

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 4961 of 2015(O&M)

Date of Decision: October 08 , 2018.

Christian Medical College Ludhiana APPELLANT (s)

Versus

M/s Nitin Ecotech Consultants and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. B.D. Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant – plaintiff is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 10.02.2012 as well as learned Additional District Judge, Ludhiana vide judgment and decree dated 29.10.2014 and consequential dismissal of its suit. Suit for recovery of ₹15,00,000/- filed by the plaintiff was dismissed by the learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 10.02.2012. Appeal filed by the plaintiff was also dismissed.

Brief facts necessary for adjudication of the case are that, the plaintiff filed a suit for recovery of ₹15,00,000/- with the pleadings that defendant No. 1, which is a partnership concern of defendant – respondents No. 2

and 3 agreed to provide installation of an effluent treatment plant in the plaintiff college and hospital on the terms and conditions as agreed upon between the parties on 19.12.2000 (Ex.P7). It was agreed that work at the site would commence within three days of placement of the order. Total period for construction and for commissioning would be a maximum of eight weeks from the date of placement of order. All finishing and site clearance would be completed within 30 days of the period of commissioning. Any clarifications required must be obtained before commencement of work at site/a week prior to the need for such information. It was further agreed that the delays in commissioning would be liable to enforcement of penalty at the rate of ₹10,000/- for the first day of delay with further penalty at the rate of ₹5,000/- per additional delay, subject to maximum of ₹1,00,000/-. After negotiation, the schedule of payment was agreed upon as under:-

- (i) 20% with formal order
- (ii) 20% after delivery of entire equipment
- (iii) 20% on successful installation of all component of Effluent Treatment plant.
- (iv) 30% on procurement of Punjab Pollution Control Board on the treated effluent.
- (v) 10% on expiry of warranty.

The plaintiff pleaded that the defendant failed to complete the project within the stipulated period and obtained payment of ₹10,34,750/- on fraudulent misrepresentation with a mala fide intention to cause wrongful damage to the plaintiff. The project remained incomplete till February, 2003. Number of components of the Effluent treatment plant supplied to the plaintiff were of unfinished and substandard quality. Number of defects were found in the civil

work and component of the plant. The plaintiff faced the risk of criminal action under the provision of Water Act, 1974 and Bio- Medical Waste Rule 1998 as the plant failed to meet the requirement specified by the Punjab Pollution Control Board. Despite letters and reminders, the defendants failed to complete their part of the contract in terms of agreement and specifically affidavit dated 22.12.2000 (Ex. P9) by defendants No. 2 and 3 (Ex.P9). The plaintiff was thus entitled to recover the amount of ₹10,34,750/- alongwith interest and damages.

Suit was resisted by the defendants. Written statement was filed taking various preliminary objections. Averments on merits were controverted. A counter claim was filed by the defendants seeking recovery of ₹6.80 lakhs alongwith ₹2,45,160/- as interest. It was pleaded that the work was executed as per the specifications. It was stated that the plaintiff was satisfied with the work of the defendant and letter dated 03.10.2001 was written to the Director, International Testing Centre and letter dated 20.07.2002 to Environmental Engineer to monitor all relevant parameters of the Effluent treatment plant. Bills were raised for the total amount, however, only part payment was made.

Replication to the written statement was filed by the defendants and written statement to the said counter claim of the defendants was also filed by the plaintiff.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether defendants received ₹10,34,750/- for providing erection and installation of Effluent treatment plant ?OPP.
- ii) If issue No. 1 is proved whether plaintiff is entitled to the penalty of ₹1 lakh as per an agreement and further interest at the rate of 18% p.a. so in total ₹15 lakhs from the defendants?OPP

- iii) Whether suit is not maintainable in the present form? OPD.
- iv) Whether plaintiff has no cause of action to file the present suit?
OPD.
- v) Whether the defendants are entitled to counter claim of ₹6,81,000/- is due from the plaintiff as per their statement of account? OPD
- vi) If issue No. 5 is proved in favour of defendants whether they are also entitled to interest at the rate of 12% p.a. from plaintiff? OPD
- vii) Relief.

Evidence was led by both the parties to substantiate their respective stands. Learned trial court on considering the facts and circumstances of the case concluded that the plaintiff failed to prove that the Effluent treatment plant was not successfully installed. Removal of discrepancies and short comings in the project by itself would not entitle the plaintiff to recover this amount. Counter claim filed by the defendants was also dismissed. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Ludhiana vide judgment dated 29.10.2014. Aggrieved therefrom, present appeal has been filed. No appeal, it is submitted, has been filed by the defendants challenging the dismissal of their counter-claim.

Learned counsel for the appellant vehemently argues that respondents No. 2 and 3 executed a specific affidavit dated 22.12.2000 (Ex.P9) according to which the respondents are liable to refund the entire money deposited with them once they failed to execute the project in its entirety or if they abandoned the project. It is specifically mentioned in Clause 7 of the affidavit dated 22.12.2000 that in the event of non-completion of the project, they would have no further claim whatsoever from the hospital for the material already

supplied by them or the work done by them. It is contended that procurement of the reports from the Punjab Pollution Control Board were an integral part of the terms and conditions of the agreement. Once the Punjab Pollution Control Board found that necessary parameters were not met with, it is apparent that the Effluent treatment plant was not installed as per the terms and conditions as specifically mentioned in document (Ex.P5) i.e. the quotations submitted by the defendant firm. Learned counsel refers to communication dated 05.02.2003 (Ex.P23) as well as report of the Board (Ex.P24). It is, thus, prayed that this appeal be allowed, impugned judgments and decrees dated 10.02.2012 and 29.10.2014 passed by the learned Civil Judge (Junior Division), Ludhiana and the learned Additional District Judge, Ludhiana, respectively, be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file as well as photocopy of the record.

The appellant filed the present suit seeking recovery of the amount in question while pleading that the defendants/respondents had failed to successfully install the effluent treatment plant, therefore, payment received by the defendants/respondents should be recovered. There is no dispute that an agreement was arrived at between the plaintiff and the defendants for installation of the effluent treatment plant. Payment of ₹10,34,750/- received by the defendants is also not in dispute. Perusal of the record reveals that on installation of the plant, various deficiencies and shortcomings were pointed out by the plaintiff as are duly noted by the learned trial court. It is rightly held by both the learned courts below that merely on the basis of discrepancies and shortcomings

in the effluent treatment plant, the defendants cannot be made liable to return the amount of ₹10,34,750/-. As per affidavit dated 22.12.2000 (Ex.P9), which was referred to by the learned learned counsel for the appellant, it is mentioned that in case the defendants failed to execute the project in its entirety or abandoned the project, the hospital will be refunded of the advance with the prevalent rate of interest in the market. It is further stated that in the event of non-completion of the project by the defendants, they would have no claim whatsoever from the hospital for the material already supplied by the defendants to the hospital or the work done by them for the hospital. A perusal of Ex.P7 i.e., the terms and conditions of the agreement reveals that the schedule of payment has been mentioned. The schedule of payment as mentioned in the said document was admittedly arrived at after negotiation and the fresh schedule of payment was drawn up which is so mentioned (handwritten) and available on Ex.P7. Learned counsel for the appellant is unable to deny that Ex.P7 indeed refers to the schedule of the payment to be given by the appellant to the defendants. Ex.P7 read in conjunction with Ex.P9 cannot be taken to mean that until and unless the requirements specified by the Punjab Pollution Control Board were not met, it would mean that the effluent treatment plant has not been successfully installed or that the project had been abandoned by the defendants, thereby entitling the appellant to recovery of the amount given to the defendants. Furthermore, payment of ₹10,34,750/- on 05.07.2001 after the issuance of letter (Ex.P12) wherein certain deficiencies in the effluent treatment plant were highlighted, reflects that the deficiencies, if any, must necessarily have been removed.

PW3 K.T.Verghese who was examined by the plaintiff to prove its

case has specifically mentioned that the terms and conditions were signed by Dr. John Pramod on behalf of the plaintiff. It is not denied that Dr. John Pramod was the Deputy Medical Superintendent with the appellant at the relevant time and he was still in the employment of the appellant during the pendency of the suit. Therefore, an adverse inference for not having examined Dr. John Pramod has been rightly drawn by the learned trial court. The defendants sought to rely upon the communications dated 03.10.2001 and 20.07.2002 (Mark 'A' and 'B') purportedly sent by Dr. John Pramod on behalf of the appellant to the Director, International Testing Center, 86A, Industrial Area, Panchkula and the Environment Engineer, Punjab Pollution Control Board, Ludhiana in respect to installation of the effluent treatment plant as per the instructions of the Punjab Pollution Control Board. It is relevant to note at this stage that PW3 K.T.Vergheese has not specifically denied the sending of these communications by Dr. John Pramod. He simply stated that he is not aware of the said letters, though it is admitted that the same have been issued on the letter head of the Christian Medical College, Ludhiana.

It has been rightly observed by the learned trial court that the plaintiff has not been able to prove that the effluent treatment plant was not successfully installed. Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 10.02.2012 passed by the

learned Civil Judge (Junior Division), Ludhiana and judgment and decree dated 29.10.2014 passed by the learned Additional District Judge, Ludhiana which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

October 08, 2018
'rts/om'

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No