104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4522-2010 (O&M)
Reserved on: 11.10.2022
Pronounced on:23.12.2022

Atma Vishwas Society .... Appellant

Versus

Ishwar Industries .... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Ms. K. R. Boparai, Advocate for the appellant.
Mr. Ram Chander, Advocate for the respondent

****

HARKESH MANUJA, J.

MAIN CASE:

Plaintiff-appellant (hereinafter referred to as 'plaintiff') is in appeal against the judgments and decree dated 03.12.2007 and 13.04.2010 passed by the Courts below; whereby suit for recovery of Rs. 4,37,580.50 in total against the respondent-defendant (hereinafter referred to as 'defendant') has been dismissed.

The facts leading to the present appeal, as stated by the appellant, are that the plaintiff being a registered society under the Societies Registration Act had been running "Tender Heart School", situated in sector-33, Chandigarh. It was alleged that the plaintiff had done some constructions in the school and the defendant had approached the plaintiff for the supply of terrazo tiles to be laid on the floor in the school premises; defendant supplied the quotation on 25.8.2000 & agreed to supply the terrazo tiles as per the specifications of IS 1237-1980. It has been further pleaded that the reason for giving this contract to the defendant was that their unit was sales tax exempted and was run for the children and women welfare. As per plaint, plaintiff paid a sum of Rs. 5,000/- in advance to the defendant at the time of accepting the quotations on 7.9.2001 by cheque & the respondent/defendant supplied tiles to the plaintiff on 19.11.2000, 24.12.2000, 27.12.2000, 18.1.2001, 25.1.2001, 3.2.2001, 24.3.2001 and 15.4.2001 and bills were also handed over to the plaintiff and accordingly, a sum of Rs. 1,48,643/- was paid by the plaintiff to the defendant. It was further pleaded that cost of laying and granite polishing of the tiles at the rate of Rs. 13 per square feet came to be Rs. 1,38,937.50, however, when the said tiles were granite polished, the colour of the tiles instead of turning out to be dazzling, had black patches giving an ugly look & on seeing the condition of the floor, tiles were sent to the Uppals testing and analytical laboratory which reported that the tiles did not conform to the standards laid down under IS 1237, compelling the plaintiff to file the suit for recovery claiming cost & damages.

In response, written statement was filed by the defendant and the said suit was contested by taking preliminary objections qua territorial jurisdiction and concealment of material facts. On merits it was submitted that Shri Paramjit Singh architect, who dealt with the defendant on behalf of the plaintiff school had approached for supply of different types of tiles to the plaintiff and on his asking quotation dated 25.8.2000 was given to him and the principal of the plaintiff's school approved the samples and the price. It was further pleaded that on 28.5.2001, the architect along with an employee of the plaintiff who normally received bills etc. on behalf of the plaintiff school approached the defendant and asked for a quotation as per ISI specification to enable the plaintiff school to get additional loan sanctioned from the bank & the same was issued as per the language of the requisite quotation brought to its proprietor Mrs. Kiranjeet Kaur and this quotation was delivered against signature of the said employee. Quotation dated 28.5.2001 pertained only to one type of tiles which too were not supposed to be supplied & in fact no dealing were to be transacted on the basis of the said quotation. It was further submitted that it was after the approval of the samples that supplies of tiles of different types were made to the plaintiff who were fully aware of the nature and quality of the tiles. Rest of the averments were specifically denied in the written statement, however, in the counter claim the defendant demanded a sum of Rs. 13820.58/- along with interest from 21.1.2001 till 12.7.2001 when the last payment was made by the plaintiff to the defendant.

The Court of learned Civil Judge (Senior Division), Chandigarh dismissed the suit filed by the plaintiff vide its judgment and decree dated 03.12.2007 which was challenged in appeal. Even first appeal was also dismissed by the Court of learned Additional District Judge, Chandigarh vide judgment and decree dated 13.04.2010. It is the said two judgments and decrees which have been impugned by way of present appeal.

Learned counsel of the appellant contends that material was to be supplied by the defendant in accordance with Ex-P3, which was even corroborated by the testimony of plaintiff witness PW1-Vikrant Suri (at page 141) and therefore Terrazo tiles supplied by the defendant were required to conform to standard IS 1237-1980 as specified in Ex-P3, whereas from the report provided by the plaintiff as Ex-P21 read with testimony of PW2, makes it abundantly clear that the material supplied by the defendant did not conform to the expected standard and the tiles supplied were of substandard quality. To stress upon the fact that the transactions between both the parties were carried out on the basis of Ex-P3, learned counsel also mentions that the rate of the tiles provided in the bills and the quotation exhibited as P3, on which plaintiff relies are same i.e. @Rs 9 per unit and further it does not even tally with the quotation exhibited as D2 on which the defendant relies upon. Learned Counsel for the appellant further contents that no lab report has been brought on record by the defendant to counter the lab report brought on record by the plaintiff in this behalf. He also contends that exhibit DX has to be discarded because the date mentioned on it is the date of supply of exhibit DX only. Learned Counsel finally concludes his argument by submitting that both the courts below erred while relying upon the quotation dated 28.05.2000 to be the final one while no positive evidence was brought on record by the defendant to prove this and by not taking into consideration that Ex-P3 was the basis on which tiles were supplied to the plaintiff.

Per contra, learned counsel for defendant contends that though existence of Ex-P3 was admitted, however its execution was admitted entirely in a different context and tiles were not supplied to the plaintiff on the basis of Ex-P3 rather those were supplied on the basis of quotation dated 25.08.2000. He further contends that plaintiff was not able to explain delay in raising the dispute and therefore both the courts below rightly found the version of defendant more probable. He also submits that the agreement between the plaintiff and defendant was on the basis of quotation dated 28.05.2000 to supply different type of tiles in different sizes at different rates, while the undated quotation relied upon by the plaintiff mentioned one single size, quality and rate only. He further submits that the sample taken by the plaintiff for testing was taken in their absence and knowledge and therefore, the report cannot be relied upon. He even contends that if Ex-P3 would have been the basis of supplying the tiles, then it would have been subject to the payment of sales tax, however the bills clearly show that no sales tax was paid. He also contends that there was no assurance by the defendant regarding the granite polishing of the tiles and the quotation does not have any clause in this regard.

I have heard learned counsel for the parties and perused the paper-book as well as records of this case. Briefly stating, the case of the plaintiff is that after initial quotation dated 25.08.2000, another quotation (undated) was provided by the defendant, in which it was written that terrazo tiles supplied would conform to IS 1237-1980 standard but in fact the tiles provided were of substandard material. On the other hand the case of the defendant was that material was supplied only on the basis of quotation dated 25.8.2000 and another quotation was given much after the entire supply had already been made only for the purpose of obtaining loan but it was misused by the plaintiff.

Both the courts below dismissed the case of the plaintiff having found the version of the defendant to be more probable and in my considered opinion rightly so. One primary reason in this regard was that bills in relation to tiles supplied by the defendant to the plaintiff pertain to the period from 19.11.2000 to 15.04.2001; however grievance was raised by the plaintiff only on 17.08.2001 through a legal notice. It is the admitted case of both sides that all the bills related to the supply were paid in full, in these circumstance, question remains if the quality of tiles was poor, Why the plaintiff continued to pay the bills. Any prudent person would have stopped paying the bills as soon as he came to know about the quality of the tiles. Though, the plaintiff submits in the plaint as well as in replication that it came to know about the quality of tiles only when polishing was done which started after the laying of the tiles was complete. Even in cross examination (on page 129 of record) also, PW1 says that polishing started in March 2000, however, the case of plaintiff stands falsified from the material brought on record by them only, as the bill dated 09.02.2001 (Ex P-12) paid to its contractor Phoolchand shows that it pertains to the laying of tiles with granite polish work done in the basement. The argument raised by learned counsel for the plaintiff that Ex-P3 was admitted by the defendant requires to be negatived as its admission was in a specific and limited context only and there was categorical statement to the effect that the material was supplied on the basis of quotation dated 25.08.2000.

There is another interesting fact to note in this regard. In plaint as well as in replication, plaintiff asserted that the advance was paid on 07.09.2001 by cheque when the quotation was accepted, while the last bill from defendant is dated 15.04.2001. Learned appellate court discussed this aspect in detail and discarded the case of the plaintiff on this basis as well. Now there could be two scenarios. Either this date was correct and in that case, the case of the plaintiff cannot stand and is bound to fail as a quotation subsequent to the act, when entire supply has already taken place, is meaningless. Or in alternate, it could be possible that this was due to a clerical mistake, though it is difficult to assume that the same clerical mistake is there in plaint as well as in replication even. However, even if this is a clerical mistake, as it appears from the testimony of the plaintiff where it is mentioned, that advance was paid on 07.09.2000, in that case, neither there is any ground to this effect in the grounds of appeal nor it has been argued by the counsel for the plaintiff, despite dismissal of suit by the courts below on this ground.

Still in the Ex-P3, there is specific mention of the condition that cartridge, local tax and loading and unloading will be charged extra while in quotation dated 25.08.2000, it is mentioned that this unit is exempted from sales tax. Bills raised by the defendant exhibited as P4 to P11 and paid by the plaintiff in full, which have been brought on record by the plaintiff, show that the bills were exempted from payment of sales tax. This strengthens the version of the defendant that the supply of tiles was made in pursuance of quotation dated 25.08.2000.

More than that, in the quotation relied upon by the plaintiff only Terrazo tiles are mentioned @Rs 9 per unit, where as in quotation dated 25.08.2000 different type of tiles has been mentioned at different rates and a perusal of bills brought on record (bills dated 18.01.2001/ 25.01.2001/ 24.03.2001) by the plaintiff itself shows that there are other kind of tiles supplied as well at the rate far below than Rs 9 per unit. To substantiate this fact, defendant brought on record many other bills in which supply of different other tiles has been shown to the plaintiff and this fact has been admitted even in cross examination by PW1 at page 127 of the records. While stating that different tiles of different dimensions were purchased from the defendant and tiles for which the suit has been filed were defective and not the others. This fact also supports the version of the defendant that the tiles were supplied on the basis of quotation dated 25.08.2000

Even the argument made at the instance of learned counsel for the plaintiff that the tiles supplied by the plaintiff did not conform to IS 1237-1980 do not have much substance. It is the admitted case of the plaintiff that the samples of tiles were not taken in the presence of defendant and in that circumstance there is not enough material on record to suggest that the tile taken by the plaintiff for testing in lab was actually the tile which was supplied by the defendant, specifically when the defendant in his cross examination has asserted that the tiles provided by them had the mark of “RTI” while the tiles given for sample had the “mark RI”.

Another aspect in this regard is that there was no term in any of the quotation regarding the granite polishing of the tiles. Rather, this is an admitted fact by the plaintiff that in bill dated 07.10.2003, the architect of the plaintiff has recommended "mansion polishing" on chip tiles. In that circumstance, it cannot be safely concluded whether the tiles, if at all were affected due to bad quality or due to the poor polishing work done by the vendor of the plaintiff, specifically when the defendant was not involved in the grinding and polishing work. The scientist who performed the test on tile was not examined by the plaintiff and even there is question mark whether he had the appropriate qualification or not. Even the lab was not a government lab as stated by the plaintiff in its plaint.

In the present case, both the Courts below have recorded concurrent finding of fact that the plaintiff has not been able to prove on record that the plaintiff is entitled to any recovery from plaintiff. Thus, in view of the findings recorded by both the Courts below which are purely factual in nature and based on evidence available on record, no question of law much less substantial question of law is involved in the present appeal.

There is no illegality or irregularity warranting interference by this Court in exercise of power under Section 100 of CPC. Therefore, the present appeal is, thus dismissed.

Pending application(s), if any, shall also stand disposed of.

December 23, 2022 **(HARKESH MANUJA)**
anil **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*