

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

**RSA No.4801 of 2018
Date of Decision :17.11.2018**

**The Haryana State Minor Irrigation and Tubewell
Corporation Limited**

....Appellant

VERSUS

Sukhvir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Pritam Saini, Advocate for the appellant.

B.S. WALIA, JUDGE (ORAL).

1. The present regular second appeal has been filed by the appellant-defendant challenging the judgment and decree of the learned Civil Judge (Jr. Division), Ellenabad dated 30.3.2015 decreeing the suit as upheld by the learned Additional District Judge, Sirsa vide judgment and decree dated 1.5.2018.

2. Brief facts of the case leading to the filing of the instant appeal are that the respondent-plaintiff had filed a suit for recovery of Rs.2,42,775/- on account of extra work executed by him as a Contractor for the appellant-The Haryana State Minor Irrigation and Tubewell Corporation Limited i.e. Work over and above the work allotted to the Contractor.

3. Learned counsel for the appellant contended that the respondent-plaintiff had earlier filed a writ petition in respect of the same cause of action for which he had filed a civil suit therefore, he was estopped from taking out parallel proceedings by way of the civil suit. Learned counsel further contends that the civil suit was filed in respect of extra work done by the respondent-

Courts below failed to appreciate the aforementioned aspect of the matter in the correct perspective.

4. It needs noticing here that on the basis of the pleadings, the learned trial Court framed the following issues:

- “1. Whether the plaintiff is entitled for a decree of declaration alongwith consequential relief of mandatory injunction, as prayed for ?OPP*
- 2. Whether the suit of the plaintiff is hopelessly time barred?OPD*
- 3. Whether the suit is barred by principal of res judicata?OPD*
- 4. Whether the civil court has got no jurisdiction to try and entertain the present suit ?OPD*
- 5. Relief.”*

5. On the basis of evidence led by the parties, the learned Civil Judge (Jr. Division) Ellenabad decided issues Nos.1 to 4 in favour of the respondent-plaintiff and on the basis thereof, decreed the suit of the respondent-plaintiff with costs holding him entitled to recover a sum of Rs.2,42,775/- along with pendente lite interest @ 18 % per annum alongwith future interest @ 6% per annum.

6. Aggrieved against the decision of the learned trial Court, appeal was filed by the appellant-defendant which was decided by the learned Additional District Judge, Sirsa vide judgment and decree dated 1.5.2018. The appeal was partly allowed to the extent of reducing the rate of interest payable by the appellant-defendant to the respondent-plaintiff from 18% per annum to 6% per annum on the decretal amount of Rs.2,42,775/- from the date of accrual till its realisation. The respondent-plaintiff was also directed to affix the requisite court fee on the amount claimed in the plaint i.e. Rs.2,42,775/- within one month from the date of order before the learned lower Court.

7. I have considered the submissions of learned counsel for the appellant.

8. Admittedly, the respondent-plaintiff had initially filed Civil Writ Petition No.14241 of 2005 which was partly allowed and thereafter, the respondent-plaintiff filed CWP No.1123 of 2008 which was dismissed on 17.11.2008 by granting liberty to him to file a civil suit. Once liberty was granted to the respondent-plaintiff to file civil suit then the submission that the respondent-plaintiff was estopped from filing a civil suit on account of having earlier instituted a civil writ petition is without merit.

9. As regards the second plea of the respondent-plaintiff having done work over and above the work sanctioned by the competent Authority, needless to mention that the work was not done suo motu by the respondent-plaintiff but on the asking of the Department. Once having availed the services of the respondent-plaintiff Contractor for carrying out work at its behest, it is not open to the Department to take a somersault and plead that no amount is payable in respect of the work got executed from the Contractor on account of lack of sanction from the competent Authority. Sanction, if any, required to be given was to be taken by the officers of the defendant-appellant. Not having done so, the respondent-plaintiff cannot be prejudiced on said account nor can be denied payment for the work got executed from him by the officers of the Department. Relevant extract of the decision of the learned Additional District Judge is reproduced as under:

“14. After having heard the rival contentions advanced by learned counsel for the parties and having gone through the record of the case very carefully, this court is of the considered opinion that facts which are not disputed are that HSMITC, assigned lining work of water course to the plaintiff. It is also not disputed that plaintiff had completed lining work of 1327 feet. That fact is also evident vide Ex. P6.

*It is also not disputed that plaintiff has also completed additional work of lining of water course to the extent of 447 feet. But the appellant/defendant has disputed that lining work to the extent of 447 feet was without any sanction from the competent authority. PW3 who is official of the Irrigation Department has proved documents Ex. P6 to Ex. P25 and he has also proved that measurement book no. 4162 was prepared regarding the execution of additional work by the plaintiff. Admittedly, the completion of additional work same is being enjoyed by HSMITC. Hon'ble Supreme Court in **State of J&K Versus Dev Dut Pandit 1999 (4) R.C R (Civil) 169** has held as under:-*

The contractor has to be paid on the basis of measurement of the work done by him. Local Commissioner measured the work done by the contractor in presence of both the parties and thereafter he submitted his report. On the basis of measurement so recorded by the local Commissioner the contractor prepared the final bill of claim for ₹14,32,436/- and after taking out the amount already paid to him, made claim for the balance. It is difficult to see how claims made under items 13 and 14 could be said to be either new claims or outside the terms of the contract. Under clause 5 of the contract, contractor is to be paid for the work executed by him under the contract at the rates specified therein.

*Hon'ble Supreme Court in **Food Corporation of India and others Versus Vikas Majdoor Kamdar Sahkari Mandli Ltd. 2008 (1) R.C.R (civil) 284** has also held as under:-*

If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond the

terms of the contract, when the benefit of the work has been availed of by the defendant.

*Similar view has also been held in **Sports Development Authority of Tamil Nadu, rep by its member Secretary Versus Tarapore and Co. Engineers and Contractors, Rep by its partner (Supra)**. Therefore, as per the law laid down by Hon'ble Apex Court respondent/plaintiff was entitled for payment of extra work i.e. additional work of lining of work of water course to the extent of 447 feet, even in the absence of any written approval of the competent authority. So the learned lower court has rightly held that the respondent/plaintiff Sukhvir Singh is entitled for a sum of ₹2,42,775/-."*

10. In the light of the position as noted above, no case whatsoever is made out for interfering with the well reasoned judgments passed by the Courts below.

11. No substantial question of law arises for consideration in this appeal.

12. Accordingly, finding no merit in the Regular Second Appeal, the same is dismissed in limine.

(B.S. WALIA)
JUDGE

November 17, 2018
ps

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