

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

**RSA No.1823 OF 2015 (O&M)
DATE OF DECISION : 10TH MAY, 2016**

**The Sangrur Central Co-Operative Bank Ltd. Patiala Gate Sangrur
.... Appellant**

Versus

M/s. Deepak Kumar & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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Present : Mr. Sumeet Puri, Advocate for the appellant.

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DARSHAN SINGH, J.

1. This regular second appeal has been preferred by defendant No.1 (wrongly mentioned as appellant/plaintiff in the memo of parties) against the Judgment and decree dated 26.02.2015 passed by learned Additional District Judge, Bathinda, vide which the appeal filed by the appellants against the judgment and decree dated 26.11.2013 passed by learned Civil Judge (Junior Division), Bathinda, has been dismissed.
2. Plaintiff-respondent No.1 filed the suit for recovery of ₹1,03,642/- i.e. ₹72,225/- as principal amount and ₹31,417 as interest @ 18% per annum w.e.f. 01.11.2008 till the date of filing of the suit, on the ground inter alia that the plaintiff was allotted the work of advertisement on bus stand, Sangrur. On 19.11.2007 the said work order was received by the plaintiff/respondent No.1 at Bathinda. As per the aforesaid work

order the plaintiff completed the work with utmost care sincerity and to entire satisfaction of defendant No.1. The plaintiff submitted the bills for the period from June, 2008 to October, 2008 total amounting to ₹72,225/- . Despite repeated request the payment of the aforesaid amount was not made. Hence the suit.

3. Appellant defendant contested that suit on the grounds inter alia that the plaintiff did not comply with the terms and conditions agreed upon between the parties regarding the work. The plaintiff also got affixed the hoardings of State Bank of India along with the hoardings of appellant-defendant No.1-Bank, although the plaintiff had entered into an agreement with defendant No.1 for advertisement of the appellant upto 30.11.2008 and was not authorized to affix the advertisement hoardings of another bank during the said contract period. It is further pleaded that the advertisement hoardings of the appellant-bank were destroyed due to heavy winds and storm in the first week of July, 2008. It was the duty of the plaintiff to get the same repaired and get affixed new hoardings but the plaintiff failed to do so despite repeated requests orally as well as in writing. Thus the appellant pleaded that as the plaintiff had failed to provide the adequate services to the appellant so the plaintiff was not entitled for the recovery of the suit amount. With these pleas appellant pleads dismissal of the suit.

4. From the pleadings of the parties the following issues were framed by the learned Trial Court:

1. Whether the plaintiff is entitled to recovery of Rs.1,03,642/- along with interest @ 18%? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the jurisdiction of Civil Court is barred under Section 82 of Punjab State Co-operative Societies Act 1963? OPD
4. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
6. Whether the plaintiff has not come to the court with clean hands? OPD
7. Whether the suit of the plaintiff is false, frivolous and vexatious to the knowledge of the plaintiff and hence the same is liable to be dismissed with special cost? OPD
8. Relief.

5. On appreciating the evidence on record and contentions raised by learned counsel for the parties the learned trial Court partly decreed the suit of plaintiff-respondent No.1 for recovery of ₹42,135 along with interest @ 6% per annum.

6. The appellant along with respondent No.1 preferred the appeal against the impugned judgment and decree dated 26.11.2013 passed by the learned Trial Court but the said appeal was also dismissed by the learned first Appellate Court. Hence, this regular second appeal by appellant-defendant No.1.

7. I have heard Mr. Sumeet Puri, Advocate learned counsel for the appellant-Bank and perused the case file.

8. Learned counsel for the appellant contended that the plaintiff has not complied with the terms and conditions of the work order. As per the agreement he was not authorized to put the advertisement/hoardings of some other bank on the bus stand but he also affixed the advertisement/hoarding of the State Bank of India. He further contended that due to rain and storm in the first week of July, 2008 advertisement hoarding of the appellant were damaged. In spite of repeated oral and written requests the plaintiff did not repair the said damaged hoarding and had not affixed the new hoarding. Thus he contended that as the plaintiff has not supplied the service as per the terms and conditions of the work order he is not entitled to recover the suit amount.

9. He further contended that the Civil Court at Bathinda has no territorial jurisdiction as the defendants are located at Sangrur. The work order was also placed at Sangrur, so no cause of action has arisen at Bathinda. Thus he contended that the impugned judgments and decrees are not sustainable in the eyes of law.

10. I have duly considered the aforesaid contentions. This fact has not been disputed by the appellant that the appellant has issued the work order Exhibit P-1 bearing No.12039 dated 19.11.2007 allotting the work of installation of advertisements hoardings of the appellant bank at bus stand Sangrur. It is also not disputed that the services were provided by the plaintiff and advertisements hoardings were installed at bus stand Sangrur. The plaintiff-respondent No.1 has submitted the bills for the month of June, 2008 to October, 2008 for a sum of ₹14,445/- each total

₹72,225/- but the payment of the said bills has not been made by the appellant.

11. Learned counsel for the appellant has contended that the plaintiff-respondent No.1 has not complied with the terms and conditions of the work order Exhibit P-1, that the damaged hoardings were not repaired in spite of the oral and written request of the appellant. But all these contentions are not substantiated. It is settled principal of law that the pleadings cannot take the place of proof. Cogent and convincing evidence has to be led in order to prove/establish the plea raised in the pleadings. In the instant case, no evidence at all had been led by the appellant. When the appellant failed to adduce the evidence despite sufficient opportunities the evidence of the appellant was closed by the court vide order dated 07.11.2013. So, there is no evidence on record to establish that plaintiff-respondent has violated any of the terms and conditions of the work order or he has not carried out the repairs of the damaged hoardings.

12. Moreover, the plea, raised by the appellant that the plaintiff has not complied with the terms and conditions of the work order for the entire period, stands falsified from the letter Exhibit P-5 dated 03.11.2008 written by the appellant. In this letter the appellant has written that the advertisements hoardings were damaged 2½ months prior to that letter which has not been got repaired so the bills for the month of September and October, 2008 should not be submitted. The plaintiff has also admitted in the letter Exhibit P-3 that the advertisements hoardings were not in order for the month of October and November, 2008.

13. The suit of the plaintiff has been decreed by the learned Courts below for the recovery of the amount of the bills for the month of June, July and August, 2008. Plaintiff-respondent has not raised any grievance by filing the appeal, cross-appeal or cross-objection for declining the claim of the plaintiff qua the bills for the month of September and October 2008. So, we are only concerned with the bills for the month of June, July and August, 2008. Even as per the letter Exhibit P-5, written by the appellant, the bills for the month of September and October were disputed on the ground that the advertisement hoardings which were damaged about 2½ months prior to 03.11.2008, which falls in the month of September were not repaired. The appellant has not raised any dispute with respect to the services of the plaintiff prior to September 2008. It is not disputed that the appellant has not made the payment of the months of June, July and August, 2008. As the plaintiff had provided the services for the aforesaid months so certainly the plaintiff-respondent No.1 is entitled for recovery of the bills for the months of June, July and August 2008 along with interest @ 6% per annum as awarded by the learned trial Court.

14. I do not find any substance in the plea raised by learned counsel for the appellant that Civil Court at Bathinda had no jurisdiction because in para No.11 of the plaint it has been specifically pleaded by the plaintiff-respondent No.1 that the work order was received by him from defendant No.1 at Bathinda. The work order Exhibit P-1 has also been addressed to the plaintiff-respondent No.1 at his Bathinda address. Thus the part of the cause of action has arisen at Bathinda and the Civil Court at Bathinda will have the territorial jurisdiction.

15. Thus keeping in view the aforesaid discussion, this court does not find any legal infirmity in the conclusion arrived at by the learned courts below and has no reason to differ with the concurrent findings recorded by the courts below. No question of law, what to talk of substantial question of law, arises in the present appeal. Therefore, the present appeal is without any merits and the same is hereby dismissed in limine.

10th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE