

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

RSA-859-2014(O&M)

Date of decision:-27.11.2019

Paraton Communications Systems

...Appellant

Versus

Executive Officer, Municipal Council, Pathankot and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Satwant Mehta, Advocate
for the appellant.

Mr.Sanjeev Soni, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Paraton Communication Systems, Dalhousie Road, Pathankot had filed a suit against defendants i.e. Executive Officer, Municipal Council, Pathankot, Brij Mohan Kapoor alias Biji, Androon Bazar, Pathankot and V.V. Electronics, On-Dot Couriers Ltd., Manchanda Towers, Pathankot, seeking damages amounting to Rs.1,23,000/- along with interest @ 18% per annum from 19.7.2006 till actual realization.

As per the case of the plaintiff, it had placed an order for purchase two telephone exchanges (new) worth Rs.900/- each plus taxes as applicable and seven old repaired eight line cards worth

Rs.3,000/- each from M/s Telesoft Electronics, New Delhi through On-Dot Couriers Ltd. - defendant No.3; the total weight of the material was 10 kgs.; the said consignment was illegally stopped at Railway Station Chakki Bank, Pathankot by the Octroi personnel of the defendant No.2 without any rhyme or reason and without informing the plaintiff; the local office – defendant No.3 was informed that the consignment had been detained at Octroi Post and were asked to come and collect the consignment after paying 21% penalty; when the official of the courier service went to the Octroi post, he was shocked to see that the consignment was stripped open and the material was stacked aside and when the material was tallied with the list provided by the consignee, it came out that two old cards of eight lines were found missing; the officials of defendants No.1 and 2 could not render any satisfactory explanation for the same, rather they threatened asking him to pay the penalty. According to the plaintiff, the defendants have grossly violated the norms of law as enumerated under Sections 75, 76 and 77 of Punjab Municipal Act and norms of equity and fair play, in that way, the defendants had usurped the two old cards worth Rs.6,000/- and consignment of plaintiff had costed him dearly inasmuch as the entire order worth Rs.1,00,000/- placed by the customer of the plaintiff was cancelled. The plaintiff had also suffered inconvenience and loss of earning in the process. Therefore, the defendants are liable to pay an amount of

estimated loss of material Rs.23,000/-, loss on account of damages against cancellation of confirmed orders Rs.1,00,000/-. When the defendants failed to accede to the request of the plaintiff to pay the said amount to it, the plaintiff brought the suit in question.

On being put to notice, defendants No.1 and 2 appeared and filed separate written statements, whereas defendant No.3 did not appear despite service and as such was proceeded against ex parte.

In the written statement filed by defendant No.1, it took up the preliminary objections that the suit was bad for misjoinder of parties; that the plaintiff had no cause of action to file the suit and the suit was not legally maintainable. On merits, it was contended that Municipal Council, Pathankot vide public auction had given the control for collection of Octroi on contract to defendant No.2 and no mandatory notice under Section 49 of the Punjab Municipal Act had been served upon the answering defendant.

In the separate written statement filed by defendant No.2, it denied the averments in the plaint.

In the end, both the defendants prayed for dismissal of the suit.

On pleadings of the parties, following issues were framed:

1. Whether the plaintiff is to suit for damages? OPP.
2. Whether the suit of the plaintiff is bad for mis-joinder? OPD.

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
6. Relief.

In order to prove his case, the plaintiff had examined PW1 Ajit Kumar and PW2 Om Parkash.

On the other hand, the defendants had examined DW1 Brij Mohan and DW2 Lakhwinder Singh.

After hearing learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the defendants, issues No.2 to 5 against the defendants and in favour of the plaintiff. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 11.9.2012.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Pathankot, which was decided by Additional District Judge, Pathankot, who vide judgment and decree dated 7.8.2013 dismissed the same affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of

this Court by way of filing a regular second appeal praying that the same be accepted, resultantly the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

Notice of the appeal was issued to the respondents. However, only respondent No.1 has appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

It may be mentioned here that the trial Court appreciating the factual and legal position had rejected the claim of the plaintiff mainly for the reason that the plaintiff has produced on record bills vide which it had allegedly purchased the material in question as Ex.P2 to Ex.P5; that out of those bills Ex.P2 and Ex.P3 are of dated 30.6.2006, whereas the bill Ex.P4 is dated 9.8.2006 and Ex.P5 is dated 3.7.2006 and all those bills did not pertain to firm M/s Telesoft Electronics, village Shalimar, Delhi through which the plaintiff had allegedly purchased goods; that the plaintiff had not produced any person from the concerned firm to corroborate the fact that the plaintiff had made payment of goods, which had been consigned in the name of plaintiff firm and only then the plaintiff had any cause of action; furthermore the the bill Ex.P3 pertains to M/s Telesoft Electronics, Village Shalimar, Delhi for a sum of Rs.3,350/- and bill Ex.P4 and Ex.P5 pertain to the date after 30.6.2006, those cannot be

looked into and even these documents did not pertain to M/s Telesoft Electronics, village Shalimar, Delhi; the plaintiff has not produced on record that M/s Telesoft Electronics, Delhi had already been reimbursed by the plaintiff with regard to material in question; that it is not established on record that who had booked the material with the courier agency and it was not established whether the goods have been booked by the plaintiff of the same had been booked by M/s Telesoft Electronics, Delhi; the plaintiff had not brought on record any cogent evidence to prove that he had suffered loss to the tune of Rs.1,00,000/-, in that way the plaintiff has not been able to bring on record enough cogent evidence to establish his case.

The lower Appellate Court was in agreement with the trial Court and had dismissed the appeal. The relevant paras No.10 and 11 of the judgment of the lower Appellate Court for ready reference are being reproduced as under:

10. After considering the rival contentions of the learned counsel for the parties and going through the pleadings, evidence on the file; it reveals that the plaintiff has filed suit for damages against the Executive Officer, Municipal Committee, Pathankot without impleading Municipal Committee, Pathankot through its Executive Officer and the plaintiff has not given one month prior notice before filing the suit. The plaintiff has

proved on file Ex.P7, legal notice dated 19.7.2006, he has to file the suit after the expiry of one month i.e. on or before 20.8.2006 but the present suit has been filed on 2.8.2006 i.e. after 13 days from sending the notice to the Executive Officer. Section 49 of the Punjab Municipal Act provides as under:

49. Suits against committee and its officers. - No suit shall be instituted against a committee, or against any officer or servant of a committee, in respect of any act purporting to be done in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff : and the plaint must contain a statement that such notice has been so delivered or left:

11. In the light of provisions of Section 49 of the Punjab Municipal Act, 1911, the suit filed by the plaintiff is pre-mature. The documents Ex.P2, Ex.P3, Ex.P4 and Ex.P5 have not been proved on file as per Indian

Evidence Act. Hence in the totality of the circumstances, evidence on file and provisions of Punjab Municipal Act, this Court is of the opinion that the trial Court has rightly dismissed the suit of the plaintiff.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

27.11.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No