

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

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Regular Second Appeal No.550 of 2015

Date of Decision: January 29, 2016

M/s. Osram India Pvt. Ltd., Gurgaon

...Appellant

Versus

M/s. Sys Management Services, Faridabad and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.H. Pancholi, Advocate
with Mr. Hemant Malhotra, Advocate
and Mr. Vikas Mohan Gupta, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 24.01.2014 passed by the Additional Civil Judge (Senior Division), Faridabad, whereby the suit for recovery of ₹6,78,502/- (principal amount ₹5,45,612/- along with interest at the rate of 24% per annum) along with the counter claim of the respondents-defendants, stand dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Faridabad, on 20.10.2014.

2. It is the contention of learned counsel for the appellant that a fraud has been played not only upon the appellant-plaintiff by the respondents-defendants but also on the Court as an effort has been made to produce a contract which was never entered into. He contends that the respondents-defendants were engaged to supply manpower which they had been doing since 2003 and have been raising bills in this regard. Out of the bills which have been submitted by them, eight of them have been found to be correct for which the payments have been made and qua the remaining

four although initially the payments were made but now recovery is being sought as no manpower was actually supplied by them and, therefore, were not entitled to claim any service charges. He asserts that in fact the employees have straightaway approached the appellant-company without going through the process of deployment by respondents-defendants and, therefore, the respondents would not be entitled to any service charge on this basis.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find myself in agreement with the assertions, as has been put forth by him.

4. Admittedly, there was an agreement between the appellant and respondents which was continuing since the year 2003 of which bills were being raised by the respondents-defendants for the manpower supplied by them as they are engaged in the business of placement consultants. Out of the 13 bills, 8 admittedly were found to be correct and the payments have been duly made and there is no dispute on this count. Qua one bill, a counter claim has been made by the respondents-defendants which has been rejected by the trial Court holding that they have not been able to produce any evidence on record for claiming the benefit as per the said bill. Qua the remaining four bills which the appellant-company asserts that the respondents were not entitled to any payment but the payment has been made in good faith on the assertion that the respondents-defendants have not engaged any manpower, in fact the persons had directly approached the appellant-company and were appointed, therefore, the respondents were not entitled to any service charge in respect of those employees. Counsel in

support of this contention has relied upon the statement of PW-2 P.K. Shukla, who has deposed before the trial Court that he had straightaway approached the appellant-company and not through the respondents-defendants but payment has been made to the respondents-defendants through whom he was not entitled to as he has not approached the appellant-company through them.

5. This contention of learned counsel for the appellant cannot be accepted as it has come on record that after due verification, the payments were made to the respondents and in any case, PW-2 Mr. P.K. Shukla, who had appeared as a witness, appears to have now changed sides and come forth to support the appellant-plaintiff. The auditor's report is based upon the statements of some of the persons, who had been engaged through the services provided by the respondents-defendants for the appellant-company and are now supporting the appellant-company.

6. The claim is based upon an objection raised by the auditor, who had come from Germany who has not been produced, however, at a subsequent stage, it has been pointed out that the management proceeded with the inquiry to find out the truth and on that basis, this claim is being made. Admittedly, when the payments were made, the bills as has been submitted by the respondents which had been duly verified by the employees of the appellant-company and on due verification, the payments have been made. As regards the bill which was projected by the respondents in the counter claim having not been supported by them before the trial Court has been rightly rejected. The claim as has been made in the present case is on the basis of conjectures and surmises only, especially when the work assigned to the respondents which was got done through them has

been admittedly completed by them to the satisfaction of the appellant-company and there is no objection raised by the appellant-company except that now such a plea is being sought to be raised which cannot be accepted and the Courts below have rightly rejected the same.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

9. As regards the proceedings, if any, initiated by the appellant-company, any observation made in this order, shall not have any effect thereon.

January 29, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE