

RSA-5370-2017 (O&M)

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

RSA-5370-2017 (O&M)

Date of decision : 11.02.2019

Surjit Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Chawla, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM- 14349-C-2017

For the reasons stated in the application, the delay of 91 days in
refiling the appeal is condoned.

CM stands disposed of.

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The present regular second appeal is directed against the
concurrent findings of fact, whereby the suit of the appellant-plaintiff for
declaration with consequential relief of mandatory injunction, by
challenging the cancellation order dated 10.03.2009 and forfeiture of
security of ₹1 Lac and adequate damages, has been dismissed by the trial
Court and affirmed in appeal.

It was alleged that the plaintiff was allotted the work of
sanitation and lifting of the dirt in the residential areas/*basties* of Fardikot
town w.e.f. 16.09.2008 to 15.09.2009. The plaintiff deposited a sum of ₹1
Lac, vide receipt dated 05.09.2008 and hired the tractor trailer as well as
sweepers for carrying out the work. The said contract was
cancelled/revoked by the Executive Officer at the behest of the President on
10.03.2009 and earnest money was also ordered to be forfeited. The

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representation-cum-appeal was preferred before the Deputy Commissioner and ultimately, the writ petition was filed in this Court. Since there are disputed questions of law, the suit, aforementioned, was filed. The impugned judgment and decree was stated to full of malice, much less, without complying with the principles of natural justice.

Defendant Nos.3 to 5 opposed the suit and denied the fact that plaintiff had been performing the duty with full zeal, honesty and sincerity. There was a danger of epidemic to spread and numerous complaints were written against the plaintiff.

The plaintiff in support of the case, examined himself as PW2, Manjjit Singh as PW1 and Khushwinder Singh as PW3 and brought on record various documents Ex.P1 to Ex.P18, whereas the defendants examined Gurinder Singh, Sanitary Inspector as DW1 and tendered in evidence many documents (Ex.D1 to Ex.D9) including the copy of complaints.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the Executive Officer did not have any power to cancel the contract as it was within the domain of the President and in the absence of resolution, the forfeiture of the earnest money and cancellation of the contract is non-est in the eyes of law, even if, the contract was entered into by the Executive Officer. The plaintiff had done the work with full zeal, honesty and sincerity. The alleged complaints were an act of rancour by competitor. The Courts below did not assign any reasons with regard to the relief of damages, which is permissible as per Section 73 of the Contract Act.

I have heard learned for the appellant-plaintiff, appraised the

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paper book and of the view that there is no merit and force in the submissions of Mr. Chawla, for, on going through condition No.14 of the contract, it is evident that the Executive Officer or the President, had the power to cancel the contract without issuing notice. The terms and conditions of the contract are sacrosanct and cannot be deviated, at the behest can be the matter of interpretation, in case, these are found to be irrational, but not in the manner and mode. No evidence has been placed on record to claim the damages. The complaints (Ex.D4, Ex.D5 and Ex.D7) have gone un-rebutted. The contract was cancelled almost few months before its expiry. The plaintiff miserably failed to place on record any material to establish that he had undertaken the work with full diligence and zeal nor there is any satisfaction certificate from the locality or of the Department. All these factors were weighed in the mind of the Courts below while dismissing the suit.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Chawla to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

11.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**