

(107) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.16873-C of 2018 and
RSA No.6043 of 2018 (O&M)
Date of decision : 07.12.2018

M/s H.S. Oberoi Buildtech (P) Ltd.

... Appellant

Versus

M/s Enessco Enterprises

.... Respondent

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

Present : Mr. Balram Prashar, Advocate for the appellant.

B.S. WALIA, J. (ORAL)

CM No.16873-C of 2018

Allowed as prayed for. Deficiency in Court fee is allowed to be made good.

RSA No.6043 of 2018 (O&M)

[1] Regular Second Appeal has been filed against the judgment and decree dated 17.10.2017 passed by the learned Civil Judge (Jr. Div.), Chandigarh as upheld by the learned Additional District Judge, Chandigarh vide judgment and decree dated 08.08.2018.

[2] Brief facts of the case leading to the filing of the instant appeal are that the appellant/defendant-Company undertook contractual job at site No.H-6, IT Park, Kishangarh and engaged the respondent/plaintiff-Firm for execution of some jobs such as POP work and other jobs and made advance

payment of Rs.1,00,000/- through cheque. Thereafter, the appellant/defendant-Company kept on making part payments on its running account with the respondent/plaintiff-Firm but did not make payment of Rs.3,90,642/- despite repeated requests of the respondent/plaintiff-Firm, whereupon respondent/plaintiff-Firm sent a legal notice through post on 24.03.2017 but the same was undelivered with the report of house locked. A soft copy of legal notice dated 08.04.2012 was also sent by the respondent/plaintiff-Firm through email to the appellant/defendant-Company but despite many visits to the office of the appellant/defendant-Company, the appellant/defendant-Company did not bother to settle the account and failed to clear the outstanding payments leading to the institution of the suit by the respondent/plaintiff-Firm.

[3] The suit filed by the respondent/plaintiff-Firm was decreed and the respondent/plaintiff-Firm was held entitled to recover Rs.3,90,642/- along with interest @ 8% per annum with effect from 09.04.2011 upto 31.12.2013 and further *pendente lite* future interest @ 6% per annum from the date of judgment till realization of the principal amount i.e. Rs. 3,90,642/-.

[4] Appeal filed by the appellant/defendant-Company was dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 08.08.2018.

[5] Learned counsel for the appellant/defendant-Company contended that the respondent/plaintiff-Firm had not been able to prove that work was carried out at the site, therefore, the appellant/defendant-Company was under no liability to make payment of the amount claimed.

[6] Admittedly, the respondent/plaintiff-Firm executed the work assigned to it and raised bills for a sum of Rs.8,25,642/-. All the bills raised

by the respondent/plaintiff-Firm were duly signed by the Project Manager of the appellant/defendant-Company namely Sh. Praveen Girotee after taking measurement at site through Sh. J.A. Bhutto, a worker who executed job for the respondent/plaintiff-Firm. Besides, appellant/defendant-Company made part payment to the tune of Rs.4,35,000/- till 08.04.2011 whereupon an amount of Rs.3,90,642/- remained outstanding against the appellant/defendant-Company. However, despite repeated requests of the respondent/plaintiff-Firm, the appellant/defendant-Company did not make payment of the balance amount whereupon the respondent/plaintiff-Firm was constrained to issue a legal notice dated 24.03.2012 to the appellant/defendant-Company but the same was received back undelivered, thereupon the respondent/plaintiff-Firm was forced to send a soft copy of legal notice dated 08.04.2012 through email to the appellant/defendant-Company but the appellant/defendant-Company did not make payment of the outstanding amount.

[7] Although the star argument of the learned counsel for the appellant/defendant-Company is that the respondent/plaintiff-Firm had not been able to prove the execution of the work at site, yet the fact remains that the bills raised by the respondent/plaintiff-Firm on the appellant/defendant-Company were duly acknowledged at the site by its Project Manager namely Sh. Praveen Girotee after taking measurement at site through Sh. J.A. Bhutto, a worker who executed job for the respondent/plaintiff-Firm. Thus, the bills raised by the respondent/plaintiff-Firm to the appellant/defendant-Company were acknowledged by the Project Manager of none else than the appellant/defendant-Company. On the contrary, the appellant/defendant-Company has not been able to refer to any evidence whatsoever to show that the respondent/plaintiff-Firm could not complete the work carried out at the

site, however, the fact remains, if the respondent/plaintiff-Firm had not carried out the work at the site then there is no reason for the Project Manager of the appellant/defendant-Company to have acknowledged the bills raised by the respondent/plaintiff-Firm. Besides, nothing was written on the bills that the same was subject to verification nor was the receipt of the bills acknowledged by the Project Manager under some reservation. Moreover, no evidence has been referred to by learned counsel for the appellant/defendant-Company to show that any effort was made by the appellant/defendant-Company to contact the respondent/plaintiff-Firm to resolve the dispute regarding unpaid bills despite, it being admitted position that legal notice was served by the respondent/plaintiff-Firm on the appellant/defendant-Company through email calling upon it to pay the outstanding amount of the bills. However, the appellant/defendant-Company maintained a stoic silence in the matter and did not give any response whatsoever to the respondent/plaintiff-Firm nor sent any reply to the notice; nor has any evidence whatsoever been referred to by learned counsel for the appellant/defendant to show that the appellant/defendant-Company ever approached the respondent/plaintiff-Firm for verification of the bills raised by the respondent/plaintiff-Firm. In the circumstances, the execution of work by the respondent/plaintiff-Firm at site for which it had issued bills to the appellant/defendant-Company which were acknowledged by its Project Manager at site stands proved as also that when the appellant/defendant-Company failed to pay the outstanding amount, the respondent/plaintiff-Firm issued legal notice but the appellant/defendant-Company did not reply to the same. The appellant/defendant-Company has failed to refer to any evidence to show that the claim of the

respondent/plaintiff-Firm is false or that the work allotted to the respondent/plaintiff-Firm was not executed to its satisfaction.

[8] In the circumstances, I find no infirmity with the well-reasoned judgments of the Courts below. No substantial question of law arises. Appeal is bereft of merit and is, accordingly, dismissed in limine.

07.12.2018
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(B.S. Walia)
Judge

1. Whether speaking/reasoned

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Yes/No.

2. Whether reportable

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Yes/No.