

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

RSA No.697 of 2013 (O & M)

Date of Decision:-28.02.2017

M/s Satpal Singh Grover

...Appellant

Versus

M/s Ion Exchange India Limited

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ajay Ghangas, Advocate
for the appellant.

HARI PAL VERMA J.

C.M. No.1874-C of 2013

This is an application seeking condonation of delay of 22 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 22 days in re-filing the appeal is condoned.

RSA No.697 of 2013

The appellant/plaintiff (hereinafter called 'the plaintiff') has filed the present regular second appeal against the judgment and decree dated 30.7.2012 passed by the Additional District Judge, Faridabad whereby the appeal filed by the plaintiff against the judgment and decree

dated 13.11.2010 passed by the Additional Civil Judge (Senior Division), Faridabad, was dismissed.

Briefly stated, plaintiff, has filed a suit for mandatory injunction directing the respondent/defendant to pay an outstanding amount of Rs.26,59,221/- along with future interest @ 24% per annum from the date of filing of the suit, till its realization. As per plaint, plaintiff is carrying the business of civil works and is registered as a Government Contractor. The respondent/defendant had approached the plaintiff through its purchase Manager Shri S.N. Mehtra for execution of civil works at Faridabad Thermal Power Plant. The negotiations were entered between the parties and purchase order dated 2.11.1995 amounting to Rs.30,50,000/- was given to the plaintiff by the defendant. Thereafter, the plaintiff undertook and executed the aforesaid civil works at Faridabad Thermal Power Plant as per the terms and conditions settled between them. However, during the course of execution of the civil works, the prices of the construction material were increased. Therefore, the plaintiff had requested the defendant to increase the rate of contract by 25% for the civil works. The defendant acceded to the request of the plaintiff vide fax dated 05.8.1996 received on behalf of Shri J.S. Getla. Accordingly, rates of civil works were increased and were made effective from 1.7.1996. In addition thereto, the defendant also agreed to the payment of excess work which was proposed to be carried out by the plaintiff, in pursuance of the purchase order issued vide memo dated 28.5.1996 and 18.6.1997. Vide purchase order dated 18.11.1996, the value of purchase order was increased to

Rs.41,01,258/- and vide another letter dated 09.2.1998 the aforesaid value was enhanced from Rs.41,01,258/- to Rs.68,97,168/-. The plaintiff had carried out the civil works to the entire satisfaction of the Faridabad Thermal Power Plant and finally the work was executed/completed by the plaintiff on 28.12.1998. Accordingly, final bill and remaining bills were duly checked, verified and recommended for payment by the Engineer Incharge of works in question on behalf of defendant. The bills were submitted with the defendant for payment. However, the defendant despite having assurance given by him, failed to make the payment to the plaintiff, details of which were as under :-

A.	i)	Amount against amendment in respect of RA Bill No.1 vide P.O. No.9798/S/0268/HD006 Dated 29.1.1998	Rs.22,518/-
	ii)	Amount of RA Bill No.1 passed for payment vide P.O. No.9798/06/S/0268/HD0010 dated 28.1.1998	Rs.71,500/-
B.	i)	Balance amount of RA Bill No.13 (actual accepted Bill is for Rs.12,22,364/- but the payment has been correctly shown as Rs.11,19,135/-. Moreover, actual payment of Rs.9,69,793/- was made in April, 1998	Rs.2,71,571/-
	ii)	Balance amount of RA Bill No.14	Rs.3,65,296/-
	iii)	Amount of RA Bill No.15	Rs.7,29,668/-
	iv)	Amount of final bill vide P.S. No.9697/06/S/0137/ HD0010 dated 28.11.96	Rs.11,99,168/-
			Rs.26,59,221/-

For the aforesaid reasons, the plaintiff has filed the said suit.

The defendant contested the suit taking various legal objections like concealment of facts, territorial jurisdiction of Civil Courts at Faridabad, locus standi and limitation etc. The plaintiff has not provided any proof in support of his plaint over and above the purchase order. The execution of contract on behalf of defendant was denied, though the factum of enhancement of value of purchase order to Rs.68,97,168/- has not been disputed. It has been submitted that the running bills submitted by the plaintiff had been periodically paid off and vide letter dated 2.2.2001 the plaintiff was apprised by the defendant that only a sum of Rs.1,29,387/- was lying outstanding towards the plaintiff in the records/accounts of the defendant. Even that amount was withheld for the reason that the Provident Fund Commissioner had issued a letter with regard to non-deposit of dues by the plaintiff and it was revealed that the dues of over Rs.5,50,000/- were outstanding towards the plaintiff without imposing penalty. Thus, the plaintiff has failed to deposit the statutory dues of provident fund.

From the pleadings of the parties, the trial Court vide order dated 16.11.2007 framed the following issues :-

- “1. Whether the plaintiff is entitled for decree of recovery of Rs.26,59,221/- along with interest from the due date of the amount till its actual realization ?OPP
2. Whether suit of the plaintiff is barred by limitation ? OPD
3. Whether this Court has no jurisdiction to entertain and try the present suit ? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD

5. Whether the plaintiff has suppressed the material facts from the Court ? OPD

6. Relief.”

The trial Court partly decreed the suit for recovery of Rs.13,97,168/- along with future interest @ 6% from the date of filing of the suit till its realization and held as under :-

“19. The contention of learned counsel for the plaintiff that there were two purchase orders and the aforesaid amount of Rs.55 lacs was admitted to have been received by the plaintiff by adding the value and another purchase order worth Rs.10 lacs is, liable to be disbelieved being beyond pleadings. Otherwise also, the proprietor of the plaintiff has responded to each and every question of learned counsel for the defendant during his cross-examination in a very rational manner and as such, it cannot be said that he had ever been got confused/perplexed on the aforesaid aspect of the payment of Rs.55 lacs out of the value of the purchase order of Rs.68,97,168/-. The proprietor of the plaintiff Satpal Singh (PW1) has categorically stated that out of the aforesaid value of the purchase order, he has already received a sum of Rs.55 lacs. As such, it is evident that the aforesaid amount has been received by him out of the present purchase order only, for it was the context of the present purchase order only which was under the reference at the time when he had stated that he had already received a sum of Rs.55 lacs from the defendant company. Moreover, it is stated by PW1 Satpal Singh during his further cross-examination that he could produce the statement of account of Rs.55 lacs received by the plaintiff firm from the defendant company from

time to time. However, the aforesaid statement of account has not been placed on the file. No doubt that a calculation Ex.P26 has been placed on the file by the plaintiff. However, the aforesaid statement of account cannot help the plaintiff to wriggle out the admission made on its behalf by the PW1 Satpal Singh by saying that a sum of Rs.55 lacs was already received by the plaintiff firm from the defendant company and it cannot be presumed that the aforesaid amount of Rs.55 lacs has not been received by the plaintiff only out of the value of the present purchase order worth Rs.68,97,168/-.”

Aggrieved against the aforesaid judgment and decree dated 13.11.2010 the present appellant/plaintiff has filed an appeal. However, finding no illegality in the well reasoned judgment and decree passed by the trial Court, learned lower Appellate Court dismissed the appeal vide order dated 30.7.2012.

Learned counsel for the appellant has raised the following substantial questions of law in the present appeal :-

- “ i) Whether the finding of both the lower Courts below is perverse and against law in view of the evidence brought on record ?
- ii) Whether the judgments and decrees passed by both the Courts below are sustainable in the eyes of law when it is duly proved by the plaintiff by documentary evidence that the total amount of Rs.26,59,221/- is outstanding towards the defendant ?
- iii) Whether the judgment and decree passed by the Courts below which is based on the oral statement of PW1 Satpal is sustainable in the eyes of law when the plaintiff

has duly proved by producing documentary evidence the total outstanding amount which is pending towards the defendant ?

- iv) Whether the rate of interest of 6% p.a. awarded by the Courts below is reasonable in view of the commercial transaction ?
- v) Whether the impugned judgment and decrees are legal and valid in law ?”

Learned counsel for the appellant has argued that the plaintiff has filed a suit for mandatory injunction directing the defendant to pay an outstanding amount of Rs.26,59,221/- along with future interest @ 24% per annum from the date of filing of the suit till its realization, but the suit has partly been decreed. The Courts below decreed the suit without appreciating the evidence as well as pleadings on record. The plaintiff was entitled for Rs.26,59,221/- but the Courts have decreed the suit only for Rs.13,97,168/-. The judgments and decrees have been passed solely on the statement of PW1 Satpal, who in his cross-examination has stated that the plaintiff has received Rs.55 lacs from the defendant whereas in the later part of his cross-examination reveals that after checking bills, payment of about Rs.51 lacs was received by the plaintiff and the statement regarding receiving of Rs.55 lacs by the plaintiff was made by mistake.

I have heard learned counsel for the appellant.

Vide, negotiation, as entered between the parties, purchase order dated 2.11.1995 amounting to Rs.30,50,000/- was given by the defendant to the plaintiff and pursuant thereto the plaintiff undertook and executed the work. During the course of execution of the work, the cost of

construction material was increased and therefore the plaintiff had requested the defendant to increase the rate of construction by 25% of the civil work, which was being executed by the plaintiff on behalf of the defendant and the defendant acceded the request vide fax dated 5.8.1996 received from Shri J.S. Getla. Interestingly, the plaintiff has not examined said Shri J.S. Getla, who had increased the rate by 25% of the civil works. Furthermore, PW1 Satpal in his cross-examination has fairly admitted that there is no written agreement between him and the defendant. The defendant awarded execution of the civil works for an amount of Rs.68,97,168/- and as against this money the plaintiff has received a total sum of Rs.55 lacs from the defendant. No statement of account for Rs.55 lacs has been attached. Thus, he fairly admitted that as against the total amount of Rs.68,97,168/- he has received an amount of Rs.55 lacs. Thus even increase of 25% by Shri J.S. Getla is quite suspicious. It is only after examination of Shri J.S. Getla, it could have come on record as to under what authority he allowed such an increase.

Therefore, this Court does not find any infirmity/ illegality in the judgments and decrees passed by the Courts below. No satisfactory calculation has come forward on behalf of plaintiff to justify his statement that he has received about Rs.51 lacs despite the fact that in an earlier part of his cross-examination he has fairly admitted that he has received Rs.55 lacs from the defendant. Since there is no ambiguity about the receipt of payment and the plaintiff has been paid the amount as per the calculation, there is no error in the judgments passed by the Courts below. Moreover, it

being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No other point is argued.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

February 28, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No