

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

RSA No.3507 of 2011(O&M)

Date of Decision:-05.09.2017

Municipal Corporation, Ludhiana.

.....Appellant.

Versus

M/s A One Builders & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Samarth Sagar, Advocate for the Appellant.

Mr. Satinder Khanna, Advocate for the respondents.

JASWANT SINGH, J.

Defendant /appellant is in second appeal aggrieved against the concurrent findings recorded by the Courts below whereby suit for recovery filed by the plaintiffs/respondents has been partly decreed by learned Civil Judge (Jr. Divn.), Ludhiana vide judgment and decree dated 23.02.2010 and findings thereof were modified by learned District Judge, Ludhiana, vide judgment and decree dated 06.04.2011.

Learned Counsel for the appellant has argued that the learned lower Appellate Court has committed grave illegality by not dismissing the suit of the plaintiff in *toto*, as it has completely overlooked the fact that the basic agreement of whose breach has been

alleged has not been brought on record by the plaintiffs. It has been further argued that Civil Courts had no jurisdiction to entertain the suit in view of the fact that there was an existence of arbitration agreement between the parties and in case there was any breach of any condition of the contract, the parties had the remedy by approaching the Arbitrator.

On the other hand, learned Counsel for the respondents/plaintiffs has argued that the present appeal itself is not maintainable on the ground that before the first Appellate Court, the plaintiffs/respondents had filed their cross objection no.2 dated 21.07.2010 which was also decided by the District Judge, Ludhiana vide the common judgment dated 6.4.2011. However, no separate appeal has been filed against the said decree passed in cross objection no.2 dated 21.07.2010 filed by the plaintiffs/respondents and thus, the present appeal is barred by principle of resjudicata.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present appeal is devoid of merit and deserves to be dismissed.

Perusal of the judgments and decrees passed by the Courts below would reveal that both the parties to the *lis* were aware regarding the controversy involved in the case and had led the entire evidence on the basis of presumption that an agreement indeed was executed amongst the parties and thereafter work had also commenced.

However, both the parties had blamed each other qua the fault committed by them. On the said aspect, the courts have minutely

perused the measurement book, the receipts and other documentary evidence to come to a conclusion that the contractor/plaintiff/respondent had suffered a loss on account of breach of terms and conditions by the appellant/defendant. Being a pure question of fact, this Court will not divulge into the nuances of the evidence led by the parties and, therefore, reject the contentions raised by the appellant-defendant qua the assessment of losses suffered by plaintiff-respondent.

As far as the legal argument raised by the appellant/defendant to the effect that there was arbitration clause in the agreement and, therefore, the Civil Courts has no jurisdiction, I am of the opinion that the said argument is also without any merit. Admittedly, the defendant has participated in the proceedings and never raised an objection qua jurisdiction at the first stage. After having joined issues with the plaintiff in the suit and after having suffered judgments and decrees against itself, defendant-appellant cannot be permitted to raise this plea in the regular second appeal.

As far as the objection raised by learned Counsel for the respondents/plaintiffs qua the maintainability of the appeal itself, this Court is of the opinion that the plaintiffs/respondents have not been able to point out that two separate decrees were framed by the District Judge at the time of disposing of the first appeal. In case a joint decree was framed by the learned District, then one appeal would lie and not two appeals, as is contended by the learned Counsel for the respondents/plaintiffs. It is only in such cases where two separate

decrees have been formed that the aggrieved party is required to challenge them separately. However, on this issue also, this Court is of the opinion that by now it is settled position of law that while filing an appeal, even two decrees can be challenged by filing a single appeal, if they arise out of a common judgment. In view thereof, the objection as raised by the learned Counsel for the respondents/plaintiffs is without any merit and thus rejected.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 05, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>