

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

RSA-2898-2015(O&M)

Date of decision:-7.1.2022

Harbans Singh

...Appellant

Versus

Bhagwan Dass

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjeev Sharma, Legal Aid Counsel
for the appellant.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated, facts of the case as can be gathered from the record are that plaintiff Harbans Singh son of Sh.Santa Singh, Contractor Wood Works, resident of House No.1574, Phase V, SAS Nagar (Mohali) had brought a suit for recovery against defendant – Bhagwan Dass, resident of House No.3185, Sector 23-D, Chandigarh seeking recovery of damages of Rs.1,50,000/-.
2. As the version of the plaintiff goes, the defendant had engaged him for doing wood work in his House No.3185, Sector 23-D, Chandigarh; as per settlement between the parties, the labour charges

were to be given as per schedule of the year 1995; the plaintiff had completed the task and thereafter asked the defendant to make payment but the defendant did not do so and rather withheld the machines and other tools of the plaintiff; when the defendant failed to make the payment, the plaintiff was constrained to file an application before the Private Construction Labour Contractor Union, Chandigarh on 28.6.2004; in response to the application, the Union submitted a complaint to the police; after intervention of the police and Union members, the defendant allowed the plaintiff to enter his house to prepare the estimate and carry out measurement of the work done by him; at that time the defendant agreed to make payment of the balance amount on the condition that the detailed bills would be submitted to him; on 20.7.2004, the plaintiff prepared final bill for an amount of Rs.1,62,661/- and submitted the same to the defendant but the defendant did not make the payment; the union issued notice to the defendant repeatedly to appear and settle the dispute but to no effect; thereafter, the plaintiff issued legal notice to the defendant on 16.6.2007 demanding an amount of Rs.1,02,661/- within a period of 15 days from the date of receipt of notice along with interest @ 18% w.e.f. 20.7.2004 but the defendant failed to do the needful despite receipt of notice. As such the plaintiff filed a suit for recovery of Rs.1,50,000/- i.e. Rs.1,02,661/- plus interest of Rs.30,780/- w.e.f. 20.7.2004 plus other damages amounting to Rs.16,000/-.

3. On notice the defendant put in appearance and filed written statement contesting the suit taking preliminary objections that the suit is not maintainable and no cause of action arose to the plaintiff to bring the

suit. On merits, the defendant denied having entered into any agreement with the plaintiff, rather contended that an oral settlement for completion of the wooden work was made between the parties, however, since the plaintiff did not complete the entire wood work in terms of the settlement after receipt of payment of Rs.67,000/-, the defendant had to engage another carpenter to complete the remaining work; the defendant has already paid a sum of Rs.67,000/- to the plaintiff, whereas the plaintiff had done work approximately of the value of Rs.50,000/-. The defendant denied that he had withheld machines and tools of the plaintiff, rather contended that plaintiff took all his tools and machines from the house of the defendant on 5.7.2004. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for recovery of Rs.1,50,000/-?OPP
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff is without cause of action for filing the present suit? OPD.
4. Whether the suit of the plaintiff is highly time-barred? OPD.
5. Whether the plaintiff has not approached with clean hands? OPD.
6. Whether the plaintiff has not affixed the proper court fee? OPD.
7. Relief

6. In order to prove his case, the plaintiff examined Jai Singh Sambhey as PW1, got his own statement recorded as PW2 besides examining Sh.Mohinderpal Dhiman as PW3. He tendered into evidence several documents i.e. abstract of cost as Ex.P2, application to Labour Construction Contractor Union as Ex.PW3/1, complaint Ex.PW3/2, letter to defendant dated 29.6.2004 as Ex.PW3/3, letter to defendant dated 8.7.2004 as Ex.PW3/4, letter to defendant dated 23.7.2004 as Ex.PW3/5, letter to defendant dated 9.8.2004 as Ex.PW3/6, letter to defendant dated 29.8.2004 as Ex.PW3/7 and replies Ex.PW3/8 to 3/10.

7. In rebuttal, the defendant Bhagwan Dass stepped into the witness-box as DW1 and repeated on oath his case as given in the written statement.

8. After hearing arguments, the trial Court decided issue No.1 against the plaintiff and in favour of the defendant, whereas issues No.2 to 6 were decided being neither pressed nor argued, as such in favour of the plaintiff against the defendant. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 9.10.2013.

9. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Chandigarh, who vide judgment and decree dated 1.9.2014 dismissed the same.

10. Still feeling dissatisfied by the judgments and decrees passed by the Courts below, the plaintiff had knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted,

the impugned judgments and decrees passed by the Courts below be set aside.

11. Notice of the appeal was given to the respondent/defendant, who was duly served but did not put in appearance, as such was proceeded against ex-parte.

12. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

13. Both the Courts below on appreciation of the factual and legal position, in light of the pleadings of the parties and evidence adduced by them, have returned the findings that the parties had entered into an oral agreement that the plaintiff would do the wood work in the house of defendant but then the rate fixed for doing the work is not proved on the record; further it is not established that it was only the plaintiff, who had carried out the whole work in the house of the defendant; the plaintiff had admitted in his cross-examination that he had received a sum of Rs.55,000/- to Rs.60,000/- from the defendant; the rates as per schedule of 1995 were not proved on the record. Thus, the plaintiff was unable to establish that he is entitled to recover Rs.1,02,661/- as charges for doing wood work in the house of the defendant from the defendant. It being so, he cannot possibly claim any interest or damages in that way total amount of Rs.1,50,000/-.

14. As such concurrent findings being there with which I do not see any reason to differ on any account and no question of law is shown to be involved in this case.

15. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

16. The appeal stands dismissed accordingly.

7.1.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No