

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

RSA No. 1711 of 1988(O&M)

Date of decision: 08.05.2019

The State of Punjab

... Appellant

Vs.

Mesars Mehar Singh & Company(P) Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Ambika Bedi, AAG, Punjab

Mr. Sant Kashyap, Advocate for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal is, at the instance of the appellant-defendant, directed against the concurrent findings of fact, whereby the suit of the plaintiff for recovery of ₹ 4,00,000/- has been decreed and affirmed in appeal with modification to the extent of ₹ 3,95,885.80.

As per the averments in the plaint, it was alleged that in view of the letter of acceptance dated 18.02.1971, one agreement No. 23 of 1971-72 for the work of construction of District Administration Complex Ludhiana (RCC) frame work only Part II, was entered into between the plaintiff and the defendant. Its terms envisaged that the quantum of work was required to be completed on 31.12.1973. Part payment of the final bill amounting to ₹ 33,025/- was received on 12.11.1975 and another sum of ₹ 7,530.36 was received on 20.08.1977. The plaintiff stated to have addressed the issue to Executive Engineer, Provincial Division, PWD (B&R), Ludhiana for item Nos. 1 to 3 being the parts of the indents. In these bills, deductions were made towards the price of certain material, including item Nos. 1 and 2 of

the indent issued by the Sub Divisional Engineer. It was also averred that despite repeated reminders, the plaintiff was deprived of other terms in fact the State failed to perform the conditions of the contract. A sum of ₹ 64,326.66 was due to the plaintiff and also interest w.e.f. 16.6.1972 onwards. A sum of ₹ 3,21,264.14 was also due to the plaintiff towards item Nos. 1 to 25, details of which are given, in para no.3 of the plaint. Even an application for referring the matter to the Arbitration in view of the clause 25-A was made but the State did not take any step and after service of notice under Section 80 CPC, the suit aforementioned was filed.

The State by filing written statement raised certain preliminary objections qua the suit being time barred, estoppel, thus prayed for dismissal of the suit on merit.

From the pleadings of the parties, the following issues were framed by the trial Court:-

- “1- Whether the plaintiff is a Private Limited Company and is entitled to sue through Mehar Singh?OPP
- 2- Whether the plaintiff is entitled to the recovery of the amount mentioned in the plaint?OPP
- 3- Whether the suit is within limitation?OPD
- 4- Whether the suit is barred as alleged in para no.2 of the preliminary objection ?OPD
- 5- Whether notice served on the defendant u/s 80 CPC is valid under law. If so, its effect?OPD
- 6- Whether the plaintiff is estopped by his own act and conduct to bring the present suit?OPD
- 7- Relief.”

In order to prove its case, the plaintiff examined Mehar Singh, PW1 and brought on record various documents to substantiate the alleged claim.

The defendant, on the other hand, also led evidence in defence and brought on record various documents to establish that the suit of plaintiff is time barred.

The trial Court decreed the suit of the plaintiff vide judgment and decree dated 31.08.1985.

The appeal filed by the State was dismissed with the only modification that total claim of the plaintiff instead of ₹ 4,00,000/- will be read as ₹ 3,95885.80 by the District Judge, Ludhiana.

Learned State counsel appearing on behalf of the appellant states that the judgments and decrees of the Courts below are not sustainable in the eyes of law as both the Courts below without referring to the documents as well as evidence produced on record, relied upon the version of the plaintiff. She further states that the alleged shortage regarding supply of material by the department to the contractor was against the indent, thus there is incorrect assumption. Even the counter claim was not dealt in the correct prospective. The decree amount of ₹ 52,630/- on account of pattern work with ply wood was in fact admitted by the contractor himself as the payment for shuttering pattern were covered under Item Nos. 9-17 of Common Schedule of Rates. It was settled, by making a supplementary payment of ₹ 7530.56 vide voucher 165 dated 18.08.1977 to the entire satisfaction. The construction of RCC Wall, Chajja, Stair case, parapet etc. was covered under the provisions of the agreement but the additional amount of ₹ 58,096/- plus interest has been erroneously allowed to the contractor. The aforementioned items of work were specified in the 'Notice inviting Tenders' and subsequently in the said agreement executed with the contractor. However, both the Courts below have gone into lengthy detail of arguments in referring to the definition of frame work little realizing that these items were actually got executed from

the Contractor well within the clear stipulation. The scope of RCC work to be executed by the contractor was ₹ 20,00,000/- against which the total work got executed including building for lift and Treasury Block was for ₹ 15.86 P. (i.e. well within the agreement amount). Moreover, the Treasury Block had already been included in the estimate approved by the Government. Thus, the additional payment of ₹ 1,28,050/- for lift and Treasury Block which were part of the same complex was not justified. The contractor had not submitted any claim of compensation under the provision of Clause 25 of the Agreement during the pendency of the agreement. Lastly, prayed for setting aside the judgments and decrees of the courts below has been made.

Per contra, Mr. Sant Kahyap, learned counsel appearing on behalf of the respondent, submitted that though there was interim stay by the Court but the payment had already been made under the protest to avoid the incurring interest. He further submitted that the judgments and decrees passed by both the courts below are based on documentary as well as evidence produced on record. There is no ambiguity and perversity and urges for dismissal of the regular second appeal

I have heard learned counsel for the parties and perused the paper book and of the view that there is no force and merit in the submissions of learned State counsel.

This Court vide order dated 02.06.2016 allowed application to bring on record substantial questions of law, formulated by the State. The same are as under:-

- “1- Whether in view of the admitted fact that the plaintiff initially started arbitration proceedings for the similar claim which is also the subject matter of the present suit, the suit was maintainable in the present form?

- 2- Whether the plaintiff to pursue the arbitration proceedings initiated by him and if not so whether he was debarred from filing the civil suit on the same cause of action?
- 3- Whether merely by serving the notice under Section 80 CPC, the plaintiff acquired fresh cause of action for filing the present appeal?
- 4- Whether the plaintiff completed the work assigned to him under the Agreement in question as per the conditions contained therein and as per PWD specification?
- 5- Whether the impugned decree and judgment passed by the Courts below are based upon misappropriations of law and evidence produced on record?
- 6- Whether any cause of action remained with the plaintiff in lieu of work done by him had already been done?"

During the course of execution of the work, plaintiff wrote a letter PW1/39 to the Executive Engineer pointing out that the agreement between the parties was for a specific and related to only RCC frame of the building forming part II of the District Administrative Complex. It was also pointed out that whatever other items of the work than the RCC frame work, such as walls and other related items were to be executed by the plaintiff, the latter would be charging 90 percent above CSR, which was not an afterthought. The department was in much knowledge before filing of the suit. The aforementioned letter was not rebutted by the defendant. In other words, they did not raise any objection. As per agreement, the plaintiff was required to complete the work within 12 months but the correspondence between the plaintiff and the Government Agencies including the letter Ex.DWS/1, reveals that the work was allotted to the plaintiff only in the later half of 1971 and the plans PW1/68 and PW1/69 the Treasury Block elevation was conspicuously in the absence of any specific objection, the stand of the State that the Treasury Block was included in the original agreement has been belied. Even letter Ex.DW5 was sent to Finance Department for approval. All these facts show that the claim of the plaintiff

in raising the demand was justified and execution of the work was more than what was agreed to.

The substantial question of law, as framed above, are answered in favour of the respondent and against the appellant.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for determination. No ground is made out for interference. Accordingly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

08.05.2019
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Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No