

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2883 of 1988 (O&M)

Date of Decision: April 11, 2019

M/s Rakesh Electricals and Builders

...Appellant

Versus

The Executive Engineer, Electrical Division, PWD (B&R) Branch Karnal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. C.M.Munjal, Advocate,
for the appellant.

Mr. Rohit Arya, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal, at the instance of the appellant-plaintiff, is against the judgments and decrees of the Courts below, whereby the suit seeking restraint against the defendants not to recover ₹ 9000/- as compensation and other amount from the plaintiff in any manner, has been dismissed by both the Courts below.

It was alleged that a work of providing street light in the campus of Bus Stand, Gohana, District Sonapat was allotted by defendant Nos.1 and 2 to the plaintiff within a time limit of two months, which expired on 16.04.1984 and further extended upto 30.06.1984. The allotment letter envisaged of providing a clear site without any hindrance. Plaintiff requested the defendants several times to clear the site, so that he could start the work as per the terms and conditions of the agreement, but was

flabbergasted to notice, the demand of compensation, raised by the defendants, which was at the back of the plaintiff, without resorting to the provisions of the natural justice.

The defendants opposed the suit and stated that the suit was not maintainable. On merits, it was stated that the site was demarcated on 14.03.1984, but the plaintiff did not come forward and, therefore, no work started. The compensation was as per the conditions of the agreement.

Ram Saran, the sole proprietor of the plaintiff concern, in support of the evidence, appeared as PW-1 and brought on record allotment letter Ex.P1 and further stated that as per the terms and conditions of Ex.P1, the site was not cleared by the defendants. On the other hand, the defendants examined DW-1 G.R.Batra, Electrical Engineer and also brought on record notice Ex.D1 and notice of extension of time as Ex.D2.

The trial Court, on the basis of the aforementioned evidence, dismissed the suit and the appeal preferred also met with the same fate.

Mr. C.M.Munjal, learned counsel for the appellant-plaintiff submitted that the defendants can wait till 30.06.1984 as it was the last date, therefore, the penalty imposed was illegal. No opportunity of hearing was given. It is in these circumstances, injunction suit was filed.

Mr. Rohit Arya, learned Assistant Advocate General, Haryana representing the State submitted that a simpliciter suit for injunction in the absence of declaration was not maintainable and no Substantial Question of Law arises for determination by this Court, thus, urged for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is no

force and merit in the submissions of the learned counsel for the appellant.

The demand of ₹ 4426/-, i.e., 10% of the total work was invoked as per Clause 2 of the conditions of the contract, being sacrosanct, particularly the contractor cannot volte-face and impose a bar on the defendants qua compensation. Even otherwise, the suit for declaration was maintainable and not injunction. The defendants were also empowered to forfeit the security. The plea that no contract was entered into is totally against the argument noticed by the trial Court, wherein it was submitted that the defendants were entitled to forfeit the security. Plaintiff, in fact, failed to show the incompetency of the defendants in levelling penalty of ₹ 4426/- and ₹ 4500/-.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

The interim order granted by this Court on 17.12.1988 stands vacated.

April 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No