

RSA-1806-2019 (O&M)

**Serial No. 272
IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA-1806-2019 (O&M)
Date of Decision: 06.02.2020**

HARYANA STATE AGRICULTURAL MARKETING BOARD

.... Appellant

Versus

VIJAY KUMAR & COMPANY

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Pritam Singh Saini, Advocate
for the appellant.

ARUN MONGA, J.(ORAL)

1. Having suffered concurrent adverse findings by the two courts below, the plaintiff/appellant has preferred the present Regular Second Appeal impugning the judgment and decree dated 18.05.2016 passed by the Trial Court and Judgment and Decree dated 21.12.2017 passed by the First Appellate Court whereby the Suit of the Plaintiff for Recovery of Rs.83,290/- against the Defendant-Respondent was dismissed with costs.

2. Succinct factual matrix, as noticed by the courts below is that the plaintiff (appellant herein) filed a Civil Suit for recovery of amount of Rs.83,290/-, wherein the Plaintiff pleaded that they allotted the defendant the work of construction of link road from village Shera to Matlauda in District Panipat vide office memo dated 28.07.1989. An agreement was also entered between the parties for that purpose and the defendant agreed to complete the work within 8 months. However, the defendant (respondent herein) failed to complete the work within the stipulated period. Further, plaintiff issued various legal notices and invoked Clause II of Agreement where penalty of Rs.83,290/- was imposed on the defendant with direction to complete the work. Plaintiff further invoked Clause III of Agreement

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whereby construction work was allotted to some other contractor. Thereafter, the superintending engineer of plaintiff confirmed the penalty amount. Plaintiff also initiated arbitration proceedings against the defendant.

3. Per contra, the Defendant though admits to the contractual relationship with the plaintiff but contends that the defendant failed to complete the construction work within the stipulated time solely because of the acts and omissions on part of the officers of the plaintiff Board. Further it is contended that the legal action initiated by the plaintiff was illegal, as the subject matter of the suit was also under consideration before the Arbitrator. Defendant further stated that the Superintending Engineer did not afford an opportunity of being heard to the defendant and approved the action of imposing penalty of Rs.83,290/- without waiting for outcome of arbitration proceedings. It is also pleaded by the defendant that the plaintiff filed the suit after expiry of more than 24 years of the imposition of the aforesaid penalty.

4. Based on the rival pleadings following six issues were framed by the trial Court:

- a. *Whether the plaintiff is entitled for recovery of Rs.83,290/- alongwith interest, as prayed for? OPP*
- b. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- c. *Whether the plaintiff has no cause of action to file the present suit? OPD*
- d. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- e. *Whether the suit is time barred? OPD*
- f. *What Relief?*

5. The parties herein adduced their respective, oral and documentary evidence, in support of their pleadings to discharge their onus

as per issues ibid.

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6. I have heard learned counsel for the appellant and after giving my thoughtful consideration, I am of the view that Regular Second Appeal filed by the plaintiffs (Appellant herein) is bereft of any merit and is thus liable to be dismissed.

7. As per Issue-(e), the trial Court held that the cause of action for recovery of the penalty amount of Rs.83290/- first arose on 01.06.1990 when notice/memo was issued to the defendant imposing penalty. Article 27 of the Schedule of the Limitation Act, 1963 provides three years for instituting suit for compensation for breach of a promise to do anything at a specified time. There is no acknowledgement and/on promise made by the defendant herein. At best, limitation period could be extended till 01.06.1990 when the notice was issued to the defendant requiring him to pay the compensation/penalty. The suit for recovery could possibly have been be validly instituted on or before 31.05.1993 but thereafter would be barred by limitation. Issue qua limitation was thus decided against the plaintiff. The suit was held to be not maintainable under Section 3 of the Limitation Act, 1963.

8. As regards Issue (a) to (d), the trial Court held that since the suit of the plaintiff is hit by limitation there was thus no need for the court to look into the merits of the case. As a result, these issues were also decided against the plaintiff and in favour of the defendant.

9. The First Appellate Court re-affirmed the findings returned by the trial Court and accordingly upheld the judgment by the trial Court and dismissed the appeal. Hence, the present Regular Second Appeal.

10. In view of the valid reasons recorded by trial court as noted aforesaid and also having perused the grounds of appeal filed herein, I am

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of the view that no fresh grounds have been raised warranting interference of this Court in present second appeal.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence.
12. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.
13. In view of my discussion above and reasons recorded therein, no interference is called for by this Court.
14. Appeal is, accordingly, dismissed.
15. Pending application, if any, shall also stand disposed of.
16. No order as to costs.

06.02.2020
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No