

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4408 of 2005 (O&M)

Date of decision : 6.2.2023

...

M/s Nirmal Singh and Son's

.....Appellant

vs.

M/s UCO Bank

.....Respondent

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present: None

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**H. S. Madaan, J. (Oral)**

1. As per report by the Registry, counsel for the appellant has been served, but he has not put in appearance. Since the appeal relates to the year 2005, I do not find it proper and appropriate to adjourn it further, therefore I am proceeding to decide it after going through the record.

2. Briefly stated, facts of the case are that plaintiff – M/s UCO Bank, having its Head Office at Calcutta and one of its Zonal Office amongst others at Chandigarh, through its Zonal Manager Sh. Inder Mohan Sharma, had brought a suit against M/s Nirmal Singh and Sons, through Nirmal Singh its Proprietor, for recovery of Rs.1,63,631.40 P as damages on account of breach of contract resulting in incomplete work, changes in specifications of the work and liquidated damages on the basis of oral and documentary evidence.

3. As per case of the plaintiff, it had floated a tender for work of additions, alterations, renovations and interior furnishing of two existing buildings situated at Plot No. 1003-1004, Sector 44-B, Chandigarh, proposed to be used as a Hostel and for part furniture required for the Staff Training College (Academic), Chandigarh. The tender submitted by the defendant was accepted vide agreement dated 9.10.1991 and the work for total value of Rs.10,90,649.50 P was allotted and entrusted to the defendant. The work was to be completed within 90 days from the date of order, starting on 12.10.1991 ending on 13.1.1991. It was also agreed between the parties that if the defendant contractor failed to execute the work in time, the he would be liable to pay penalty of Rs.500/- per day of delay to the plaintiff subject to a maximum of 10% of the total cost of the project tendered by the defendant as liquidated charges, for the period which the said work would remain incomplete. The defendant had executed the work for total value of Rs.7,50,000/- but did not do the complete work, that too as per specifications, thereby causing loss to the plaintiff to the tune of Rs.1,63,631.40 P, by way of breach of contract. The defendant failed to rectify the defective work and complete the work inspite of repeated demand of the plaintiff, therefore, the contract was terminated on 21.9.1993, after making necessary calculations. When the defendant failed to make the payment, the suit in question was filed.

4. Notice of the suit was given to the defendant, who put in appearance and filed written statement contesting the suit, raising

various legal pleas, contending that the order had been placed by the plaintiff after one year of the acceptance of tender by the defendant. As a result of delay, the costs of the material increased and the defendant was facing problem in completing the work. An advance amount of Rs.4 lacs, promised to the defendant by the plaintiff, was not made. Therefore, the defendant was compelled to leave the work. The fault was not on his part but that of the plaintiff. The defendant prayed for dismissal of the suit.

5. Plaintiff filed replication controverting the allegations in the written statement and reiterating the averments made in the plaint. From the pleadings of the parties, following issues were framed :-

- 1) Whether the plaintiff is entitled to recover a sum of Rs.1,63,631.40 P from the defendant? OPP
- 2) Whether the plaintiff is entitled to recover interest and at what rate? OPP
- 3) Whether the plaintiff has got no cause of action ? OPD
- 4) Whether the plaintiff has not come to the Court with clean hands, if so to what effect ? OPD
- 5) Whether the suit is barred by limitation? OPD
- 6) Whether the suit is not properly verified? OPD
- 7) Relief.

6. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing the arguments, the trial Court of Civil Judge (Junior Division), Chandigarh, decided issues No.1 and 2 in favour of the plaintiff and against the defendant. Issue Nos. 3, 4, 5 and 6 were decided against the defendant and in favour of the plaintiff. As a result of findings on the issues, vide judgment dated 10.10.2002, the suit of the plaintiff was decreed for recovery of Rs.1,63,631.40 P from the defendant alongwith interest @ 6% per annum from the date of filing of the suit till realization of the decretal amount.

8. Feeling aggrieved, by the said judgment and decree passed by the trial Court, the defendant had preferred an appeal before the District Judge, Chandigarh. That appeal, which was assigned to Additional District Judge, Chandigarh, was disposed of, in as much as, the findings of the trial Court on issues No. 1 and 2 were modified, whereas the other findings were affirmed. Therefore, the suit of the plaintiff was decreed to the extent of 48,631.40 P with proportionate costs with interest @ 6% per annum on the above amount from the date of filing of the suit till actual realization.

9. Still feeling aggrieved, the defendant has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondent, who had put in appearance, but subsequently, there had not been any representation on behalf of either of the parties.

10. After going through the record, I find that the trial Court had come to the conclusion that the defendant had not completed

the work within stipulated time as agreed by him and decreed the suit of the plaintiff in toto. However, the Ist Appellate Court of Additional Distinct Judge, Chandigarh, had observed that some of the grievances raised by the defendant from the plaintiff were not addressed and it had come on record that defendant was not in a position to complete the work on account of change of drawings, specifications and delay in making the payment. Therefore, only the defendant could not be blamed for not completing the work within time and for leaving the work incomplete in terms of the agreement. The Ist Appellate Court found the plaintiff – bank to be entitled to recover a sum of Rs. 48,631.40 P from the defendant.

11. I find that the judgment recorded by the Ist Appellate Court of Additional District Judge, Chandigarh, is quite detailed and well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law and I do not see any reason to differ with it on any point. As a matter of fact, no substantial question of law arises in the present appeal.

12. The appeal is found to be without any merit and the same stands dismissed accordingly.

6.2.2023  
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( H.S. Madaan )  
Judge

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|-----------------------------|---------|
| Whether speaking / reasoned | Yes/ No |
| Whether reportable          | Yes/ No |