

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

**RSA No.3518 of 2003(O&M)  
Date of Order: 21.02.2019**

**State of Haryana and others**

**..Appellants**

**Versus**

**Jatinder Parshad**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** Mr. Saurabh Girdhar, AAG, Haryana,  
for the appellants.

Mr. Puneet Jain, Advocate, for  
Mr. Rakesh Gupta, Advocate,  
for the respondent.

**ANIL KSHETARPAL, J(Oral)**

State of Haryana is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff, who is approved contractor, carried out certain work on the basis of tender awarded and filed a suit claiming that the amount for the work completed has not been paid.

During the pendency of the suit, the amount was paid. Learned trial court keeping in view the evidence which has come on record, partly decreed the suit after noticing that the amount has already been paid, however, since there was delay in payment, therefore, interest @ 12% per annum from the date of completion of the work till actual payment was awarded.

At the time of admission of the appeal, following substantial questions of law were framed.-

- “1. Whether the plaintiff was entitled in law to file a suit for mandatory injunction in view of Section 41(h) of the Specific Relief Act?
2. Whether the Civil Court has jurisdiction to grant interest against the provisions of Section 34 of the Code of Civil Procedure?”

No doubt, a suit in the form of mandatory injunction would not be maintainable as rightly contended by counsel for the State of Haryana. However, in essence, plaintiff-respondent was seeking recovery of the amount which was due to him from the appellants. Only question is whether the suit is to be treated as suit for recovery of the amount i.e. Rs.1,98,000/-. Answer, in the considered view of this Court is Yes.

The plaintiff can be directed to pay the *ad valorem* court fee on the suit amount of the trial court. Accordingly, question no.1 stands resolved.

As regards question no.2, the contract between the parties was a commercial contract. The plaintiff-respondent entered into a contract to earn profit. The amount which was due to him, payment thereof was unnecessarily delayed. As noticed above, the principal amount has already been paid. Accordingly, the decree passed by the courts below is modified. The State of Haryana would be liable to pay interest @ 9% per annum from the date fell due till the date of payment.

Appeal stands disposed of accordingly.

**February 21, 2019**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No