IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3302 of 2015 (O&M)
Date of decision: 20.08.2019

Chandigarh Industrial and Tourism Development Corp. Ltd.
... Appellant

Versus

Janak Raj Mahajan's Tent House
... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Parveen Gupta, Advocate
for the appellant.

Mr. Sharan Sethi, Advocate
for the respondent.

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REKHA MITTAL, J. (Oral)

CM No.13954-C of 2017

Prayer in this application is for impleading legal representative(s) (in short “LRs”) of Janak Raj Mahajan-respondent No.2.

In view of averments made in the application supported by an affidavit of Tarun Mahajan son of late Sh. Janak Raj Mahajan and arguments advanced, application is allowed and person mentioned in para 6 of the application is allowed to be brought on record as legal representative of Janak Raj Mahajan-respondent No.2 (since deceased), subject to just exceptions, for the purpose of present lis only.

Disposed of accordingly.

Amended memo of parties is taken on record.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery filed by the respondent/plaintiff in respect of supplying ordered materials on the basis whereof bills of Rs.6,39,625/- were raised was decreed by the trial Court for recovery of Rs.10,63,625/- and respondents/plaintiffs were also held entitle to interest @ 6% per annum on the amount of Rs.5,39,625/- from the date of filing of the suit till realization. The judgment and decree passed by the trial Court became subject matter of challenge in appeal preferred by the appellant but the same was dismissed with costs by the Additional District Judge, Chandigarh vide judgment and decree dated 15.10.2014.

As per case set up by the respondents/plaintiffs, M/s Mahajan Tent House is a proprietorship concern of Sh. Janak Raj Mahajan plaintiff No.2. The appellant/defendant Corporation invited tenders for hiring tentage, crockery, cutlery etc. and awarded rate contract to the plaintiff, as per terms and conditions contained in acceptance letter dated 15.12.1994. Plaintiff started supplying the ordered materials. Bill for each supply was raised and accepted by the defendant. Initially, contract was for a period from 15.12.1994 to 30.09.1995 and thereafter it was made valid upto 30.09.1996. Material was supplied against indents placed on the plaintiff company. Plaintiff raised various bills and submitted the same for payment. The bills were not paid and a sum of Rs.6,39,625/- was due and outstanding. An amount of Rs.1 lakh was paid in July, 1995 leaving balance of Rs.5,39,625/-. A notice dated 04.09.1999 under Section 434 of the Companies Act to pay a sum of Rs.6,32,215.55 along with security amount of Rs.20,000/- was issued. The plaintiff filed company petition for winding up the defendant. Defendant received notice but did not make payment on the pretext that its records have been seized by the CBI vide memos dated 06.01.1997 and 26.02.1997. Plaintiff filed a petition for winding up the defendant corporation in the High Court. Defendant filed the written statement admitting payment of Rs.1 lakh in July, 1995 and sum of Rs.5,39,625/- lying credit as due and payable to the plaintiffs. Along with written statement defendant produced letter dated 07.06.2000 written by the defendant corporation to Hotel Mountview, Sector 10, Chandigarh wherein defendant admitted payment of Rs.1 lakh in July, 1995 leaving a balance of Rs.5,39,625/-. The company petition was dismissed by the High Court on 21.12.2006 relegating the plaintiff to seek remedy before the Civil Court and period spent in the company petition would be excluded, in terms of Section 14 of the Limitation Act, 1963. Hence the suit.

The defendant filed the written statement admitting the fact regarding inviting tender in September, 1994 and allotment of contract to the plaintiff from 15.12.1994 to 30.09.1995 on certain terms and conditions. It is also admitted that on completion of first term, plaintiff was allotted the work upto 30.09.1996. It is averred that as per general business practices, plaintiff should have prepared and submitted the bills on completion of every event/function. Plaintiff prepared all the bills in a single day. The defendant asked the plaintiff for reconciliation of bills but he did not approach the defendant for the said purpose. In the meanwhile, on the basis of a complaint, CBI seized records of the defendant including bills submitted by plaintiff on 07.10.1996 and 06.01.1997. CBI submitted its report on 14.07.1998 and gave a finding that plaintiff submitted bogus bills to the tune of Rs.1,73,665/-. Defendant moved an application for directing the plaintiff to submit the bills for reconciliation before filing written statement in company petition and after reconciliation, it was found that bills amounting to Rs.2,56,207.58 are genuine and remaining of Rs.2,43,185.25 are bogus. Security amount of Rs.20,000/- has already been refunded to the plaintiff.

The controversy between the parties led to framing of issues reproduced in para 4 of the judgment of trial Court. The parties were permitted to adduce evidence in support of their respective contentions.

Having heard counsel for the parties in the light of materials on record, trial Court determined issue No.1 in favour of the plaintiff whereas issue No.2 was answered against the defendant and eventually the suit was decreed in the terms indicated hereinbefore. The appeal preferred by the defendant/appellant did not find favour with the first appellate Court wherein findings recorded by the trial Court were affirmed without variance.

Counsel for the appellant would argue that a committee was constituted by the appellant to examine authenticity/correctness of the bills submitted by the respondents/plaintiffs. The said committee submitted its report proved on record wherein the bills amouting to Rs.2,56,207.58 were found to be correct and others of Rs.2,43,185.25 as bogus. It is argued with vehemence that the Courts have seriously erred by refusing to rely upon the report prepared by the committee while accepting claim of the respondents/plaintiffs for recovery of the outstanding amount of Rs.5,39,625/-. It is further submitted that even the CBI submitted a report whereby it was found that bills valuing more than Rs.1.70 lakh were bogus. It is further argued that in view of documentary evidence produced by the appellant corporation, judgments passed by the Courts are liable to be modified.

Counsel representing the respondents, on the contrary, has supported concurrent findings recorded by the Courts with the submission that the Courts, on a detailed consideration of materials on record, have refused to rely upon any such report submitted by the committee at the back of the respondents/plaintiffs. It is argued that even the document relied upon by the appellant/defendant cannot be said to be report of a committee that only contains details of the bills and comments in the remarks column against a particular bill to be justified or unjustified. It is further argued that in reply to the company petition coupled with letter appended thereto marked as Ex.P-151, there was a clear admission by the appellant/defendant with regard to outstanding liability of Rs.5,39,625/- and as such, findings of the Courts cannot be faulted with on any score, whatever.

I have heard counsel for the parties, perused the paper book and records.

There is no dispute with regard to stand of the defendant in the written statement filed in response to company petition filed by M/s Mahajan Tent House. It is also not disputed that Manager Accounts of the appellant corporation wrote letter dated 07.06.2000 to Hotel Mountview, Sector 10, Chandigarh marked as Ex.P151. It is also not denied that respondent submitted bills valuing Rs.6,39,625/- and an amount of Rs.1 lakh was paid during the year 1995-96. There is nothing on record suggestive of the fact that the respondents were associated in any proceedings conducted by a committee constituted for verification of the bills, therefore, document Ex.D1 submitted by the said committee cannot bind the respondents in respect of the remarks recorded by the said committee holding certain bills to be unjustified. There is also no material on record to suggest that appellant corporation has initiated any proceedings against its official/officer with regard to issuance of wrong indents for supply of tentage, crockery and cutlery etc. on the basis whereof the respondents/plaintiffs submitted bills for payment. In this view of the matter, I find myself unable to be persuaded with the submission made by counsel for the appellant that consistent findings recorded by the Courts suffer from an error much less perversity that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

20.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No