as expeditiously as possible after giving the opportunities of hearing to the parties.

Original record is ordered to be sent back.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 01.12.2016.

The appeal stands allowed in the aforesaid terms.

10.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	✓ Yes/ No
Whether Reportable	✓ Yes/ No