

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.104

RSA No.251 of 2022 (O&M)
Date of Decision: 16.12.2022

Rajesh Kumar Saini

.... Appellant

Versus

Market Committee, Tohana

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Munish Kumar Garg, Advocate
for the appellant.

TRIBHUVAN DAHIYA, J. (ORAL)

CM-491-C-2022

This application has been filed seeking condonation of delay of 409 days in filing the appeal.

For the reasons stated in the application, the same is allowed and delay of 409 days in filing the appeal stands condoned.

RSA No.251 of 2022 (O&M)

This is defendant's appeal against the judgment of reversal in a suit for recovery.

2. The facts of the case in brief are, the respondent/plaintiff filed a suit for recovery of Rs.1,86,944/- along with interest at the rate of 18% per annum from 03.05.2014 till realization. It was pleaded that defendant had taken a contract for collecting *jhar-phus*/garbage for the year 2013-14 on 09.10.2014 for a sum of Rs.17 Lakh on the settled terms and conditions. Out

of the said sum, the defendant had paid an amount of Rs.15,18,500/- and the

balance amount of Rs.1,81,500/- remained outstanding towards him. Despite service of legal notice dated 03.04.2014 upon the defendant, the amount was not paid.

3. The appellant/defendant contested the suit admitting that he had taken a contract of collecting *jhar-phus*/garbage for the year 2013-14, in pursuance thereof, an amount of Rs.15,18,500/- already stood paid. Service of legal notice upon him was also admitted. It was averred that the defendant being the highest bidder, was given the tender to lift *jhar-phus*/garbage from Anaj Mandi, Tohana, for the year 2013-14. However, it was plaintiff's responsibility to provide the *jhar-phus*/garbage, which he failed to do. The Kaccha Arhtiya Association (hereinafter referred to as the 'Association') by passing the resolution dated 04.12.2013 stopped the fans and power cleaners in the Anaj Mandi; resultantly, no garbage could be lifted by the defendant from there. The plaintiff did not take any step to get the crops cleaned by use of fans and power cleaners. On that account, the defendant suffered a huge loss. The matter was reported to the plaintiff but to no effect. In these circumstances, the plaintiff was not entitled to the amount claimed, instead the defendant was entitled to recover an amount of Rs.12,50,000/- from the plaintiff along with interest at the rate of 18% per annum, as a counter claim.

4. On the pleadings of the parties, the following issues were settled by the trial Court:

1. Whether the plaintiff is entitled for recovery of Rs.1,86,944/- (Rs.1,81,500/- principal amount Rs.5,444/- as interest calculated @ 18% per annum upto 03.05.2014) along with future interest till realization?OPP

2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action and locus-standi to file the present suit?OPD
4. Whether the suit is bad on account of mis-joinder of parties and non-joinder of necessary parties?OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
6. Whether the suit of the plaintiff is barred by law of limitation? OPD
7. Whether the Civil Court at Tohana has no jurisdiction to try and decide this suit?OPD
8. Whether the plaintiffs have concealed the true and material facts from the Court?OPD
9. Whether the defendant/counter-claimant is entitled to get back the amount deposited by him against the tender along with interest @ 18% per annum, on the grounds mentioned in the counter-claim?OPD
10. Relief.

5. Issues No.1 and 9 were decided together by the trial Court holding, since the plaintiff had released the tender to the defendant to lift the garbage for huge amount of Rs.17 Lakh, it had to ensure the availability of garbage in the Mandi as well, so that the same could have been lifted by the defendant. Since the plaintiff failed to do that, it was liable to pay the compensation to the defendant. The compensation of Rs.12,50,000/- claimed

by the defendant was held to be excessive, he was however, held entitled to recover an amount of Rs.6,69,000/- along with interest at the rate of 6% per annum from the plaintiff.

6. On the basis of findings recorded on these issues, Issues No.2, 3, 5 and 8 were also decided against the plaintiff. Issues No.4, 6 and 7, which were to be proved by the defendant, were not pressed during arguments, nor any evidence was led *qua* them. Hence, the same were decided against the defendant.

7. Resultantly, the suit was dismissed and counter-claim filed by defendant was allowed to the extent of Rs.6,69,000/- along with interest at the rate of 6% per annum. The plaintiff went in appeal against the trial Court judgment, which was accepted by decreeing the suit and setting aside the counter-claim.

8. Learned counsel for the appellant has argued that trial Court's findings have been reversed wrongly. The plaintiff was bound to provide adequate garbage to the defendant for collection as the tender for the purpose was floated on the presumption that garbage would be available. In the event of non-availability of the garbage for collection in the Mandi, the defendant cannot be made liable to pay the balance amount. By referring to testimony of Jagan Nath, DW3, the then President of the Association, learned counsel has contended that resolution passed by the Association on 04.12.2013 for stopping the electric power cleaners stands proved on record. Therefore, the suit could not have been decreed against the defendant, and he was entitled to recover the amount claimed by way of counter-claim as compensation.

9. Learned counsel for the appellant has been heard and judgments of the Courts below perused.

10. Undisputedly, as per contract entered into between the parties on acceptance of tender, it was not binding upon the plaintiff to provide garbage to the defendant, nor was there any duty upon it to ensure cleaning of crops in the Mandi by using electric power cleaners and fans only. It has been held by the lower appellate Court that contract between the parties clearly stipulated that the defendant had the right to lift entire garbage from the Anaj Mandi, irrespective of the fact as to how this garbage was generated. The defendant was entitled to collect/lift the garbage generated, by using of power cleaners as well as by manual cleaning of crops by the farmers themselves.

11. So far as resolution passed by the Association regarding stoppage of electric power cleaners is concerned, it is alien to the contract entered into between the parties. The plaintiff was not a party to such a resolution. Further, it has been held by the lower appellate Court, there is no evidence on record that even after passing of the resolution in question, there was actual stoppage of the electric power cleaners leading to any reduction in garbage generation. Further, there is no evidence on record to establish that *arhtiyas* of the Anaj Mandi concerned were members of the Association, which passed the resolution. Besides, the defendant's witness, Ashwani Kumar, DW1, himself deposed, even if power cleaners were not used, lesser quantity of agricultural waste/garbage could still be generated.

12. Therefore, there is no denying the fact that even if there has been stoppage of electric power cleaners pursuant to the resolution, the garbage still got generated. There is no evidence on record to establish complete cessation of garbage generation. It is neither pleaded nor proved on record that there was no garbage at all for the defendant to collect. Also, the

defendant did not adduce any evidence to prove the fact that he altogether stopped lifting of garbage after passing of the resolution by the Association.

13. In view thereof, the findings recorded by the lower appellate Court reversing the trial Court judgment, decreeing the suit and dismissing the counter-claim filed by the defendant, suffers from no error of law, and is based upon cogent evidence led before the Court. No substantial question of law arises for consideration either.

14. Appeal stands dismissed.

15. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.12.2022
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No