

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

**RSA No.4421 of 2017 (O&M)**

**Date of decision:20.02.2018**

Punjab State and others

... Appellants

Vs.

The Wadala Viram Co-operative Labour  
and Construction Society Ltd.

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Ms. Akanksha, AAG, Punjab  
for the appellant.

**AMIT RAWAL J.**

The present Regular Second Appeal is directed against the judgment and decree dated 10.12.2014 passed by the Civil Judge (Junior Division), Amritsar and judgment and decree dated 16.02.2016 of Additional District Judge, Amritsar, whereby, the suit of the respondent-plaintiff was decreed by the trial Court and appeal preferred by the appellant-defendants, was dismissed by the Lower Appellate Court.

The appeal is accompanied by an application bearing No. 11500-C of 2017 under Section 5 of the Limitation Act, seeking condonation of delay of 465 days in filing the appeal on the premise that though judgment and decree was passed on 16.2.2016 but the office of District Attorney, Amritsar had applied for obtaining the certified copy of judgment and decree aforementioned on 25.02.2016 which was received on

15.03.2016.

On going through the contents of the judgment and decree, the matter was considered by the District Attorney, who vide letter dated 8.4.2016 submitted opinion to the Director Prosecution and Litigation, Punjab, Chandigarh. The office of the Director Prosecution and Litigation, Punjab, Chandigarh, vide letter dated 2.5.2016 conveyed the opinion to the office of Chief Engineer Canal, Irrigation Works Punjab, Chandigarh, whereby, it was opined that the case is not fit for filing an appeal.

On receiving the opinion from the office of the Director Prosecution and Litigation, Punjab, Chandigarh, the case was sent to the Government for consideration and further necessary action. The Govt. considered the case and decided to file the appeal against the judgments and decrees of both the Courts below, accordingly, accorded the sanction on 3.04.2017. In this process, delay of 465 days occurred in filing the appeal. The application is supported by an affidavit of Executive Engineer, Majitha Division, UBDC, Amritsar.

On merit, it has been stated that respondent-plaintiff instituted a suit for recovery of ₹9,40,000/- on account of the fact that it had submitted tender rates in respect of the works mentioned at serial nos. 6 and 7 of the notice inviting tender having estimated costs of ₹12 lacs each and after adjustment of two running payments which had been made to the plaintiff-society, the remaining amount as per the estimate was not paid, resulting into filing of the suit. It was further pleaded that concerned official of the

department reduced the costs of the executed work after completion of the work from the original costs of ₹12 lacs to ₹5 lacs which was unilateral act without consent of the plaintiff and therefore, reduction in costs is stated to be illegal, arbitrary and capricious.

It was averred that concerned official of the department, vide letter dated 21.6.2006 admitted the claim of E.C.bags used by the plaintiff-society and its entry in the measurement book. The last payment of ₹50,000/- was made on 14.05.2005. Having failed to adhere to the request, compelled the plaintiff to file a suit on 19.09.2006.

The aforementioned suit was contested by the defendants by taking various preliminary objections on the ground of non-maintainability, cause of action, much less estoppel, for, the plaintiff had received full and final payment, therefore, could not claim the amount as stated above. It was submitted that claim of the plaintiff to release the payment to the tune of Rs.12 lacs was totally baseless. The execution of the work was not denied but stated that it was not as per the estimated or tentative costs but on the basis of record entry. The amount of Rs.51,349/- lying pending on account of deducted security, was stated to be released on availability of funds from the Government. The factum of issuance of letter dated 30.06.2006 was not denied.

Since the parties were at variance, the trial Court framed the following issues:-

*“1. Whether the plaintiff is entitled for recovery of suit*

*amount, as prayed thereof? OPP*

2. *Whether the plaintiff is entitled to interest @ 18% p.a on the suit amount? OPP*

3. *Whether the suit is not maintainable in the present form? OPD*

4. *Whether the plaintiff has received full and final payment from the defendants and has no cause of action to file the present suit? OPD*

5. *Relief.”*

On the basis of evidence brought on record, the trial Court decreed the suit and the appeal laid before the Lower Appellate Court was dismissed.

Learned State counsel appearing on behalf of the appellants submitted that judgments and decrees of both the Courts below are not sustainable in the eyes of law, for, the entire payment for the work done by the respondent as per the entry in the measurement book, had already been made. The total costs for the work done by the plaintiff was ₹3,82,933/- and after deducting the amount of ₹16,579/- and other standard deduction amounting to ₹16,619/-, an amount of ₹3,49,734/- was released to the plaintiff-respondent. The plaintiff accepted the final bill as per the actual record entry made in the measurement book., therefore, estopped to claim the amount by filing a suit. The costs mentioned above was only estimated and not actual costs, therefore, the claim was totally baseless and fallacious.

This aspect has totally been ignored by the Courts below. The respondent completed only a small part of work as per the entry made in the measurement book which was accepted by the plaintiff and urged this Court for setting aside the judgments and decrees under challenge by allowing the appeal as substantial question of law arises for adjudication of the present appeal.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of the Courts below and of the view that the appeal is liable to be dismissed on the ground of delay as well as on merit.

While dealing with the application for condonation of delay as per the facts revealed above, there had been a gap of one year as the office of the Director Prosecution and Litigation, Punjab, Chandigarh, had opined to be not a fit case for filing the appeal but the Government differed with the same. No explanation has come forward during all this period how the file was dealt with. The exigency of State of Punjab cannot be permitted to prolong the filing of the appeal at its own convenience resulting into inordinate delay, but to be treated at par with the ordinary litigation.

In my view, the application is bereft of reasons as to how and when the Government differed with the decision of the prosecutor in filing the appeal.

As far as merit is concerned, both the Courts below on the basis of examination of documentary evidence found that department had reduced the amount in a unilateral manner without giving any opportunity to the plaintiff. As per Ex.P2, in the column of earnest money, rate was fixed as

₹12,000/- i.e. 1% received by the department, whereas, Ex.P5, letter written by Chief Engineer to the Superintending Engineer, it depicted that cuttings regarding reduced amount have been made which were not even signed or sealed by any authority of the department, much less respondent-plaintiff/society. The witness of the department during cross-examination admitted that original amount was reduced after the allotment and execution of the work and as well as in view of the Rule 2.117 of B.R.Manual related to Public Works Chapter-II, the plaintiff had been able to prove the reduced amount from ₹12 lacs to ₹5 lacs which was not legally permissible as per the Rules of Public Works Manual. The rate of item of earth work as mentioned at serial no.1 of Ex.P4 as well as serial no.1 of Ex.P3 was ₹2160/- per hundred CUM and second rate mentioned at serial no. 2 of Ex.P4 and Ex.P3 was ₹59.40 paise but rate was considerably reduced without consent of the plaintiff. The department cannot be permitted to unilaterally change the rate on its own by deviating from the terms and conditions of the agreement. The department had not raised any dispute with regard to un-satisfactory work. In view of the aforementioned fact, there was no occasion for reducing the amount. It is in this background of the matter, the respondent-plaintiff was compelled to file a suit which was rightly decreed.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgments and decrees under challenge, much less no substantial question of law arises for adjudication of the

present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed on the ground of merit as well as on limitation.

February 20, 2018

savita

(AMIT RAWAL)  
JUDGE

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |