

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

**RSA No.4154 of 2015 (O&M)
Date of Decision.21.11.2018**

M/s Vishnu Kumar Gupta and othersAppellants
Vs

Union of India and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.10070-C of 2015

For the reasons stated in the application, delay of 3 days
in filing the appeal is condoned.

Application is allowed.

RSA No.4154 of 2015

The appellants-plaintiffs have not been successful in suit seeking declaration and mandatory injunction treating the contract of 1985 as abandoned instead as cancelled. The firm-M/s Vishnu Kumar Gupta was awarded a contract dated 23.07.1985 for Blast Pens at Srinagar, Air Field. It was alleged that vide letter dated 06.03.1989, the work was suspended as there was some deviation in the contract. Most of the work had already been performed except few. The sole proprietor had died on 21.07.1991. The contract was erroneously cancelled on 31.07.1993 and the intimation of cancellation was addressed to the dead person and therefore, the contract could not have been cancelled in the manner and mode.

The defendants opposed the suit and came out with the

stand that during the life time of Vishnu Kumar Gupta, intimation with regard to continuation of work was sent vide letters dated 15.03.1991 and 19.04.1991.

On preponderance of the evidence, the trial Court dismissed the suit. The appellants-plaintiffs were not successful before the lower Appellate Court.

Mr. Sharma, learned counsel appearing on behalf of the appellants-plaintiffs submitted that intimation dated 24.06.1992, Ex.P10 sent to the deceased person was totally misplaced, for, vide letter Ex.P35, the defendants were aware of the death of Vishnu Kumar Gupta. The work was not suspended for the fault of the plaintiffs but on request of the defendants. In these circumstances, the contract could not have been cancelled, enabling the defendants to encash the bank guarantee in the year 1990 but treated as abandoned and the specific relief as sought, ought to have been granted.

I am afraid aforementioned argument of Mr. Sharma is not sustainable, for, the bank guarantee was encashed in the year 1990 only and after that letters of April and March, 1991 were addressed to Vishnu Kumar Gupta, who was alive for completion of the remaining work as there was no deviation. Letter dated 24.06.1992, Ex.P10 for completion of work was again addressed to him, but by that time he died. It was after that letter, the suit aforementioned was filed. It is nothing but lapse on the part of the plaintiff in not completing the work, therefore, the defendants had no other option but to cancel the contract, rightly so the Courts below have rejected the plea of abandonment.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No