

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

RSA No. 577 of 2016 (O&M)

Date of Decision: 18.10.2016

State of Punjab and others

.....Appellants

vs.

M/s Ludhiana Builders

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rupam Aggarwal, D.A.G, Punjab.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendant-State of Punjab (in the department of public works), after the suit filed by the respondent-plaintiff, seeking a recovery of Rs. 5,56,989/- was decreed in its favour and the first appeal filed by the present appellants-defendants, was dismissed.

2. As per the plaintiff, which is a firm stated to be duly registered, it was also registered as a Contractor with the appellant-State and was allotted the work of providing and laying a 20 mm thick graded premix carpet with tack coat mechanically mixed and laid with paver, on the A/S Ludhiana Rahon Road, vide a letter issued by the 4th appellant-defendant, i.e. the Executive Engineer, Construction Division No. 1, P.W.D. (B&R), Ludhiana, on 23.11.2001.

3. The work is stated to have been completed by the plaintiff on 12.06.2002, as per the last and final bill prepared by the 4th defendant.

4. It was contended that Rs. 7,73,596/- was not paid to the plaintiff, due to which a legal notice was served on 21.11.2005, in which the

plaintiff made the demand of Rs. 7,93,373/-, along with interest, after which the defendants paid the principal amount of Rs. 7,73,596/- vide a cheque dated 05.12.2008 but did not pay any interest, even after allegedly depriving the plaintiff of the principal amount for a period of six and half years.

It was contended that though the plaintiff was actually entitled to interest @ of 18% per annum, however, it had claimed a moderate rate of 12%, with the total amount of interest uptill 06.12.2008 coming to Rs. 5,56,989/-, which was not paid despite repeated requests.

Thus, as per the plaintiff, it was entitled to a payment of Rs. 13,30,585/- but was only paid the aforesaid sum of Rs. 7,73,596/-.

5. A legal notice is again stated to have been served for the shortfall of Rs. 5,56,989/-, on 06.02.2010, despite which no payment having been made, a notice under Section 80 CPC was issued, after which the suit was filed on 16.04.2010.

6. Upon notice, the defendants appeared and filed a written statement taking a preliminary objection that the plaintiff had already received the full and final amount of Rs. 7,73,596/- on 05.12.2008 and therefore, the suit was time barred and in any case, no cause of action arose for filing the suit.

On merits, the contentions of the plaintiff were all denied.

7. A replication having been filed, the following issues were framed by the learned Civil Judge (Jr. Divn.), Ludhiana:-

“1. Whether the plaintiff is entitled for recovery of amount as prayed for? OPD

2. Whether the suit of the plaintiff is time barred? OPD

3. Whether the plaintiff has no cause of action to file the present suit? OPD

4. *Whether the suit is not maintainable in the present form? OPD*

5. *Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD*

6. *Whether the suit is liable to be dismissed under Order 7 Rule 11 CPC on account of legality and validity of notice under Section 80 CPC being deported cases? OPD*

7. *Relief.”*

8. The plaintiff examined one of the partners of the firm, Inderjit Singh and also tendered various documents in evidence, including the notices issued, postal receipts, acknowledgments and the reply to the notice under Section 80 CPC.

The defendants examined Kulwant Singh, Executive Engineer, who was occupying the post of the 4th defendant and also tendered five documents in evidence including a letter dated 23.11.2001, stating that the work was not completed within the stipulated period.

9. Upon appraising the pleadings, the evidence and the arguments before him, the learned Civil Judge found that it was admitted by the witness of the defendants that though the work was completed in 2002, funds had been received only in the year 2008, resulting in the delayed payment.

Though an argument was also made for the defendants that the contract in question had not been signed by the defendants, that plea was rejected on the ground that when the work had been executed and payment had been made, the plea was without merit.

10. As regards an argument that the contract had not been completed within one month from the date of allotment, i.e. from

23.11.2001, it was held that penalty for the delay could have been imposed but firstly, because of no penalty having been imposed and secondly, with no counter-claim filed, that plea was also rejected.

The delay of 06 years, having been admitted to be due to late receipt of funds, was held to be not justifiable and as such, the plaintiff was held entitled to interest on the sum of Rs. 7,73,596/-.

11. As regards the rate of interest claimed (12% per annum), it was held that with interest rate having already been decreased by all nationalized banks, the plaintiff would only be entitled to interest @ 9% per annum, from the date of the completion of the work, till the date that the payment was made to him, i.e. 05.12.2008.

12. On the issue of limitation, the learned Civil Judge held that payment was made on 05.12.2008 and the plaintiff having presented the suit on 15.04.2010, it was very much within limitation and maintainable.

Similarly, the pleas with regard to shortage of court fee and lack of jurisdiction were also rejected and the suit of the plaintiff was decreed to the extent of payment of interest @ 9% per annum for the aforesaid period, as already noticed.

13. In the first appeal filed by the present appellants, the learned District Judge, after noticing the pleadings and the evidence led and considering the judgment of the learned lower court, also came to the same conclusion, that the late payment was admittedly made on account of the late receipt of funds from the Government, despite the fact that the bill was submitted to the defendants by the plaintiff immediately after completion of the work.

Thus, on the aforesaid reasoning, which was essentially the

same as of the learned Civil Judge, including the issue of limitation, the learned first appellate Court dismissed the appeal of the present appellants-defendants.

14. Before this Court, learned counsel for the appellant-State essentially reiterated the pleadings before the courts below, emphasising on the fact that since the work was not completed within one month from the date of its allotment, no interest was payable to the respondent-plaintiff.

Upon notice having been issued in this case earlier, though the respondents stand duly served and a power of attorney of Sh. Suveer Sheokand, Advocate, is on record and in fact notice had also been issued in the application filed by the appellant-State for advancement of the date of hearing, on the ground that warrants of attachment had been issued by the Court seized of the execution proceedings, none appeared for the respondent-plaintiff, on the date of hearing.

15. Having considered the arguments of Mr. Rupam Aggarwal, D.A.G, Punjab, I find myself unable to accept them, for the same reason as given by the learned Civil Judge, to the effect that no clause having been pointed out in the agreement with regard to penalty for late fulfillment of the contract, and even if such clause were present, no penalty having been imposed at any stage, or even any amount of penalty claimed by way of a counter-claim or even with any cross-objections with regard to a specific amount of penalty payable by the plaintiff, it would not be possible to hold that such penalty was payable, though on principle, the argument is not illogical.

16. Further, though no specific argument has been raised before this Court with regard to the suit having been filed almost 8 years after the

work had been completed on 02.06.2002, however, this Court, is obviously bound to deal with that issue, an issue on limitation having been raised by the defendants and framed by the learned Civil Judge.

In view of the fact that the appellant-State admitted the claim (as regards the principal payable) and in fact made payment of the said principal of Rs. 7,73,596/- on 05.12.2008, also admitting that the payment was delayed simply on account of late receipt of finance from the Government, in the opinion of this Court also, the appellants cannot be absolved of the liability to pay the interest on the delayed payment. No doubt, Section 18 of the Limitation Act, 1963, provides that limitation is extended where an acknowledgment of the outstanding liability is made by the party concerned, before the expiration of the period of limitation, but in this case the acknowledgment of the debt is in the form of payment of principal amount due to the respondent-plaintiff, only in the year 2008, the work having been completed in the year 2002; however, the payment itself, in the opinion of this Court, would give a fresh cause of action to the plaintiff with regard to the interest payable to him on the admitted payment due to him, such admission having been made by the payment itself to the plaintiff, by the defendant.

This would be especially so in the light of the testimony of the appellants-defendants' own witness, who admitted that the delayed payment was only on account of delayed receipt of funds from the State Government.

Further, it is nobodys' case that the plaintiff had not made the demand for interest along with the demand for principal amount due to him, with his demand actually having been for a sum of Rs. 13,30,585/-, of which only Rs. 7,73,596/- was paid to him. Hence, in the opinion of this Court, the

learned courts below did not err in awarding the interest due to the respondent-plaintiff, even at a reduced rate of 9% per annum rather than @ 12% per annum.

Consequently, finding no merit in the appeal, it is dismissed in *limine* but with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

October 18, 2016
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Whether speaking/reasoned	Yes
Whether Reportable	Yes