

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

RSA No. 5597 of 2019(O&M)

Date of decision: 3.3.2020

Yamuna Power and Infrastructure Ltd.Appellant

VERSUS

M/s Komal Electrical and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Tara Dutt, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.15926-C of 2019

Heard.

Allowed as prayed for.

Deficiency of Court fee has already been made up.

Disposed of accordingly.

CM No.15929-CII of 2019

Prayer in this application is for condoning delay of 30 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. S.S. Chauhan - appellant, the application is allowed. Delay of 30 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No.5597 of 2019

The respondent/plaintiff M/s Komal Electrical of Rajasthan filed suit for declaration with consequential relief of mandatory injunction

directing Yamuna Power and Infrastructure Ltd. (appellant herein) for refund of security deposited with the appellant, in compliance of terms and conditions settled vide agreement dated 01.11.2009 in respect of execution of work at Salempur Feeder and Gobindgarh Feeder. The Courts have consistently held in favour of the respondent/plaintiff with the findings that respondent/plaintiff is entitle to refund of security, wrongly withheld by the appellant/defendant and consequently directions were issued to the appellant to release the same.

Counsel for the appellant has assailed the judgments primarily on two counts. It is argued that the appellant raised a plea with regard to its entitlement to recover the sum of Rs.1,29,459/-, due to shortage of material, from the respondent/plaintiff but said contention has wrongly been rejected by the Courts. Another submission made by counsel is that in the agreement, there was a clause for referring the parties to Arbitration in case of dispute between them, therefore, the Civil Court does not have jurisdiction to decide the suit.

Counsel for the appellant, in response to a query, could not point out any materials on record that the appellant filed an application before the trial Court for referring the matter to Arbitrator in view of arbitration clause in the agreement entered between the parties. Perusal of the judgment of trial Court would reveal that defendants No.1 to 4 including the appellant/defendant No.1 filed the written statement contesting claim of the respondent/plaintiff, meaning thereby that the appellant submitted to the jurisdiction of the Civil Court without raising an issue that the matter needs reference to Arbitrator. In this view of the

matter, contention raised by the appellant with regard to lack of jurisdiction with the Civil Court is patently misconceived and accordingly rejected.

Perusal of para 13 of the judgment of trial Court reveals that the appellant raised a plea with regard to his entitlement to recover Rs.1,29,459/- qua shortage of material. The trial Court has held that no evidence was adduced by the defendant for proving shortage. Counsel for the appellant has failed to point out any materials on record that either escaped notice of the Court or was not considered in right perspective. In this view of the matter, there is no justifiable ground for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

MARCH 3, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no