

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.105

RSA No.2027 of 2022 (O&M)
Date of Decision: 20.12.2022

Swaran Talkies Hoshiarpur Private Limited

.... Appellant

Versus

Electrorama through its manager

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Dinesh Nagar, Advocate for the appellant.

TRIBHUVAN DAHIYA, J. (ORAL)

CM-7059-C-2022

This application has been filed seeking condonation of delay of 28 days in filing the appeal.

For the reasons stated in the application, the same is allowed and delay of 28 days in filing the appeal stands condoned.

RSA No.2027 of 2022 (O&M)

This is plaintiff's second appeal against the concurrent findings of the Courts below in a suit for recovery.

2. The facts of the case in brief are, the appellant/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for recovery of ₹5 lakh from the defendant; ₹4 lakh for the price of processor and ₹1 lakh for damages along with *pendente lite* and future interest, on account of failure of sound system installed by the defendant in Auditorium-2 of Cineplex being run by the plaintiff.

3. The facts pleaded are, the plaintiff company has been running a Cineplex having two auditoriums. It contacted the defendant for installation of sound and projection system for total amount of ₹48 lakh. The same was installed by the defendant before the scheduled opening of the Cineplex. On 12.12.2010, the sound system of Auditorium-2 of Cineplex stopped working properly on account of some defects while the movie was being played there. The customers raised hue and cry in the hall and the plaintiff had to return the price of their tickets. The defendant was informed in this regard and one Mr. Thakur from the defendant company came on 13.12.2010 to check the sound system. He apprised the plaintiff that the said system had failed and could not work anymore. Due to failure of sound system, Auditorium-2 remained closed after 12.12.2010. It was alleged that the defendant had installed duplicate sound system, which stopped working.

4. The suit was contested by defendant stating that on receiving the complaint a technician was immediately sent to the plaintiff's premises. He informed the plaintiff that reason for the technical snag was faulty UPS system, which was got installed by the latter on its own. Installation of UPS system was not within the scope of the agreement. Therefore, it was not responsible for the technical snag.

5. Both the Courts have concurrently held that undisputedly, the sound and projection system was installed by the defendant, but not the UPS. Plaintiff's Managing Director-PW3 himself during cross-examination conceded that the UPS System was got installed from a company of Parwano, Himachal Pradesh. In order to pin-point the technical snag, no expert was examined; in the absence whereof, it could not be concluded as to who was responsible for the snag in question. During trial also, no effort was made by the plaintiff to examine any expert to establish this fact.

Besides, in the absence of any documentary or other evidence on record, it could not be established as to for how long the defendant was responsible for functioning of the said sound system.

6. Further, regarding the loss of ₹1 lakh claimed as damages on account of Auditorium-2 of the Cineplex remaining non-functional on 12.12.2010 and return of money to the viewers, the plaintiff failed to produce any record to that effect. That being the position, the Courts below concurrently held that damages in the absence of evidence could not be awarded.

7. Learned counsel for the appellant could not point out any error of law in the findings recorded by both the Courts below. No substantial question of law arises for consideration either.

8. Appeal stands dismissed.

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

(TRIBHUVAN DAHIYA)
JUDGE

20.12.2022

Maninder

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