

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

RSA No. 1272 of 2015(O&M)

Date of decision: 12.3.2018

Virender Singh Dahiya

....Appellant

VERSUS

The Commissioner and Secretary and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harish Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J.

The appellant/plaintiff has filed the instant appeal seeking modification of the judgments and decrees dated 21.11.2014 and 16.07.2014 passed by the Court in appeal as well as the trial Court, respectively, whereby suit filed by the appellant was partly decreed by the trial Court and he was held entitled to recover an amount of Rs.2,22,000/- i.e. security amount subject to deposit of Court fee on the amount of Rs.2,22,000/-. In the appeal preferred by the appellant, judgment and decree passed by the trial Court was modified to the effect that the appellant was allowed interest at the rate of 9% per annum on the security amount of Rs.2,22,000/- w.e.f. 28.03.2010 till realisation and the appellant was directed to deposit advalorem Court fee of Rs.2,22,000/- within a period of 2 months failing which suit would be deemed to have been dismissed.

Counsel for the appellant would inform that appellant has already paid the requisite Court fee with the trial Court, therefore, he has no grievance to express with regard to directions issued by the Courts for payment of Court fee on sum of Rs.2,22,000/-. However, he has prayed for further relief by making two-fold submissions. It is argued that though the appellant was paid an amount of Rs.39.88 lakhs towards costs of the work executed by him but the said payment was made after considerable delay on 08.11.2010 without any fault attributable to the appellant, therefore, the appellant is entitled to interest on the amount of Rs.39.88 lakhs from the day it became due till its actual realisation. The second submission made by counsel is that the Courts have accepted appellant's claim for recovery of amount of Rs.2,22,000/- along with interest but he has not been awarded costs of litigation.

I have heard counsel for the appellant, perused the paper-book and the records.

Perusal of the judgment of trial Court would reveal that in para 14, the Court has held that plaintiff has admitted that he has completed the work within extended time. So, plaintiff has not completed the work within stipulated period and time was extended by defendants. Hence, plaintiff is not entitled to interest on Rs.39.88 lakhs. Counsel for the appellant has fairly conceded that in the grounds of appeal before the first Appellate Court, the appellant has not challenged judgment of the trial Court rejecting claim of the appellant qua interest on Rs.39.88 lakhs on the premise that there was delay in payment of that amount. Indisputably, question of payment of interest on the alleged delay is a question of fact to

be decided by the trial Court and thereafter the first Appellate Court as the factual controversy is to be finalized upto the level of first Appellate Court. As the appellant did not raise the issue of his entitlement to interest on Rs.39.88 lakhs before the Court in appeal, he cannot be allowed to agitate that factual dispute in Regular Second Appeal and accordingly his contention in this regard is rejected.

Indisputably, claim of the appellant was partly decreed by the trial Court and similarly his appeal was partly allowed by the first Appellate Court. In the given scenario, both the parties would become entitled to payment of costs, therefore, discretion exercised by the Courts not to award costs in favour of the appellant cannot be faulted with.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

MARCH 12, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no