

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2975 of 2011
Date of decision : May 5th , 2016

M/s Architect Yetinder Mathur

..... Appellant

Versus

Mahatma Hans Raj DAV Institute of Nursing and Hospital

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anand Chibbar, Senior Advocate with
Mr. Sahil Sharma, Advocate
for the appellant.

Mr. R. S. Cheema, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking recovery of ₹4,42,175/- along with interest at the rate of 15% per annum from defendants w.e.f. 27.12.2001 till the date of payment on the premise that plaintiff is a registered firm engaged in providing architectural services and site supervision to its various clients, in Punjab, Haryana and Union Territerorry, Chandigarh.

Mr. Anand Chibbar, learned Senior counsel assisted with Mr. Sahil Sharma submitted that in response to the newspaper advertisement plaintiff sent biodata for the pre qualification of architects for providing architectural services to the Mahatma Hans

Raj DAV Institute of Nursing and Hospital, Jalandhar vide letter dated 13.7.2001. The appellant was called upon to appear before the Building Sub Committee at Jalandhar along with the documents on 25.7.2001 and as per letter dated 17.8.2001 Ex.P-4 defendant informed the appellant-plaintiff that he has been selected on merit and terms and conditions of the appointment would be conveyed as and when approval of Managing Committee is received.

He further submitted that as per the said letter plaintiff was requested to go ahead with the preparation of building plans and estimates which shall be approved by the Managing Committee. He has also drawn attention of this Court to letter dated 9.1.2002 Ex.P-8 written by defendant to the plaintiff whereby it has been held that plans and estimates as prepared by the plaintiff were shown to the officers of DAV Institute of Engineering & Technology, Jalandhar on two days i.e. on 6th and 7th, January, 2002 and were approved and accepted and formal approval was expected to be received by the College shortly. However, the plaintiff was requested to send terms and conditions in writing and the proposed draft of the agreement to be executed may also be sent for onward transmission to the Managing Committee, for approval and the appellant-firm vide letter dated 2.2.2002 Ex.P-9 was informed by the defendant to send performa of tendered documents to be got filled from the building contractors selected by the DAV College Managing Committee and further requested to prepare final plans to be submitted to the Municipal Corporation for approval with required specifications and get the documents approved and thereafter defendants vide Ex.P-10

again wrote a letter dated 7.3.2002 that he had been appointed as Architect for construction of Mahatma Hans Raj DAV Institute of Nursing & Hospital. For the sake of brevity Ex.P-10 is reproduced hereinbelow:-

M/s Architect Yatinder Mathur,

764, Sector 8-B, Chandigarh

Sub: Terms and conditions.

Sirs,

Please refer to your letter dated 18.2.2002 on the subject cited above.

I am to inform you that your appointment as Architect for construction of Mahatma Hans Raj DAV Institute of Nursing & Hospital has been approved by the DAV College Managing Committee, New Delhi vide letter No. G-7/66858 dated 27.2.2002. I am sending herewith a copy of the letter for your information and record.

As regards the mode of payment your letter has been forwarded to the Managing Committee for necessary approval.

Thanking You,

Yours faithfully,

Encl. As above

Convener.”

It has been brought on record that letter Ex.P-11 whereby the appellant was informed that the following terms and conditions and the matter has been marked for the next meeting of the Building Sub-Committee. The contents of the letter reads thus:-

“Principal Mrs. P.P.Sharma,

C/o Mahatma Hans Raj DAV

Institute of Nursing & Hospital

Mahatma Hans Raj Marg,

Jalandhar-144008.

Sub:Approval of Architect

Dear Sir,

Please refer to your letter No. 859 dated 23.1.2002 on the above subject.

The appointment of the Architect Yatinder Mathur, Chandigarh has been agreed to on the following terms and conditions and the matter has been marked for the next meeting of the Building Sub-Committee.

- 1. He would charge 0.9% of the total cost of estimate for the above said work.*
- 2. He would appoint an Engineer locally for daily supervision of the work and he will visit the site fortnightly.*
- 3. The survey work and testing of soil will be got done by the College.*
- 4. For model making and perspectives actual cost will be borne by the institution.*
- 5. The written agreement will be executed by both the parties before assigning the work.*

*Yours faithfully,
Director(Colleges)"*

He further submitted that in view of the aforementioned letter a concluded contract as per Section 70 of the Indian Contract Act, 1872 had taken place and therefore, the alleged termination of the contract vide impugned letter dated 19.10.2002 Ex. P-14 was no longer sustainable, though, the Managing Committee agreed to pay out of pocket expenses for the services rendered but yet after submitting of bill the payment has not been made. The contents of Ex.P-14 reads thus:-

*“Sh. Kunal Mathur,
C/o Architect Yetinder Mathur,
764, Sector 8-B, Chandigarh.
Dear Sir,*

This is to inform you that your services as Architect for Mahatma Hans Raj DAV Institute of Nursing and Hospital, Jalandhar, are no longer required with immediate effect. The Managing Committee would pay your out of pocket expenses for the services you have rendered as Architect for Mahatma Hans Raj DAV Institute of Nursing and Hospital, Jalandhar, as and when you submit the bill for the same.

*Yours faithfully,
General Secretary.”*

He further submitted that once the Managing Committee of DAV Institute of Nursing & Hospital had admitted to pay, the suit was filed in that regard only but both the courts below have declined the relief. In support of his contentions he has relied upon the judgments of Hon'ble Supreme Court in **Mulamchand Vs. State of Madhya Pradesh AIR 1968 SC 1218 and V. R. Subramanyam Vs. B. Thayappa (deceased) and others AIR 1996 SC 1034** and urges this Court to formulate following substantial questions of law as carved out in the Memorandum of Appeal:-

- “1. Whether in view of the provisions of Section 70 of the Indian Contract Act, which are fully applicable to the facts of the case in hand, the plaintiff's suit is not entitled to be decreed?
2. Whether the defendant can be allowed to be enriched unjustifiably as against the plaintiff in view

of the provisions of Section 70 and Section 175 of the Indian Contract Act?

3. Whether Section 70 of the Indian Contract Act and Section 175 of the Indian Contract Act are in conflict with each other?

Mr. R. S. Cheema, learned counsel appearing on behalf of the respondent submitted that a specific objection, in the written statement qua maintainability of the suit, was taken as the DAV Managing Committee had not been impleaded as a party, thus the suit was liable to be dismissed on account of non-joinder of proper parties.

He further submitted that the defendant had not given the requirement to the plaintiff with regard to construction but only rough site plans were submitted by the plaintiff which were subject to approval of the Municipal Corporation. Once the aforementioned plans and estimates were not acted upon as plaintiff and had not sent the performa required by the defendant vide letter dated 2.2.2002 Ex.P-9, no agreement was executed which is condition precedent for assigning the work, thus there was no concluded contract. No execution of the contract was made on account of the act and conduct of plaintiff himself. The plaintiff had no locus standi to file the present suit. In support of his contentions he has relied upon the judgments in **Arun Bala Banik Vs. Swapan Kumar Banik and others 2015 (156) AIC 708, Udit Narain Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar and**

another 1963 AIR (SC) 786, U. P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. 1996 AIR (SC) 1373, Sankrod Cooperative L.&C.Society Ltd. Vs. Haryana State 1999 (4) RCR (Civil) 575 and Oberai Construction Pvt. Ltd. Vs. Worli Shivshahi Co.op.Hsg.Society Ltd. 2008 (4) ArbILR 179 to contend that once there is no concluded contract, there existed no arbitration agreement, therefore the suit for recovery was not maintainable and rightly so, the same has been declined.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt that there was no concluded contract between the parties but the contents of letter Ex.P-14 itself reveal that the Managing Committee had agreed to pay out of pocket expenses for the services rendered by the architects and bill Ex. P-15 only with regard to the costs of project i.e. ₹3,47,174/-. The correspondence referred to above between the parties leads to a conclusion that the appellant-plaintiff had been appointed as an architect and terms and conditions were also referred except for writing of the contract, in my view, the offer and acceptance in such terms ought to have some promise to be entered and that promise was reflected in letter Ex.P-14 (supra). Both the courts below have not assigned reasons to the aforementioned documents, particularly the undertaking given by the Managing Committee for paying out of pocket expenses. The plaintiff has claimed only 25% of the total fees as per guidelines issued by the Council of Architecture and also by the Indian Institute of Architects. In my view, the appellant-plaintiff is liable to be paid the expenses as

considerable amount of work had been done by the appellant-plaintiff. No doubt, the Managing Committee has not been impleaded as a party but that would not entail into dismissal of the suit, for, the defendants had been corresponding with the plaintiff as late as till 7.3.2002 Ex.P-10 as noticed above, it is only vide letter dated 27.2.2002 Ex.P-11 internal communication was between Managing Committee and the Principal of Mahatama Hans Raj DAV Institute.

In view of the aforementioned facts, I am of the view that the ratio decidendi culled out by the Hon'ble Supreme Court in **V. R. Subramanyam's case (supra)** squarely applies to the facts and circumstances of the present case, particularly where the appellant has rendered certain services and not intended to do gratuitously therefore, the appellant is entitled to compensation for the work done, though, there was no written agreement between the parties, similar view had also been taken by the Hon'ble Supreme Court in **Mulamchand's case (supra)**.

The judgments cited by Mr. Cheema, learned counsel appearing on behalf of the respondents are pertaining to a dispute having arisen between the parties in respect of a contract having not entered into by competent officer and as well as with regard to the agreement being placed before the Arbitrator containing the arbitration clause and as per the documentary evidence and facts of the case, court found that there was no concluded contract but commulative reading of the aforementioned letters, referred to above, leads to a irresistible conclusion that the appellant-plaintiff is entitled

to compensation i.e. out of pocket expenses as defendant-respondent himself agreed to pay vide letter Ex.P-14 (supra)

In view of the aforementioned facts, the judgments and decrees of both the courts below are set aside. The questions of law noticed above, are answered in favour of the appellant-plaintiff and against the respondent-defendant. The suit is decreed. However, it shall entail interest @ 9% per annum instead of 15% per annum as claimed over and above the amount of ₹3,47,174/- along with interest @ 9% per annum.

The appeal stands allowed.

Decree sheet be prepared

(AMIT RAWAL)
JUDGE

May 5th , 2016
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