

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

RSA No.1140 of 2017 (O&M)

Date of decision:28.11.2018

Dhiraj Kumar

... Appellant

Vs.

The State of Punjab

... Respondent

RSA No.1290 of 2017 (O&M)

Avon Handa

... Appellant

Vs.

The State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vinod Khunger, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1140 and 1290 of 2017, whereby, the plaintiff sought two reliefs in one suit; declaration that he was not liable to pay the balance contract amount awarded for Canteen and Parking Contract in the District Court at Ferozepur alongwith damages to the tune of ₹10 lakhs.

As per the terms and conditions of the contract, the plaintiff had deposited 50% of the amount but did not deposit the balance as work was not shifted to the new District Administrative Complex, Ferozepur. It is in this background, the damages claimed.

Mr. Vinod Khunger, learned counsel appearing on behalf of the appellant-plaintiff submitted that it has come out through the testimony of DW1- Sukhwinder Singh, District Revenue Officer, who proved that the District Court was not shifted to the new complex. This is the sufficient evidence to claim the damages, if the suit for declaration was not maintainable.

I am afraid the aforementioned argument is not sustainable for the following reasons:-

i) The relief of declaration for not paying the balance amount as per the provisions of Section 34 of Specific Relief Act, 1963 is not maintainable, in the absence of any challenge to the cancellation of the contract and forfeiture of ₹1 lakh.

ii) Except self serving statement of plaintiff, no independent witness has been examined to substantiate the liquidated damages.

iii) The statement of the witness read out in the Court was neither affirmative nor negative as to a specific question, as could not tell whether the District Court shifted or not.

iv) The plaintiff miserably failed to summon the record/file from the concerned department which would have spilled the truth, thus, failed to discharge the onus.

All these factors weighed in the mind of the Courts below while dismissing the suit

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 28, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No