

119 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-163-2022 (O & M)  
Date of decision: 14.11.2023

GAMMON INDIA LIMITED AND ANR

...APPELLANTS

V/S

M/S VIJAY SINGH AND COMPANY AND ORS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Jasdev Singh Mehndiratta, Advocate,  
Ms. Jyotnoor Kaur Sethi, Advocate and  
Ms. Navreet Dhaliwal, Advocate for the appellants.

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**HARKESH MANUJA J. (ORAL)**

By way of present appeal, challenge has been made to the judgments and decrees dated 19.11.2019 and 25.02.2021 passed by the Courts below whereby a suit for mandatory injunction seeking issuance of direction to the appellants/defendants No.1 and 2 to discharge their liability regarding the payment of an outstanding amount of Rs.44,28,000/- along with interest, besides seeking permanent injunction from interfering or removing the equipments/machinery/raw materials pertaining to plaintiff/respondent No.1 lying on the project site, came to be decreed in favour of respondent No.1-plaintiff.

2. It was pleaded in the plaint that proforma respondents gave a contract for construction of roads, sewer, water supply lines etc. to appellants/defendants No.1 and 2 in Ambience Township Project, Sector 36-37, Huda, Panipat. In pursuance thereof, appellants/defendants No.1 and 2 deputed respondent No.1/plaintiff firm to provide security services and a work order dated 01.07.2014 was issued in this regard for the period 01.01.2014 to 31.10.2014. As per the plaint, the work continued till 31.01.2016. It was further pleaded that the contract between the respondents/plaintiffs and the

appellants/defendants No.1 and 2 was later terminated and as a result thereof, appellants/defendants No.1 and 2 tried to remove their equipments from the site in question, without making payment of the outstanding amount due towards respondent No.1/plaintiff, compelling him to file the present suit.

3. On the other hand, appellants/defendants No.1 and 2 filed their written statement and submitted that on account of negligence and poor performance of the security personnel provided by respondent No.1/plaintiff, huge financial loss was suffered by them. It was also pleaded that the contract between appellants/defendant Nos.1 and 2 with respondent Nos.2 and 3 stood terminated and an arbitration dispute in this regard was pending. Respondent Nos.2 and 3/defendant Nos.3 and 4 filed their separate written statement and submitted that they were not party to any contract between the plaintiff/respondent No.1 and the appellants/defendant Nos.1 and 2, therefore, the suit was not maintainable against them.

4. The trial Court vide judgment and decree dated 19.11.2019, partly decreed the suit to an extent of Rs.1,91,172.50/-, in favour of respondent No.1/plaintiff firm and against the appellants/defendants No.1 and 2. Aggrieved thereof, respondent No.1/plaintiff filed first appeal which came to be partly allowed vide judgment and decree dated 25.02.2021 thereby granting decree for recovery in a sum of Rs.25,03,311/- in favour of respondent No.1/plaintiff and against defendants.

5. Impugning the judgment and decree dated 25.02.2021 passed by the first Appellate Court, learned counsel for appellants/defendants No.1 and 2 submits that the first Appellate Court did not appreciate that the documents Ex.P-4 to Ex.P-27 were all photocopies and never proved on record. He also submits that no permission, even to lead secondary evidence qua those

documents, was ever sought for by respondent No.1/plaintiff. He further submits that even no documentary evidence was led besides work order dated 01.07.2014 (Ex. P2) to prove that the plaintiff/respondent No.1 continued to work up till 31.10.2014. Learned counsel further submits that the suit in the present form was not even maintainable as instead of prayer for grant of decree for mandatory injunction, respondent No.1/plaintiff should have prayed for decree for recovery of amount.

6. I have heard learned counsel for appellants/defendants No.1 and 2 and gone through the paper book. I am unable to find substance in the submissions made on behalf of appellants/defendants No.1 and 2.

7. As per the specific averments made in para 4 of the plaint, respondent No.1/plaintiff was providing security services to appellants/defendants No.1 and 2 from 01.07.2014 till 31.01.2016 but the entire dues towards the same were never cleared by them. A perusal of the paper-book shows that although, the documents Ex.P4 to Ex.P27, which are the invoices bills issued by respondent No.1/appellant being the photostate copies, were not proved on record as per the provisions of the Indian Evidence Act, 1872, as the originals thereof were not produced besides, even having failed to prove all the work orders upto 31.01.2016, yet, in the humble opinion of this Court, no illegality or perversity can be found with the judgment and decree passed by the first Appellate Court, which is rightly based on admission made by the witness/authorized representative of the appellants/defendants No.1 and 2 who while appearing as DW-2, admitted the fact that as per their own record, a sum of Rs.25,03,311/- was payable towards respondent No.1/plaintiff. The relevant extract from the examination-in-chief of DW2-Mr. Naresh Kumar Mehta is reproduced hereunder:-

*“11. For the work done by the Plaintiff as per books of account of the defendant an amount of Rs.25,03,311/- (Twenty five lakhs thirty (sic-three) thousand (sic-three hundred) eleven only) remain payable to the Plaintiff.*

*12. Due to non payment of the works by the Defendant No.3&4 to the defendant and termination of the work by the Defendant No.3&4 by letter dated 3<sup>rd</sup> November 2015 which are subject matter of the separate arbitration proceedings the defendant remain unpaid for the work done by it. However when the defendant started to demobilize the site in March 2016 the plaintiff unlawfully and by use of force prevented the defendants from removing their materials and machinery from the site. The total value of the stock and materials at the site as in annexure 1 was 3.21 Crores.”*

8. Admittedly, no attempt was made by appellants/defendants No.1 and 2 to seek permission of the Court to cross-examine DW2-Naresh Kumar Mehta on the aforesaid aspect of admission made by him as regards the amount payable towards respondent No.1/plaintiff. Furthermore, even the present appeal has been preferred through him only at the authorized representative of appellants/defendants No.1 and 2.

9. Also, the other objection raised at the instance of appellants/defendant No.1 and 2 as regards the maintainability of the suit in the present form, the same being for mandatory injunction, does not hold good as the requisite Court fee/stamp duty was duly affixed by respondent No.1/plaintiff on the plaint, against the recovery prayed for by it.

10. As regards the plea raised by appellants/defendants No.1 and 2 regarding its material/machinery or equipments lying at the spot, which were even admitted by the authorized representative of respondent No.1/plaintiff, namely, Ajay Lathwal (PW-1) in his cross-examination, in addition to the examination-in-chief made by PW6 Mr. Jatin; appellants/defendant No.1 and 2

shall be at liberty to invoke their remedies in accordance with law against respondent No.1/plaintiff.

11. Resultantly, in view of the discussion made hereinabove, finding no illegality or perversity with the reasoning recorded by the First Appellate Court, the present appeal being devoid of merits stands dismissed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

November 14, 2023  
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(HARKESH MANUJA)  
JUDGE

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|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |