

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3333 of 2016 (O&M)
Date of decision: 20.07.2017

Harjit Singh

... Appellant

Vs.

Bharat Sanchar Nigam Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.C. Arora, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of defendant No.4, is directed against the impugned judgment of reversal dated 02.05.2016, whereby first appeal of the plaintiff was allowed, judgment and decree dated 03.10.2015 of the learned trial Court were set aside and suit for recovery filed by the plaintiff was decreed by the learned first appellate Court.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that plaintiff department brought suit for recovery of Rs.9,56,325/- i.e. Rs.7,77,500/- as principal and Rs.1,78,825/- as interest on the grounds that sewerage/water pipes were laid down near Bus Stand, Sri Muktsar Sahib by defendant No.3 and the contract was given to defendant No.4 for installing the sewerage pipes. Plaintiff also

alleged that the suit had been instituted by competent person and defendants

No.1 to 3 were also legal entities. Plaintiff given the details of loss as under :

Detail of loss caused on 24.08.2011

<u>Location of Cable cutting</u>	<u>Type of Cable</u>	<u>Qty.</u>	<u>Amount</u>
Near Bus Stand, Mlt Road (Additional 10 slab charges @4500 per slab)	20 pair	5 M	7500
	20 pair	45 M	45000
Near Bus Stand, Mlt Road (Additional 15 slab charges @5500 per slab)	50 pair	5 M	10000
	50 pair	145 M	82500
Near Bus Stand, Mlt Road (Additional 15 slab charges @6000 per slab)	100 pair	5 M	10000
	100 pair	145 M	90000
Near Bus Stand, Mlt Road (Additional 35 slab charges @7000 per slab)	200 pair	5 M	20000
	200 pair	345 M	245000
Near Bus Stand, Mlt Road (Additional 9 slab charges @11000 per slab)	400 pair	5 M	20000
	400 pair	45 M	99000
Piller Plinth charges:			8000
Total			6,37,000/-

Detail of loss caused on 22.10.2011

<u>Particulars</u>	<u>No. of connections</u>	<u>Rate</u>	<u>Amount</u>
Charges for damage of cable			
1. 5 Pair UG Cable near Bus Stand	5M	7500	7500
Addl. 5 Slab @ 4500/- per slab	25M	22500	22500
2. 10 Pair UG Cable near Bus Stand	5M	7500	7500
Addl. 5 Slab @ 4500/- per slab	25M	22500	22500
3. 20 Pair UG Cable near Bus Stand	5M	7500	7500
Addl. 2 Slab @ 5000/- per slab	10M	10000	10000
4. 50 Pair UG Cable near Bus Stand	5M	10000	10000
Addl. 2 Slab @ 5500/- per slab	10M	11000	11000

1. 400 Pair UG Cable near Bus Stand	5M	20000	20000
Addl. 2 Slab @ 11000/- per slab	10M	22000	22000
Total:		140500	140500

The total loss of both these days came to be Rs.7,77,500/-. Plaintiff alleged that the damages were caused to the underground cables by the defendants, as they had failed to perform their duty with care and caution and also negligent. Plaintiff further alleged that the total damages caused by defendants worked out to be Rs.7,77,500/- and plaintiff was also entitled for interest @1% per mensem, which came to Rs.1,78,825/- and totaling Rs.9,56,325/-. Plaintiff also served notice upon defendants under Section 80 of CPC, but to no avail. Plaintiff also alleged that they had requested the defendants to make the payment, but they had failed to pay the same. Moreover, this Court had jurisdiction as the works had been executed in City Sri Muktsar Sahib. Plaintiff also averred that various notices were issued to defendants to make payment to the tune of Rs.6,37,000/- and Rs.1,40,500/-, but they had failed to pay the amount. Plaintiff instituted suit before the learned lower Court on these grounds.

Having been put to notice, defendants No.1 to 3 appeared and filed their joint contesting written statement, raising more than one preliminary objections. Defendant No.4 appeared and filed his separate and contesting written statement, controverting the allegations levelled against him in the plaint. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether plaintiff is entitled to recovery of ₹9,56,325/- alongwith interest? OPP

2. Whether the present suit is not maintainable in the present form? OPD
3. Whether plaintiff has not come to the Court with clean hands? OPD
4. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff could not prove its case. Accordingly, suit for recovery filed by the plaintiff was dismissed by the learned trial Court, vide its judgment and decree dated 03.10.2013. Feeling aggrieved, plaintiff filed its first appeal, which came to be allowed by the learned first appellate Court, vide its impugned judgment and decree dated 02.05.2016. Hence this regular second appeal at the hands of defendant No.4 only.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that telephone cable had already been laid down by the plaintiff-department, before the appellant-defendant No.4 started carrying out the work of laying down the sewerage line. The pleaded and duly proved case on behalf of the plaintiff was that while executing the work of laying down the sewerage/water pipes, it was defendant No.4-appellant who caused damage to the telephone cable, already laid by the plaintiff-department. The assessed financial loss was sought to be recovered by the plaintiff-department from the defendants, particularly the appellant herein. In the very nature of things, once the telephone cable was already existing at the

site, where the appellant was carrying out the work of laying down the sewerage/water pipes, it was least expected from the appellant-defendant No.4 to be careful, so as to avoid causing any kind of damage to the telephone cable already laid by the plaintiff-department at the site.

Plaintiff has given a specific and mathematical calculation, pointing out particular cable and the amount of financial loss caused, as noticed in the forgoing paragraphs. Further, a close perusal of the impugned judgment rendered by the learned first appellate Court would make it crystal clear that the learned trial Court misdirected itself, while not appreciating the documentary as well as oral evidence and the learned Additional District Judge was well within his jurisdiction to reverse the findings recorded by the learned trial Court on the crucial issues, particularly issue No.1. Having said that, this Court feels no hesitation to conclude that the impugned judgment and decree passed by the learned first appellate Court deserve to be upheld.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 18 and 20 of the impugned judgment, which deserve to be noticed here, read as under: -

“In the light of above legal position, the Court has evaluated the testimony of witnesses of both the parties, which has already been discussed by this Court before coming to this legal proposition. However, in the light of above legal proposition, this Court is of considered view that when the cable was already lying on the

place, then the duty would certainly be casted upon the defendants, when they have to lay down sewerage/water pipes at the site in dispute. On this account, plaintiff examining P.D. Kansal DET as PW1 as well as Mohinder Singh Sodhi, SDO as PW2 also cleared the fact that even site plan was available in their office. Moreover, when the cable was visible to the naked eye, then why the defendant no.4 was damaging to the same without any legal right. Furthermore, careless and negligent attitude has been adopted by defendant no.4 by laying down the sewerage/water pipes, because otherwise cable would never have been damaged. Moreover, when plaintiffs were aware of the work and progress and they had also visited the spot, then it was duty of the defendants to respond to the same. No doubt, both the parties i.e. plaintiff as well as defendants no.1 to 3 are Government departments, therefore it was their duty to act in cooperation with each other and not to play the blame game, which has been done in the present case.

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In the light of above discussed documentary evidence, this Courts no hesitation in holding the fact that the learned lower Court has ignored the documents, which has substantiated the stand of plaintiff and proves the damages caused to the cable by the defendants, therefore, finding recorded on issue no.1 is neither found to be legal and nor sustainable. Plaintiff alleged and pleaded that the defendant has caused loss to the tune of Rs.7,77,500/- and also brought documents in this regard as

Ex.PX/1, Ex.PX/2 and Ex.PX/3. On perusal of these documents, it has revealed that the plaintiff in the first instance has proved the factum of loss/damages caused to their cable to the tune of Rs.6,37,000/- on 29.08.2011 through demand notice Ex.PX/1. Though, later on plaintiff also brought other documents i.e. Ex.PX/2 and Ex.PX/3, but there is no explanation from the mouth of any of the witnesses of the plaintiff that when first demand notice has been issued for a sum of Rs.6,37,000/-, then how the later amount surfaced in their record. Under these circumstances, this Court is of considered view that plaintiff department is entitled for the loss firstly assessed to the tune of Rs.6,37,000/- and not for the later amount, which has been alleged in other documents to the tune of Rs.1,40,500/- and through Ex.PX/3 as Rs.17,08,000/-. Moreover, plaintiff has brought document as Ex.PX/3 alleging that fresh estimates were prepared, but they have failed to connect the same with the present case. As such, this Court is of considered view that plaintiff is only entitled for a sum of Rs.6,37,000/-, which has been firstly assessed for damage to the cable by defendant no.4 while executing work on behalf of defendants no.1 to 3. Accordingly, findings on issue no.1 is hereby reversed and plaintiff is held to be entitled for a sum of Rs.6,37,000/- along-with interest @ 9% per annum from this demand notice dated 29.08.2011 till today and @ 6% per annum future interest. Accordingly, finding on issue no.1 shall stand decided in favour of plaintiff and against the defendants in above terms.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. He also failed to refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 CPC. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in the impugned judgment and decree passed by the learned Additional District Judge, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.07.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No