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

RSA-61-2021 (O&M)

Date of Decision:08.08.2022

M/S TDG CONTRUCTIONS CO

.. Appellant

Vs.

HARYANA STATE AGRICULTURE MARKETING BOARD

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rajinder Goyal, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

CM-598-C-2021

This application under Section 5 Limitation Act read with Section 151 CPC has been filed for condonation of delay of 233 days in filing the appeal.

Heard.

For the reasons mentioned in the application, delay of 233 days in filing the appeal is condoned.

CM stands allowed.

RSA-61-2021 (O&M)

Appellant (defendant) has assailed the judgment and decree dated 25.04.2019 passed by Addl. District Judge, Panipat, in Civil Appeal No.204 of 2018, whereby the judgment and decree dated 16.11.2015 passed by Civil Judge (Sr. Divn.), Panipat in Civil Suit No.421 of 2014 dismissing the suit of the plaintiff for recovery of 5,29,177/- along with interest, was reversed.

Briefly the facts of the case leading to the appeal are that

plaintiff (respondent) brought a suit for recovery on the ground that the work of construction of link road from Jalalpur to Sanauli Road, District Panipat was awarded to defendant through allotment letter dated 28.04.2011 and pursuant to that, a formal agreement Ex.P-2 was also executed. As per the contract, the construction work was to be completed within a period of five months from the date of issue of allotment letter, however, the same was not completed, thereby compelling the plaintiff to issue notices to defendant to expeditiously complete the work, but the defendant sought extension of time, which was allowed initially upto 15.08.2012 and lastly, upto 30.12.2012. Since the work was not completed within a stipulated period, therefore, the plaintiff was compelled to award the contract of work to the third party and at the same time, imposed penalty amounting to Rs.5,29,177/-.

While contesting the suit, the defendant filed his written statement, wherein multiple preliminary objections regarding locus standi, maintainability of the suit and cause of action etc. were raised and on merits, it was pleaded that since the defendant was engaged in three different works at different sites, and the other two works were completed, but against that the payments were delayed by the plaintiff, therefore, because of shortage of funds, the subject contract work was not completed.

Denying the averments in the plaint, and describing the imposition of penalty as arbitrary, it was prayed that the suit be dismissed. The stand of the defendant in the written statement was controverted by filing replication.

After completion of the pleadings of the parties, the trial Court framed in all, four issues and thereafter, parties adduced their evidence. The

trial Court upon considering the pleadings, evidence and material on record dismissed the suit vide judgment and decree dated 16.11.2015.

Dissatisfied with the judgment and decree passed by the trial Court, plaintiff preferred first appellate Court bearing No.204 of 2018 before the first appellate Court and the same was allowed through impugned judgment and decree dated 25.04.2019. Hence, this regular second appeal.

Learned counsel for the appellant has argued that the trial Court had delivered a well reasoned judgment holding the suit to be not maintainable, as defendant firm is a partnership firm, but it was not sued through its partner and apart from it, no damages allegedly suffered by the plaintiff were quantified or established by way of a convincing evidence. He has further argued that the construction material was not available as a result of stay operating against the activities of quarries, therefore, the defendant was prevented by sufficient reason to carry on the contract.

Learned counsel has argued that the appellate Court has reversed the findings by misreading the evidence and ignoring the fact that the negligence was with the defendant department, as it failed to release the payments to the defendant in respect of the work already completed by him. He prays that the impugned judgment and decree dated 25.04.2019 be set aside.

After hearing the learned counsel and considering the evidence on record, this Court finds that the appellant has adopted two conflicting stands to avoid its liability for delaying the contract awarded to him. On one hand, it is pleaded that because of the interim stay granted by the High Court, the construction material was not available, whereas at the same time, it was pleaded that he had successfully completed other two works

awarded by the same plaintiff, but his payments were delayed. Learned counsel is unable to show anything on record about the negligence of the plaintiff, as admittedly the contract which was to be completed within a period of five months was extended twice. Further, the case of the plaintiff is proved by the testimony of PW-2, namely, Ram Niwas, who was awarded this contract after completion of 60% work by the defendant. Thus, this Court has no hesitation in holding that the findings recorded by the appellate Court are based upon correct appreciation of evidence.

At this stage, Mr. Goyal, learned counsel has drawn the attention of the Court to the application moved under Order XLI Rule 27 CPC for leading additional evidence, which relates to a request by defendant to reconsider imposition of penalty, which is pending and is not addressed because of the pendency of the suit. Since this request was sent after decision of the suit as well as the appeal, there was no occasion for the department to re-consider it, as the decree was already in their favour. The argument that the damages are not quantified is also without any merit, as the claim of the plaintiff seeking recovery of the amount is only the account of imposition of penalty.

Resultantly, finding no merit in this appeal, the same is dismissed.

08.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No