

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

RSA-79-2022 (O&M)

Date of decision: 17.01.2023

Municipal Corporation, Faridabad and others

...Appellants

Versus

M/s Thola Gamdu Coop. L & C Society Ltd.

...Respondent

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

Present: Mr. Udit Garg, Advocate for
Mr. Rajiv Verma, Advocate for the appellants.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that plaintiff M/s Thola Gamdu Coop. L & C Society Ltd. Matindu, Sonipat had brought a suit against Municipal Corporation, Faridabad through its Commissioner and Executive Engineer, Municipal Corporation, Faridabad seeking a declaration that letter dated 22.04.2014 vide which a penalty of 10% of allotted amount of work i.e. Rs.41,04,600/- under Clause-II and decision of Corporation to forfeit the security amount are illegal, arbitrary liable to be set aside, besides craving for grant of permanent injunction restraining the defendants from recovering the said amount from the plaintiff and from forfeiting the security amount deposited by the plaintiff. As per version of the plaintiff, defendant No.1 had allotted construction work of water drain from Bodh Vihar Chowk to Hitkari

Chowk, NIT Faridabad to plaintiff society after accepting its tender. The work order had been issued by the defendants, vide letter dated 12.11.2010 and the entire cost of work was fixed as Rs.5,09,30,943/- which was liable to be extended as per work done at site subject to approval from the State Government. However, the attitude of defendant Corporation and its employees was non-cooperative inasmuch as the plaintiff was not given design of water drain till 03.11.2011 despite various requests, therefore, work could not start. It took 3 ½ months for defendants to issue the design. The plaintiff had taken up the matter with officials of defendants in that regard, vide letter dated 08.03.2011, requesting for extension of time limit from 21.01.2011 to 31.03.2012.

According to the plaintiff, it could not complete the work due to non finalization of layout of drainage for want of shifting of transformer poles, water pipelines and delayed payment etc. The plaintiff kept on making representations to officials of defendants but no proper and appropriate response was given and delay in completion of work was solely on account of the sluggish and slow response of officials of defendants. No ground was there to impose any penalty upon the plaintiff when defendants refused to withdraw the impugned notice and threatened to forfeit security amount deposited by the plaintiff with them. Feeling aggrieved, the plaintiff brought the suit in question.

2. On notice, the defendants appeared and filed joint written statement, contesting the suit, raising various preliminary objections, contending that the plaintiff lacked locus standi to file the suit because it had failed to execute the alleged work within the stipulated period, therefore, the penalty was imposed upon it as per terms & conditions of the contract. The plaintiff itself being a wrong doer is estopped from filing the suit. According to the defendants, full cooperation was extended to the plaintiff and designs were supplied within time. All the hurdles pointed out by the plaintiff in the construction were got removed. Even time for completion of contract was extended, however, progress of the work was not upto the satisfaction despite various letters having been written to the plaintiff. Only 20% of the work was completed in one year, therefore, penalty was rightly imposed upon the plaintiff as per rules adopting proper procedure. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled to get a decree of declaration against the defendants as prayed for? OPP.*
2. *Whether the plaintiff is entitled to get decree of permanent injunction against the defendants as prayed for? OPP.*
3. *Whether the suit is not maintainable due to law of estoppel? OPD*
4. *Whether the plaintiff has violated the terms of agreement? OPD*
5. *Relief.*

4. Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of plaintiff, Sh. Pradeep, its authorized representative appeared as PW1 and submitted his affidavit Ex.PW1/A in which he has made assertions in tune of the case of the plaintiff as given in the plaint. The plaintiff relied upon various documents, whereas, during the course of evidence of defendants, Sh. Sumer Singh, JE got his statement recorded as DW1 and repeated on oath the version of defendants as given in the written statement. The defendants also proved in evidence several documents.

5. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Faridabad, vide judgment and decree dated 15.09.2018 decreed the suit of the plaintiff with costs, declaring that the impugned letter dated 22.04.2014 levying penalty of 10% of amount of contract i.e. Rs.41,04,600/- under Clause II issued by the defendant Corporation is null and void and is not binding upon the plaintiff, therefore, the defendants were restrained from recovery the amount of penalty as well as forfeiting the security amount in any manner.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendants had preferred an appeal before District Judge, Faridabad. The appeal was assigned to Addl. District Judge, Faridabad, who vide judgment and decree dated 27.10.2021, dismissed the same.

7. Still feeling aggrieved, the defendants have knocked at the

door of this Court by way of filing the present Regular Second Appeal.

8. I have heard learned counsel for the appellant/defendants besides going through the record and I find that there is no merit in the appeal. Here both the Courts below i.e. trial Court of Civil Judge (Jr. Divn.) Faridabad and Ist Appellate Court of Addl. District Judge, Faridabad have returned concurrent findings that the delay in execution of the work by the plaintiff was not deliberate but on account of the act and conduct of officials of defendants inasmuch as they had not provided the requisite drawings to the plaintiff within time and had not got the site cleared for smooth completion of project. The progress in the drain work could not be done due to non finalization and non removal of hurdles of crossing of water pipeline to alignment of drain, electric poles and constructed house in alignment of drains. The transformer and electric poles coming in between layout of drainage were also got removed quite belatedly. In that way, the problems/hurdles pointed out by the plaintiff in various letters written to officials of defendants were not sorted out at the earliest. Therefore, the burden for non completion of work in time could not be shifted upon the plaintiff.

9. The Courts below have analyzed the evidence adduced by the parties in a very minute and detailed manner, finding that there was no justification for the defendant corporation to impose any penalty upon the plaintiff or threatening to forfeit the security deposited by the plaintiff with Municipal Corporation, Faridabad. Therefore, the relief

of declaration and permanent injunction as prayed for by the plaintiff was granted to it.

I find that the judgments passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. No illegality or infirmity therein is found to be there. There is no ground to interfere with the impugned judgments and decrees by exercising the power in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

17.01.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No