

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

RSA-5065-1999

Date of decision: 25.03.2022

Nandpur Cooperative Labour and
Construction Society Ltd.

.....Petitioner

versus

Municipal Council and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Deepak Aggarwal, Advocate for
Mr. Vineet Sharma, Advocate
for the appellant.

Mr. Harpreet S. Gharuan, Advocate
for respondents No.1 and 2.

FATEH DEEP SINGH, J.

The appellant-Nandpur Cooperative Labour and Construction Society Ltd. (in short 'the Society') initially preferred against the respondent-Municipal Council, Tarn Taran then defendants a suit for recovery of Rs.1,03,094/- (Rupees One Lakh Three Thousand Ninety Four Only) by way of principal including securities and interest of Rs.55,276/- (Rupees Fifty Five

Thousand Two Hundred Seventy Six Only) @ 18% per annum from October, 1992 to October, 1995 totalling to Rs.1,58,370/- (Rupees One Lakh Fifty Eight Thousand Three Hundred Seventy Only). The institution was on the grounds that the plaintiff has undertaken at the behest of the defendants development works by way of laying bricks etc. near bus stand in spite of completion having been made in September/October, 1992 and submission of the bill, the defendant failed to make the payments.

The stand of the defendants claiming that the entries in the record have been fabricated in collusion with one, Bawa Singh, Junior Engineer and denied any work having been undertaken so claimed by the plaintiff.

The Trial Court framed the following issues:-

1. Whether the plaintiff is entitled to recover a sum of Rs.1,02,094/- from the defendants? OPP
2. To what rate of interest, if any plaintiff is entitled to? OPP
3. Whether suit is within limitation? OPP
4. Relief.

The plaintiff examined PW-1-Bawa Singh, Junior Engineer, Amritsar Improvement Trust, PW-2-Mohinder Pal Singh, one of the plaintiffs while the defendants failed to lead their evidence which was closed by order. The Court of the learned

Additional Civil Judge (Senior Division), Tarn Taran vide judgment decree dated 01.08.1998 decreed the suit of the plaintiff for the recovery of Rs.1,58,370/- (Rupees One Lakh Fifty Eight Thousand Three Hundred Seventy Only) along with interest at the rate of 12% per annum from October, 1992 till realization.

The defendant-Municipal Council preferred an appeal in the Court of the learned Additional District Judge, Amritsar through impugned judgment/decreed dated 25.09.1999 has reversed the orders of the Court below and while accepting the appeal set aside the same. It is in this context, the present matter has come about.

Heard counsel for the parties and perused the records.

No doubt, since the plaintiff has come up with the suit in question a heavy onus lay upon the plaintiff to establish their case beyond shadow of doubt. The testimony of the own official of the defendants namely, PW-1-Bawa Singh, Junior Engineer, who testified that while posted as J.E. in Municipal Council, Tarn Taran in the year 1992, he was having additional charge of defendant-Municipal Council and that development works near bus stand was undertaken by the Council and has proved the measurement book (MB) as Ex.P-A/1 to Ex.P-A/3 and the very

cross-examination witness does not elicit anything favourable for the defendants. The other witness is the plaintiff, PW-2-Mohinder Pal Singh, who has reiterated in totality the case of the plaintiff how it was allocated the development works which they had undertaken within the time bound to the satisfaction of the Department. A suggestion has been put in the cross-examination of the witness that the work was not completed rather upsets the very stand and defence of the defendants who in their pleading denied that any such allotment of work was made or any work was undertaken and further that the plaintiff is not entitled to claim interest on the amount. The entire evidence has remained un rebutted as defendants have not led any evidence. In light with what has been submitted before this Court by learned counsel for the appellant, the plaintiff-Committee through resolution Ex.PW-2/A has authorized Mohinder Pal Singh to represent the Society in the execution of the works. The copy of the MB proved on the record Ex.P-A/1 to Ex.P-A/3 bears out that a certificate has been given on 16.09.1992 which is also counter-checked as to the calculations of the works undertaken by the next authority and the E.O. has passed the bill for a sum of Rs.38,561/- (Rupees Thirty Eight Thousand Five Hundred Sixty One Only) and which entire

evidence has remained unrebutted. What one can perceive is that the Committee is trying to hoodwink the law and denied the legitimate right of the plaintiff to this amount. Though, legal notice Ex.PW-2/B with postal receipts Ex. PW-2/C was issued on 30.05.1995 prior to the institution of this suit and which remained unresponded by the defendants further illustrates that all is not well with the Municipal Council who did not even bother to controvert this. The learned Trial Court while adjudicating on the matter has rightly held that the work was completed way back in September/October, 1992 and that the suit has been filed on 17.11.1995 within the prescribed period of limitation after deducting the period of notice proved on the record. The learned Trial Court has rightly drawn this conclusion which needs to be upheld. However, the learned Additional District Judge, has fell into an error by holding that the suit is barred by limitation how and by what means, it has wrongly held that notice was given on 17.07.1979 and that the suit was filed on 18.10.1979 quite at variance with the dates on the record. More so, when the work as per the unrebutted evidence was executed way back in the year 1992, shows non-application of mind by the learned First Appellate Court and whose conclusions certainly to the mind of

this Court are wholly wrong and incorrect and needs to be set aside.

Keeping in view the foregoing discussions, the impugned judgment/decreed of the learned First Appellate Court is hopelessly against the evidence and the law and needs to be set aside. This Court upholding the finding of the Trial Court and thus, the appeal in light of the same, is hereby allowed.

25.03.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No