

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3194-2017 (O&M)

Date of decision: 17.04.2018

Punjab State and others

..... Appellants

Versus

M/s Brightway Contractor and Developers

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Gulnoor Ghuman, AAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

1. The State of Punjab has preferred this Regular Second Appeal against the judgment and decree of the Ist Appellate Court dated 03.02.2017, affirming the judgment and decree dated 16.10.2015 of the trial Court whereby suit of the respondent-plaintiff for recovery of ₹2,90,424.40P along with *pendente lite* and future interest @ 12% per annum from the date of filing of suit till realization was decreed.

2. Put pithily, the competitive bid of respondent-plaintiff for work of constructing Reclamation Spur Studs and Revetment D/S High level bridge on Amritsar-Jalandar, G.T. Road, on Rtd side of river Beas to save C-land and Abadies of village Vazibhullar was accepted by the appellant-State. After completion of work in prescribed time, respondent-plaintiff submitted its final bill in the month of June, 2013 for ₹41,48,920/-. However, the appellant-State released the payment in January, 2014, without any interest for the delayed period.

3. Being aggrieved, the respondent-plaintiff filed a suit for recovery of interest of ₹2,90,424/- @ 12% per annum for the delayed period

on the aforesaid amount of ₹41,48,920/- from June, 2013, till the date of its realization. The trial Court after holding the trial decreed the suit vide judgment and decree dated 16.10.2015.

4. Being dis-satisfied the appellant-State approached the Ist Appellate Court, but remained un-successful as its appeal was dismissed.

5. Learned State counsel *inter alia* contends that in view of the condition of the contractual agreement in between the parties, the respondent-plaintiff was not entitled to interest on the delayed payments. Even otherwise, the suit of the respondent-plaintiff was not maintainable before the Civil Court in view of the arbitration clause.

6. Having given considerable thought to the submissions made by learned State counsel, this Court finds the instant appeal completely devoid of any merit for the reasons to follow:

7. DW-1 Avtar Singh, Sub Divisional Officer of the appellant-defendant in his cross-examination specifically admitted that in sanction/work order Ex. P8, there was no mention that Notice Inviting Tender (NIT) would be a part and parcel of the sanction/work order. Therefore, both the Courts below have rightly held that when the terms and conditions of NIT were not part of sanction/work order, there was no ground available with the appellant-defendant to deny the payment to respondent-plaintiff within reasonable time.

8. It is well settled that any condition in the tender notice which is against public policy or arbitrary has no legal force. Therefore, any condition in the NIT that the payment would be made to respondent-plaintiff for the work done as and when the funds would be available with the Government, was completely illegal and arbitrary which could be enforced or given effect.

work allotted was completed by respondent-plaintiff to its satisfaction within time.

9. I have gone through the judgments of both the Court below and do not find any illegality or perversity in the same.

10. In view of discussion made above, the instant Regular Second Appeal, is dismissed.

April 17, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No