

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA No.17 of 2010 (O&M)

Date of decision: 19.03.2019

State of Punjab and others

..... Appellants

Versus

Pandori Sidhwan Coop. Labour & Construction
Society Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. N.K. Banka, DAG, Punjab
for the appellants.

Mr. Dheeraj Mahajan, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

On 01.10.2010, a Coordinate Bench had passed a detailed order while dismissing the miscellaneous application which in the considered view of this Court answers the objection of the appellant-State before this Court. The order is extracted as under:-

“This is an application by respondent for vacating interim stay dated 08.01.2010, whereby execution of the impugned decree has been stayed, while admitting the appeal.

I have heard learned counsel for the parties and perused the case file.

Plaintiff-respondent filed suit against State of Punjab and others (appellants) for permanent injunction restraining the defendants from allotting the work in question to anybody else and also sought mandatory injunction directing the defendants to issue work order of the said work to the plaintiff. However, both these reliefs have been declined by the Courts below to the

plaintiff-respondent.

The plaintiff also sought mandatory injunction directing the defendants to make necessary payments of the work already executed by the plaintiff. The trial Court dismissed the suit of the plaintiff in toto. However, in first appeal, lower appellate court has partly decreed the suit directing the defendants to make payment/running payments proportionately to the work proved to be executed by the plaintiff on submission of bills regarding materials and labour etc.

Learned counsel for the applicant-respondent contended that the applicant-respondent was orally directed to commence the work and later on, written letter was also issued and accordingly, applicant-respondent executed 80% of the work and therefore, payment thereof is required to be made. However, learned counsel for the non-applicant/appellants contended that no work order was issued to the plaintiff-respondent nor any work has been executed by the plaintiff-respondent. It is also contended that suit for mandatory injunction for recovery of the amount of work allegedly executed is not maintainable.

I have carefully considered the rival contentions.

Decree passed by the lower appellate court is prima facie vague. It has been directed that payment be made proportionately to the work proved to be executed. Moreover, the plaintiff-respondent should have sued for recovery of the amount, if any due to it, from the defendants-appellants and suit for mandatory injunction for the said amount is prima facie not maintainable.

For the reasons aforesaid, I find no merit in the instant application, which is accordingly dismissed. However, nothing observed herein before shall be construed as an expression of opinion on the merits of the appeal.”

Learned counsel for the respondent-plaintiff on the other hand submits that 70%-80% of the work has been completed on the oral directions of the concerned official. He also draws attention of the Court to the statement of DW-1 Jaswinder Singh, SDO to this effect. However, as

noted in the order, suit for mandatory injunction in such form is prima facie not maintainable. Learned counsel for the respondent offers to deposit the Court fee, however, that itself does not resolve the dispute. The decree passed by the Court is vague. The amount payable, if any has not been determined.

Keeping in view the aforesaid fact, the judgment passed by the learned First Appellate Court is set aside. The case is remitted back to the First Appellate Court to re-decide the appeal without being influenced by prima facie observation which has been made by this Court or the findings returned in the impugned judgment which is being set aside. The plaintiff shall be entitled to make a prayer for deposit of the Court fee and the same shall be decided by the Court in accordance with law.

With these observations, the appeal is disposed of.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Parties through their counsel are directed to appear before the First Appellate Court on 12.04.2019.

19.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No