

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 6069 of 2015 (O&M)

Date of Decision:15.12.2017

Deepjot Singh and another

.....Appellants

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Arora, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The present appeal is at the behest of the plaintiff being aggrieved that the rate of interest awarded by the Courts below while decreeing his suit for recovery, is on the lower side.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The plaintiff filed a suit for recovery of an amount of Rs. 8,39,084/- which included interest of Rs.1,70,491/- at the rate of 18%.

The facts, as per the plaintiff, are that the plaintiff was the partnership firm and the suit was filed through one of its partner. The defendants invited tenders for providing intercepting sewer in Focal Point on Samrala Road, Ludhiana. The costs of the project was approximately Rs.26.40 lakh. The tender of the plaintiff was accepted by the defendants. The work was to be completed within five months from the commencement of the project i.e. on 22.11.1991. It was averred that as per the terms and conditions of the tender, the clear alignment was to be given by the

defendants. The work could not commence without the clear alignment from hindrances. The plaintiff alleged that it was ready and willing to perform the work assigned and deposited Rs.75,000/- as security. The requests were made to the defendants to provide clear alignment and to give demarcation. The defendants were having evasive attitude. The plaintiff had arranged machinery, permanent staff and temporary labour. The expenses incurred were detailed in the suit. As the defendants failed to give hindrance free clear alignment, the work could not be started and the plaintiff suffered a loss of Rs.5,93,593/-. The suit for recovery after giving notice under Section 58 of the Punjab Water Supply and Sewerage Board Act, was filed for recovery of the losses plus the security deposit and interest thereon. Earlier, the suit for permanent injunction was filed which was withdrawn with permission to file fresh suit.

On notice written statement was filed by defendant No.1. Various preliminary issues including jurisdiction of the Court and suit being time barred, were raised. On merits, it was admitted that the tender of the plaintiff was accepted and work was allotted but it was denied that the plaintiff was willing to perform the work.

The learned Trial Court framed six issues. The plaintiff supported its suit by himself deposing as PW2 and other witnesses deposed as PW1, PW3 to PW5.

The defendants rebutted the claim by deposition of DW1 Madan Lal, J.E., DW2 Manmohan Singh and DW3 S.K. Verma, Superintending Engineer of the Board.

The learned trial Court after appreciating the facts and considering evidence produced, partially decreed the recovery suit vide

judgment and decree dated 17.9.2005. It was held that the plaintiff is entitled to recovery of Rs. 3,39,000/- alongwith costs and interest at the rate of 6% per annum.

Being aggrieved, the plaintiff filed an appeal.

Learned Additional District Judge, Ludhiana, dismissed the appeal vide judgment and decree dated 28.10.2014. Hence, the regular second appeal.

Only one contention has been raised while arguing the present appeal. i.e. the interest awarded at the rate of 6% per annum is on the lower side as the transaction involved was a commercial transaction.

Learned counsel contended that the plaintiff had to arrange the machinery and make payment to the staff by borrowing money from the market for which he had to pay higher rate of interest. In such circumstance, 6% rate of interest is lower side and the same should be enhanced to 18% per annum.

The contention raised by learned counsel cannot be accepted.

No evidence has been brought on record to establish that the money spent by the plaintiff was borrowed from the market. Not an iota of evidence is there to show that the plaintiff had paid higher rate of interest on the money spent. No terms and conditions have been brought on record or pointed out during the arguments in which the rate of interest has been settled between the two parties.

Learned Courts below after appreciating the facts and evidence have partially decreed the suit after arriving at a figure which was equivalent to the loss suffered by the plaintiff.

In absence of any written condition on the rate of interest

guidance can always be taken from order Order 34 Rule 11 (a) (iii) of CPC and the same reads as under:

"(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,-at the rate agreed between the parties, or failing such rate, (at such rate not exceeding six per cent per annum as the Court deems reasonable); and...."

As per the above mentioned provision, rate of interest of 6% per annum is to be awarded.

Even otherwise, the scope in regular second appeal is limited to substantial question of law involved. Fixing the rate of interest in the facts and circumstances of the case will not raise even a question of law much less substantial question of law.

No other issue has been raised.

Moreover, during the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine-qua non for entertaining regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

The findings recorded by the First Appellate Court as well as the trial court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the Courts below and the same deserve to be upheld.

No ground for interference has been made out.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, being devoid of any merit, however, with no orders as to costs.

The appeal being devoid of any merit is hereby dismissed.

15.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No