

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

105

**RSA-5374-2019 (O&M)
Date of decision: 18.04.2022**

Jitender Singh Contractor

.....Appellant

Versus

Haryana State Agriculture Marketing Board, Karnal Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Saurabh Dalal, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

This is a Regular Second Appeal against the concurrent findings recorded by the Courts below. The judgment and decree of Civil Judge (Jr. Divn.), Karnal dated 27.11.2015 was upheld by the Lower Appellate Court vide judgment and decree dated 04.10.2019 whereby the suit of the respondent/plaintiff was decreed with costs.

The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The case in brief as set up by the plaintiff before the trial Court was that they had allocated work of construction of link road from village Ainchla to Picholia vide order No.2944 dated 14.07.2010 to the defendant. As per the terms and conditions of the contract entered into between the parties, the defendant was to complete the work allotted to him within 10 months i.e. on or before 13.05.2011. However, since the defendant failed to complete the work within the aforementioned stipulated time, the defendant was liable to be penalized under clause II of the contract agreement which provided for imposition of compensation equalling upto 10% of the agreed

contractual amount. Despite the plaintiff sending repeated reminders and letters to the defendant to complete the work within the stipulated time, he failed to do so as a result of which as per clause II of the contract agreement, penalty to the extent of 10% of the contractual amount was imposed upon the defendant vide letter No.1919 dated 23.05.2011. The plaintiff department adhered to the principles of natural justice by granting an opportunity to the defendant for filing his objections. Vide letter No.2683-85 dated 29.06.2011, the Superintending Engineer after hearing both the parties confirmed the penalty imposed upon the defendant under clause II of the agreement. Thereafter, final measurement of the road was carried out on 06.07.2011 vide memo No.2839-44. A notice dated 12.11.2012 followed by another notice in the form of a reminder dated 12.12.2012 vide memo No.4539 was also issued to the defendant, to make the payment of penalty imposed upon him but in vain. Having been left with no other alternate remedy, the plaintiff filed the suit in question for recovery of Rs.5,35,420/- along with interest from the date of agreement till its realization.

The defendant admitted to the execution of the contract for construction of link road on 14.07.2010 between the parties, however, he submitted that the defendant was unable to complete the work within the stipulated time of 10 months on account of ban on mining in the State of Haryana by the Hon'ble Apex Court, as a result of which he was unable to procure the requisite construction material. It was pleaded that on account of the ban on mining, the rates of raw material had escalated which came in the way of the defendant not being able to

execute the work allotted to him.

On the basis of material and evidence led, both the Courts below concurrently concluded that the plaintiff was entitled to the recovery of amount in the sum of Rs.5,35,420/- i.e. 10% of the contractual amount as per the terms and conditions of the contract.

Learned counsel for the plaintiff has assailed the concurrent findings arrived at, by the Courts below by reiterating his submissions made before the trial Court and has urged that he was unable to fulfil his part of the contract within the stipulated time on account of the ban imposed on mining in the State of Haryana by the Hon'ble Apex Court. It was, thus, for reasons beyond his control that he was unable to execute the work allotted to him. It was submitted that the order had been passed arbitrarily by the authorities concerned without appreciating that he had in fact actually executed some part of the contract work by filling of earth on the road and later on because of non-availability of raw material, he could not complete the work.

I have heard learned counsel and perused the relevant material on record including the impugned judgments and decrees.

This Court does not find any substance in the submissions made by the learned counsel. It is the admitted case of the defendant that he failed to complete the work allotted to him within the stipulated time of 10 months. The submission made by the learned counsel that it was on account of a ban on mining by the Hon'ble Apex Court that he was unable to procure the raw material and the raw material which was in fact available in the market was being sold at exorbitant rates deserves to be rejected. A perusal of the terms and conditions of the

contract leaves no manner of doubt that time was the essence of the contract entered into between the parties.

It also needs to be observed here that no doubt there was ban on mining only in the State of Haryana but at the same time it has not been disputed that there was no ban on the sale of raw material which in fact was readily available in the neighbouring States as well as in the local market. In the circumstances, the plaintiff rightly, after giving due opportunity of hearing to the defendant, imposed the penalty as provided for under clause II of the contract (Ex.P-1).

As a sequel to the above, this Court affirms the concurrent findings recorded by the Courts below. Accordingly, the instant appeal being devoid of any merit is dismissed.

18.04.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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