

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

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Regular Second Appeal No.1724 of 2011
Date of Decision: April 01, 2016

The Bhanpura Co-op. Labour and Construction Society Ltd.

...Appellant

Versus

The State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arvind Bansal, Advocate
for the appellant.

Mr. Rohit Arya, Assistant Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 28.08.2010 passed by the Additional District Judge, Kaithal, dated 28.08.2010, whereby the appeal preferred by the respondents-defendants against the judgment and decree dated 12.12.2009 passed by the Civil Judge (Junior Division), Kaithal, by which the suit of the appellant-plaintiff for declaration and mandatory injunction subsequently converted into that of recovery, was decreed, has been allowed and the cross-objections preferred by the appellant dismissed.

2. It is the contention of learned counsel for the appellant that the learned Lower Appellate Court has wrongly relied upon the communication dated 26.07.1999 mark 'X' which was placed on record by way of additional evidence. He contends that the said document was never communicated to the appellant and, therefore, could not have been relied upon by the Court for recording the finding. His further contention is that not only the said document was placed on record but on an application moved by the

appellant for leading additional evidence for placing on record the communication dated 05.05.2010 mark 'Y' has also been accepted according to which the amount of ₹1,55,559/- has been accepted as payment under protest by the appellant. Assertion has also been made with reference to the communication dated 06.12.2000 Exhibit P-2, whereby a specific note was given by Superintending Engineer, Bakhra Water Services Circle, Kaithal, according to which the work, as assigned to the appellant, has been completed and, therefore, there was no question of not making payment for the work performed as per the terms of contract. He contends that the communication mark 'X' has no effect as in the subsequent communication dated 06.12.2000 Exhibit P-2, the work assigned, has been found to have been completed by the appellant to the satisfaction of the respondents. The amount withheld by the respondents i.e. ₹54,389/- has wrongly been detained by the respondents and the appellant is entitled to the release of the same. He, thus, prays for allowing the present appeal by setting aside the judgment and decree passed by the Lower Appellate Court.

3. On the other hand, counsel for the respondents submits that the document mark 'X' has been duly referred to in the written statement and is the basis for opposing the claim of the appellant. The said document having been referred to in the written statement and in that context, the inspection report dated 15.07.1999 which becomes the basis for the communication dated 26.07.1999, clearly puts up the case of the respondents according to which the work had been stopped by the supervisory authorities namely the Superintending Engineering, B.W.S. Circle, Kaithal. The work having been stopped, there was no question for the appellant to have completed the work, especially when it has come in the report that after 20.06.1999, the

appellant had not performed any further work. Apart from that, he contends that the official, who had communicated the letter dated 06.12.2000 Exhibit P-2, on which reliance has been placed by the appellant, namely Shri Ved Parkash, S.D.O., was not deputed in the Sub Division, Pundri, in the year 1999, rather he joined on 10.07.2008 and, therefore, he would not be in a position to give such a report/certificate with regard to the work having been completed, especially when the work has been stopped by communication dated 26.07.1999 mark 'X' by the supervisory authorities. No explanation has come as to how the appellant had proceeded to complete the work beyond the said date. He, thus, contends that the findings as recorded by the Lower Appellate Court, being in accordance with law and the facts as brought on record, do not call for any interference.

4. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the impugned judgment but do not find myself in a position to accept the contentions as raised by the counsel for the appellant.

5. The written statement, on the basis of which the plea and the additional evidence was led by the respondents, clearly refers to the inspection report dated 15.07.1999 by the Superintending Engineer, B.W.S. Circle, Kaithal, according to which the work done by the appellant was not satisfactory, so the work was stopped on the basis of the direction received from the Superintending Engineer, B.W.S. Circle, Kaithal, by letter dated 16.07.1999. The said letter has already been placed on record. The communication dated 26.07.1999 mark 'X' has been placed on record as additional evidence before the Lower Appellate Court which further clarifies the position with regard to the fact that the work had been stopped

and the same was duly communicated to the appellant. Not only this, the reliance which has been placed upon by the appellant, is a communication dated 06.12.2000 Exhibit P-2 which is a revised estimate as prepared on instructions from Superintending Engineer, B.W.S. Circle, Kaithal, but the said communication is through Shri Ved Parkash, S.D.O., who was not posted/deputed in Sub Division, Pundri, for the year 1999. The said document, therefore, could not have been relied upon for accepting the claim of the appellant, especially in the light of the fact that the work assigned to the appellant, has been stopped by communication dated 26.07.1999 based upon the letter dated 16.07.1999 of the Superintending Engineer, B.W.S. Circle, Kaithal. The payment as made to the appellant, thus, cannot be said to be not as per the work performed by it. The report which has been referred to i.e. 15.07.1999, clearly depicts that the work has not been performed by the appellant after 28.06.1999 which is apparent from Exhibit D-3 which has been duly entered in the measurement books.

6. The findings as recorded by the Lower Appellate Court in the impugned judgment being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court.

7. No other point has been raised or argued by the counsel for the parties.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

April 01, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE