

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4570 of 2018(O&M)

Date of Decision: 20.9.2018

State of Haryana and others

---Appellants

versus

Surender Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Indresh Goyal, Addl. A.G.Haryana
for the appellants**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the respondent-plaintiff was partly decreed to the effect that letters No. 9456 dated 7.8.2014 and 9810 dated 26.8.2014 are illegal and accordingly set aside with consequential relief of permanent injunction that the defendants are restrained from getting the work done at the risk and cost of plaintiff.

Counsel for the appellants would urge that as the appellants have invoked clauses II and III of the contract to get the work executed at the risk and cost of the respondent-plaintiff who failed to execute the work despite acceptance of E-tender submitted by him, the Courts have committed a serious error rather illegality by partly accepting claim of the respondent-plaintiff.

Apart from the fact that the appeal has been filed after delay of

116 days, the same is devoid of merit and deserves to be dismissed.

The Court in Appeal, in para 14 of the judgment has held, reads as follows:-

“From the perusal of the case file it is evident that there is no such contract in which Clause-II and Clause-III have been mentioned. The defendant in his cross-examination has admitted that original contract has been stolen and an FIR has been registered in this regard. He further submitted that there are some photostat copies of condition of contract on his file but the signature of contractor i.e. plaintiff and witnesses are not appearing on it. Defendants even did not file that photostats copy of condition of the contract on the file and therefore, it can be safely held that, there is no such conditions in the agreement with the plaintiff. As per PW3, Shashikant SDO, Public Health, Hansi, Ex. P3 was the agreement with the plaintiff and there was no other agreement entered between the parties except Ex. P3. From the bare perusal of Ex. P3 itself also, it is evident that there is no clause-II and Clause-II as referred in the letter no. 9810 dated 26.8.2014 and 9456 dated 7.8.2014. Therefore, there is no legal sanctity of these two letters and the same are liable to be set aside. Thus, the learned lower court has rightly restrained the defendants to get the work done by other contractor at the risk of plaintiff.”

Counsel for the appellants is not in a position to dispute these factual findings recorded by the Court in Appeal that the appellants-defendants failed to produce on record any such contract in original or even

a copy thereof signed by the respondent-plaintiff which contains clause II and III. That being so, consistent findings recorded by the Courts do not suffer from perversity much less raise a question of law that needs determination in regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

20.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No