

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

**RSA No.311 of 2011 (O&M)
Date of decision:22.04.2016**

M/s Sadhu Ram and Sons and others ... Appellants

Vs.

Food Corporation of India and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. P.K.Sekhon, Advocate
for the appellants.

Mr. Vaibhav Gupta, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are aggrieved of the non recovery of the entire amount of compensation sought on account of damages as per the provisions of Section 73 of the Contract Act.

Mr. P.K. Sekhon, learned counsel appearing on behalf of the appellant-plaintiffs submits that contract was entered into between Food Corporation of India (FCI) for consideration of ₹1,03,57,000/-. As per the terms and conditions of the contract, FCI was to provide cement and ACC sheets. Umpteen number of documents have been placed on record, i.e., in the shape of correspondence to show that FCI was not supplying the material on time. Even Corporation had initiated the proceedings against the

contractor who had to supply the sheets and therefore, it was a clear cut case of negligence and delay in handing over the material on part of the FCI. Accordingly, the damages to the tune of ₹1,03,57,000/- along with interest were sought but the trial Court partly decreed the suit for recovery of ₹2,39,032.91 for refund of security deposit and payment of last cheque. Thus, there is illegality and perversity in the findings rendered by the Courts below, much less, the same are erroneous and urges this Court to formulate the substantial questions of law. He further submits that the appellant-contractor had employed numerous labourers, who, sat idle without there being any work.

Mr. Vaibhav Gupta, learned counsel appearing on behalf of the respondent-defendants submits that the appellant-plaintiffs have miserably failed to discharge the onus, much less, did not lead any evidence with regard to claim damages. In the absence of documentary evidence, oral evidence would not be sufficient for entertaining the claim qua damages, therefore, rightly so, the suit has been partly decreed.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

In order to substantiate the claim vis-a-vis damages, as per the provisions of Section 73 of the Contract Act, the appellant-plaintiffs are required to lead direct and cogent evidence. Having failed to do so, damages cannot be claimed at the drop of the hat. Both the Courts below found that the plaintiffs have failed to lead any evidence and partly decreed the suit by ordering the refund of

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security amount but the element of interest has not been taken care of. Accordingly, the judgment and decree of the trial Court is modified. The amount ordered to be refunded shall entail the interest @ 9% per annum from the date which has been ordered to be paid.

With the aforementioned observations, judgment and decree of the trial Court is modified which shall entail the interest @ 9% per annum.

Accordingly, the appeal is partly allowed.

(AMIT RAWAL)
JUDGE

April 22, 2016
savita