

RSA-2444-1992 (O&M)

-1-

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

**RSA-2444-1992 (O&M)
Reserved on : 24.04.2023
Date of Decision : 12.05.2023**

Haryana State Electricity Board

....Appellant

VERSUS

Yoginder Nath and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Mahajan, Advocate for the appellant.

Respondent No.1 present in person.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgments and decrees dated 09.08.1989 and 27.08.1992 passed by both the Courts below whereby the suit of the plaintiff-respondent No.1 has been decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration with consequential relief of mandatory injunction on the ground that the plaintiff-respondent No.1 was enlisted as a Government contractor since long with the Haryana PWD (B&R) Circle, Karnal and had under taken a number of jobs of the government department from time to time. The plaintiff-respondent No.1 claimed that he was entitled to recover Rs.416/- from the defendant-appellant for the alleged charges of four bags of cement illegally withheld by the defendant-appellant as

also for refund of deposit of security of Rs.2245/-. The suit was contested by the defendant-appellant.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether running payments were given to the plaintiff at lesser rate as such whether he is entitled to recover a sum of Rs.347/81 paise ? OPP
2. Whether the defendants wrongfully recovered charges of four bags of cement at penal rate from the plaintiff, is so, to what effect ? OPP
3. Whether the plaintiff is also entitled to recover the amount of security ? OPP
4. Whether the plaintiff is entitled to interest, if so, to what rate ? OPP
5. Whether this Court has no jurisdiction ? OPD
6. Relief.

The Trial Court vide judgment and decree dated 09.08.1989 decreed the suit of the plaintiff-respondent No.1 for recovery of Rs.416/- on account of four bags of cement and Rs.2254/- as security amount along with costs and interest @ 18% per annum after three months from the date of completion of the work till realization. Aggrieved by the said judgment and decree, both the plaintiff-respondent No.1 as well as the defendants preferred appeals. Vide judgment and decree dated 27.08.1992, the appeal filed by the plaintiff-respondent No.1 was partly accepted whereas the appeal filed by the defendant-appellant herein was dismissed. The suit of the plaintiff-respondent No.1 was decreed for recovery of Rs.416/- on account of four bags of cement,

Rs.875/- on account of damages of labour charges and Rs.2245/- as security amount with interest @ 18% per annum. Aggrieved by the said judgment and decree, the present regular second appeal has been filed by the defendant-appellant.

The only argument raised by the learned counsel for the defendant-appellant is that the jurisdiction of the Civil Court was barred and therefore the Courts below have illegally decreed the suit.

Respondent No.1 has appeared in person and has supported the judgments and decrees passed by the Courts below. He submitted that no interference was called for in the concurrent findings of fact recorded by both the Courts below.

I have heard learned counsel for the defendant-appellant as well as the plaintiff-respondent No.1 appearing in person.

The argument of the learned counsel for the defendant-appellant that the Civil Court had no jurisdiction to try the suit deserves to be rejected simply on the ground that though a specific issue i.e Issue No.5 was framed qua jurisdiction, the onus of which was cast upon the defendant-appellant, however the said issue was not pressed before the Trial Court. Learned counsel for the defendant-appellant has not been able to convince this Court that the issue of jurisdiction can be raised once the same had been given up before the Court below. Even otherwise, Section 102 of the Code of Civil Procedure, 1908, as it stood in 1992, reads as under :

“102. No second appeal in certain suits : No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-

RSA-2444-1992 (O&M)

-4-

matter of the original suit does not exceed three thousand rupees.”

The pecuniary subject matter of the suit indisputably does not exceed rupees three thousand and as such in view of the provisions of Section 102 of the Code of Civil Procedure, 1908, as it stood at the relevant time, no second appeal would have been maintainable. No other point was argued.

In view of the above the present appal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

12.05.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No